

**SENATE BILL No. 383**

By Committee on Judiciary

2-6

1 AN ACT concerning crimes, punishment and criminal procedure; relating  
2 to driving under the influence; sentencing; amending K.S.A. 2017  
3 Supp. 8-1567 and repealing the existing section.

4  
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2017 Supp. 8-1567 is hereby amended to read as  
7 follows: 8-1567. (a) Driving under the influence is operating or attempting  
8 to operate any vehicle within this state while:

9 (1) The alcohol concentration in the person's blood or breath as  
10 shown by any competent evidence, including other competent evidence, as  
11 defined in ~~paragraph (1) of subsection (f) of~~ K.S.A. 8-1013(f)(1), and  
12 amendments thereto, is 0.08 or more;

13 (2) the alcohol concentration in the person's blood or breath, as  
14 measured within three hours of the time of operating or attempting to  
15 operate a vehicle, is 0.08 or more;

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

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

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

23 (b) (1) Driving under the influence is:

24 (A) On a first conviction a class B, nonperson misdemeanor. The  
25 person convicted shall be sentenced to not less than 48 consecutive hours  
26 nor more than six months' imprisonment, or in the court's discretion 100  
27 hours of public service, and fined not less than \$750 nor more than \$1,000.  
28 The person convicted shall serve at least 48 consecutive hours'  
29 imprisonment or 100 hours of public service either before or as a condition  
30 of any grant of probation or suspension, reduction of sentence or parole.  
31 The court may place the person convicted under a house arrest program  
32 pursuant to K.S.A. 2017 Supp. 21-6609, and amendments thereto, to serve  
33 the remainder of the sentence only after such person has served 48  
34 consecutive hours' imprisonment;

35 (B) on a second conviction a class A, nonperson misdemeanor. The  
36 person convicted shall be sentenced to not less than 90 days nor more than

1 one year's imprisonment and fined not less than \$1,250 nor more than  
2 \$1,750. The person convicted shall serve at least five consecutive days'  
3 imprisonment before the person is granted probation, suspension or  
4 reduction of sentence or parole or is otherwise released. The five days'  
5 imprisonment mandated by this subsection may be served in a work  
6 release program only after such person has served 48 consecutive hours'  
7 imprisonment, provided such work release program requires such person  
8 to return to confinement at the end of each day in the work release  
9 program. The person convicted, if placed into a work release program,  
10 shall serve a minimum of 120 hours of confinement. Such 120 hours of  
11 confinement shall be a period of at least 48 consecutive hours of  
12 imprisonment followed by confinement hours at the end of and continuing  
13 to the beginning of the offender's work day. The court may place the  
14 person convicted under a house arrest program pursuant to K.S.A. 2017  
15 Supp. 21-6609, and amendments thereto, to serve the five days'  
16 imprisonment mandated by this subsection only after such person has  
17 served 48 consecutive hours' imprisonment. The person convicted, if  
18 placed under house arrest, shall be monitored by an electronic monitoring  
19 device, which verifies the offender's location. The offender shall serve a  
20 minimum of 120 hours of confinement within the boundaries of the  
21 offender's residence. Any exceptions to remaining within the boundaries of  
22 the offender's residence provided for in the house arrest agreement shall  
23 not be counted as part of the 120 hours;

24 (C) on a third conviction a class A, nonperson misdemeanor, except  
25 as provided in subsection (b)(1)(D). The person convicted shall be  
26 sentenced to not less than 90 days nor more than one year's imprisonment  
27 and fined not less than \$1,750 nor more than \$2,500. The person convicted  
28 shall not be eligible for release on probation, suspension or reduction of  
29 sentence or parole until the person has served at least 90 days'  
30 imprisonment. The 90 days' imprisonment mandated by this subsection  
31 may be served in a work release program only after such person has served  
32 48 consecutive hours' imprisonment, provided such work release program  
33 requires such person to return to confinement at the end of each day in the  
34 work release program. The person convicted, if placed into a work release  
35 program, shall serve a minimum of 2,160 hours of confinement. Such  
36 2,160 hours of confinement shall be a period of at least 48 consecutive  
37 hours of imprisonment followed by confinement hours at the end of and  
38 continuing to the beginning of the offender's work day. The court may  
39 place the person convicted under a house arrest program pursuant to  
40 K.S.A. 2017 Supp. 21-6609, and amendments thereto, to serve the 90 days'  
41 imprisonment mandated by this subsection only after such person has  
42 served 48 consecutive hours' imprisonment. The person convicted, if  
43 placed under house arrest, shall be monitored by an electronic monitoring

1 device, which verifies the offender's location. The offender shall serve a  
2 minimum of 2,160 hours of confinement within the boundaries of the  
3 offender's residence. Any exceptions to remaining within the boundaries of  
4 the offender's residence provided for in the house arrest agreement shall  
5 not be counted as part of the 2,160 hours;

6 (D) on a third conviction a nonperson felony if the person has a prior  
7 conviction which occurred within the preceding 10 years, not including  
8 any period of incarceration. The person convicted shall be sentenced to not  
9 less than 90 days nor more than one year's imprisonment and fined not less  
10 than \$1,750 nor more than \$2,500. The person convicted shall not be  
11 eligible for release on probation, suspension or reduction of sentence or  
12 parole until the person has served at least 90 days' imprisonment. The 90  
13 days' imprisonment mandated by this subsection may be served in a work  
14 release program only after such person has served 48 consecutive hours'  
15 imprisonment, provided such work release program requires such person  
16 to return to confinement at the end of each day in the work release  
17 program. The person convicted, if placed into a work release program,  
18 shall serve a minimum of 2,160 hours of confinement. Such 2,160 hours of  
19 confinement shall be a period of at least 48 consecutive hours of  
20 imprisonment followed by confinement hours at the end of and continuing  
21 to the beginning of the offender's work day. The court may place the  
22 person convicted under a house arrest program pursuant to K.S.A. 2017  
23 Supp. 21-6609, and amendments thereto, to serve the 90 days'  
24 imprisonment mandated by this subsection only after such person has  
25 served 48 consecutive hours' imprisonment. The person convicted, if  
26 placed under house arrest, shall be monitored by an electronic monitoring  
27 device, which verifies the offender's location. The offender shall serve a  
28 minimum of 2,160 hours of confinement within the boundaries of the  
29 offender's residence. Any exceptions to remaining within the boundaries of  
30 the offender's residence provided for in the house arrest agreement shall  
31 not be counted as part of the 2,160 hours; and

32 (E) on a fourth or subsequent conviction a nonperson felony. The  
33 person convicted shall be sentenced to not less than 90 days nor more than  
34 one year's imprisonment and fined \$2,500. The person convicted shall not  
35 be eligible for release on probation, suspension or reduction of sentence or  
36 parole until the person has served at least 90 days' imprisonment. The 90  
37 days' imprisonment mandated by this subsection may be served in a work  
38 release program only after such person has served 72 consecutive hours'  
39 imprisonment, provided such work release program requires such person  
40 to return to confinement at the end of each day in the work release  
41 program. The person convicted, if placed into a work release program,  
42 shall serve a minimum of 2,160 hours of confinement. Such 2,160 hours of  
43 confinement shall be a period of at least 72 consecutive hours of

1 imprisonment followed by confinement hours at the end of and continuing  
2 to the beginning of the offender's work day. The court may place the  
3 person convicted under a house arrest program pursuant to K.S.A. 2017  
4 Supp. 21-6609, and amendments thereto, to serve the 90 days'  
5 imprisonment mandated by this subsection only after such person has  
6 served 72 consecutive hours' imprisonment. The person convicted, if  
7 placed under house arrest, shall be monitored by an electronic monitoring  
8 device, which verifies the offender's location. The offender shall serve a  
9 minimum of 2,160 hours of confinement within the boundaries of the  
10 offender's residence. Any exceptions to remaining within the boundaries of  
11 the offender's residence provided for in the house arrest agreement shall  
12 not be counted as part of the 2,160 hours.

13 *(2) The court may order that the term of imprisonment imposed*  
14 *pursuant to subsection (b)(1)(D) or (b)(1)(E) be served in a staggered*  
15 *manner as provided in this paragraph.*

16 *(A) The 90 days' imprisonment mandated by subsection (b)(1)(D) or*  
17 *(b)(1)(E) may be divided into three 30-day segments. The first 30-day*  
18 *segment may be served in a work release program only after such person*  
19 *has served 48 consecutive hours' imprisonment, provided such work*  
20 *release program requires such person to return to confinement at the end*  
21 *of each day in the work release program. The person convicted, if placed*  
22 *into a work release program, shall serve a minimum of 672 hours of*  
23 *confinement. Such 672 hours of confinement shall be a period of at least*  
24 *48 consecutive hours of imprisonment followed by confinement hours at*  
25 *the end of and continuing to the beginning of the offender's work day. The*  
26 *court may place the person convicted under a house arrest program*  
27 *pursuant to K.S.A. 2017 Supp. 21-6609, and amendments thereto, to serve*  
28 *the first 30-day segment only after such person has served 48 consecutive*  
29 *hours' imprisonment. The person convicted, if placed under house arrest,*  
30 *shall be monitored by an electronic monitoring device that verifies the*  
31 *offender's location. The offender shall serve a minimum of 672 hours of*  
32 *confinement within the boundaries of the offender's residence. Any*  
33 *exceptions to remaining within the boundaries of the offender's residence*  
34 *provided for in the house arrest agreement shall not be counted as part of*  
35 *the 672 hours.*

36 *(B) The court shall set a review hearing for such offender 90 to 120*  
37 *days after the initial sentencing, and again at 180 to 240 days after the*  
38 *initial sentencing. The offender shall participate in the multidisciplinary*  
39 *model of services for substance use disorders required pursuant to*  
40 *subsection (b)(4) prior to each such hearing as ordered by the court. At*  
41 *each such hearing, the court shall consider any alcohol-monitoring results*  
42 *and the recommendation of the multidisciplinary team, together with any*  
43 *other factors deemed relevant by the court, in deciding whether to modify*

1 *the sentence by ordering a stay of the next following segment of*  
2 *incarceration that the court had initially ordered to be executed.*

3 *(C) If the court stays a segment of incarceration that it has previously*  
4 *ordered to be executed, that portion of the sentence must be added to the*  
5 *total number of days the offender is subject to serving in custody, if the*  
6 *person subsequently violates any of the conditions of that stay of*  
7 *execution.*

8 *(D) The provisions of this paragraph shall not affect any other*  
9 *sanction otherwise authorized by law for any violation of probation,*  
10 *assignment to a community correctional services program, suspension of*  
11 *sentence or nonprison sanction.*

12 ~~(2)~~ (3) The court may order that the term of imprisonment imposed  
13 pursuant to subsection (b)(1)(D) or (b)(1)(E) be served in a state facility in  
14 the custody of the secretary of corrections in a facility designated by the  
15 secretary for the provision of substance abuse treatment pursuant to the  
16 provisions of K.S.A. 2017 Supp. 21-6804, and amendments thereto. The  
17 person shall remain imprisoned at the state facility only while participating  
18 in the substance abuse treatment program designated by the secretary and  
19 shall be returned to the custody of the sheriff for execution of the balance  
20 of the term of imprisonment upon completion of or the person's discharge  
21 from the substance abuse treatment program. Custody of the person shall  
22 be returned to the sheriff for execution of the sentence imposed in the  
23 event the secretary of corrections determines: (A) That substance abuse  
24 treatment resources or the capacity of the facility designated by the  
25 secretary for the incarceration and treatment of the person is not available;  
26 (B) the person fails to meaningfully participate in the treatment program of  
27 the designated facility; (C) the person is disruptive to the security or  
28 operation of the designated facility; or (D) the medical or mental health  
29 condition of the person renders the person unsuitable for confinement at  
30 the designated facility. The determination by the secretary that the person  
31 either is not to be admitted into the designated facility or is to be  
32 transferred from the designated facility is not subject to review. The sheriff  
33 shall be responsible for all transportation expenses to and from the state  
34 correctional facility.

35 ~~(3)~~ (4) In addition, for any conviction pursuant to subsection (b)(1)  
36 (C), (b)(1)(D) or (b)(1)(E), at the time of the filing of the judgment form or  
37 journal entry as required by K.S.A. 22-3426 or K.S.A. 2017 Supp. 21-  
38 6711, and amendments thereto, the court shall cause a certified copy to be  
39 sent to the officer having the offender in charge. The court shall determine  
40 whether the offender, upon release from imprisonment, shall be supervised  
41 by community correctional services or court services based upon the risk  
42 and needs of the offender. The risk and needs of the offender shall be  
43 determined by use of a risk assessment tool specified by the Kansas

1 sentencing commission. The law enforcement agency maintaining custody  
2 and control of a defendant for imprisonment shall cause a certified copy of  
3 the judgment form or journal entry to be sent to the supervision office  
4 designated by the court and upon expiration of the term of imprisonment  
5 shall deliver the defendant to a location designated by the supervision  
6 office designated by the court. After the term of imprisonment imposed by  
7 the court, the person shall be placed on supervision to community  
8 correctional services or court services, as determined by the court, for a  
9 mandatory one-year period of supervision, which such period of  
10 supervision shall not be reduced. During such supervision, the person shall  
11 be required to participate in a multidisciplinary model of services for  
12 substance use disorders facilitated by a Kansas department for aging and  
13 disability services designated care coordination agency to include  
14 assessment and, if appropriate, referral to a community based substance  
15 use disorder treatment including recovery management and mental health  
16 counseling as needed. The multidisciplinary team shall include the  
17 designated care coordination agency, the supervision officer, the Kansas  
18 department for aging and disability services designated treatment provider  
19 and the offender. Any violation of the conditions of such supervision may  
20 subject such person to revocation of supervision and imprisonment in jail  
21 for the remainder of the period of imprisonment, the remainder of the  
22 supervision period, or any combination or portion thereof.

23 ~~(4)~~ (5) In addition, prior to sentencing for any conviction pursuant to  
24 subsection (b)(1)(A) or (b)(1)(B), the court shall order the person to  
25 participate in an alcohol and drug evaluation conducted by a provider in  
26 accordance with K.S.A. 8-1008, and amendments thereto. The person shall  
27 be required to follow any recommendation made by the provider after such  
28 evaluation, unless otherwise ordered by the court.

29 (c) Any person convicted of violating this section or an ordinance  
30 which prohibits the acts that this section prohibits who had one or more  
31 children under the age of 14 years in the vehicle at the time of the offense  
32 shall have such person's punishment enhanced by one month of  
33 imprisonment. This imprisonment must be served consecutively to any  
34 other minimum mandatory penalty imposed for a violation of this section  
35 or an ordinance which prohibits the acts that this section prohibits. Any  
36 enhanced penalty imposed shall not exceed the maximum sentence  
37 allowable by law. During the service of the enhanced penalty, the judge  
38 may order the person on house arrest, work release or other conditional  
39 release.

40 (d) If a person is charged with a violation of this section involving  
41 drugs, the fact that the person is or has been entitled to use the drug under  
42 the laws of this state shall not constitute a defense against the charge.

43 (e) The court may establish the terms and time for payment of any

1 fines, fees, assessments and costs imposed pursuant to this section. Any  
2 assessment and costs shall be required to be paid not later than 90 days  
3 after imposed, and any remainder of the fine shall be paid prior to the final  
4 release of the defendant by the court.

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

15 (g) Prior to filing a complaint alleging a violation of this section, a  
16 prosecutor shall request and shall receive from the:

17 (1) Division a record of all prior convictions obtained against such  
18 person for any violations of any of the motor vehicle laws of this state; and

19 (2) Kansas bureau of investigation central repository all criminal  
20 history record information concerning such person.

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

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

31 (1) Convictions for a violation of this section, or a violation of an  
32 ordinance of any city or resolution of any county which prohibits the acts  
33 that this section prohibits, or entering into a diversion agreement in lieu of  
34 further criminal proceedings on a complaint alleging any such violations,  
35 shall be taken into account, but only convictions or diversions occurring  
36 on or after July 1, 2001. Nothing in this provision shall be construed as  
37 preventing any court from considering any convictions or diversions  
38 occurring during the person's lifetime in determining the sentence to be  
39 imposed within the limits provided for a first, second, third, fourth or  
40 subsequent offense;

41 (2) any convictions for a violation of the following sections occurring  
42 during a person's lifetime shall be taken into account: (A) Refusing to  
43 submit to a test to determine the presence of alcohol or drugs, K.S.A. 2017

1 Supp. 8-1025, and amendments thereto; (B) driving a commercial motor  
2 vehicle under the influence, K.S.A. 8-2,144, and amendments thereto; (C)  
3 operating a vessel under the influence of alcohol or drugs, K.S.A. 32-1131,  
4 and amendments thereto; (D) involuntary manslaughter while driving  
5 under the influence of alcohol or drugs, K.S.A. 21-3442, prior to its repeal,  
6 or ~~subsection (a)(3) of~~ K.S.A. 2017 Supp. 21-5405(a)(3), and amendments  
7 thereto; (E) aggravated battery as described in ~~subsection (b)(3) of~~ K.S.A.  
8 2017 Supp. 21-5413(b)(3), and amendments thereto; and (F) aggravated  
9 vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular  
10 battery, K.S.A. 21-3405b, prior to its repeal, if the crime was committed  
11 while committing a violation of K.S.A. 8-1567, and amendments thereto;

12 (3) "conviction" includes: (A) Entering into a diversion agreement in  
13 lieu of further criminal proceedings on a complaint alleging a violation of  
14 a crime described in subsection (i)(2); (B) conviction of a violation of an  
15 ordinance of a city in this state, a resolution of a county in this state or any  
16 law of another state which would constitute a crime described in  
17 subsection (i)(1) or (i)(2); and (C) receiving punishment under the uniform  
18 code of military justice or Kansas code of military justice for an act which  
19 was committed on a military reservation and which would constitute a  
20 crime described in subsection (i)(1) or (i)(2) if committed off a military  
21 reservation in this state;

22 (4) multiple convictions of any crime described in subsection (i)(1) or  
23 (i)(2) arising from the same arrest shall only be counted as one conviction;

24 (5) it is irrelevant whether an offense occurred before or after  
25 conviction for a previous offense; and

26 (6) a person may enter into a diversion agreement in lieu of further  
27 criminal proceedings for a violation of this section, and amendments  
28 thereto, or an ordinance which prohibits the acts of this section, and  
29 amendments thereto, only once during the person's lifetime.

30 (j) Upon conviction of a person of a violation of this section or a  
31 violation of a city ordinance or county resolution prohibiting the acts  
32 prohibited by this section, the division, upon receiving a report of  
33 conviction, shall suspend, restrict or suspend and restrict the person's  
34 driving privileges as provided by K.S.A. 8-1014, and amendments thereto.

35 (k) (1) Nothing contained in this section shall be construed as  
36 preventing any city from enacting ordinances, or any county from adopting  
37 resolutions, declaring acts prohibited or made unlawful by this act as  
38 unlawful or prohibited in such city or county and prescribing penalties for  
39 violation thereof.

40 (2) The minimum penalty prescribed by any such ordinance or  
41 resolution shall not be less than the minimum penalty prescribed by this  
42 section for the same violation, and the maximum penalty in any such  
43 ordinance or resolution shall not exceed the maximum penalty prescribed



1 for the same violation.

2 (3) On and after July 1, 2007, and retroactive for ordinance violations  
3 committed on or after July 1, 2006, an ordinance may grant to a municipal  
4 court jurisdiction over a violation of such ordinance which is concurrent  
5 with the jurisdiction of the district court over a violation of this section,  
6 notwithstanding that the elements of such ordinance violation are the same  
7 as the elements of a violation of this section that would constitute, and be  
8 punished as, a felony.

9 (4) Any such ordinance or resolution shall authorize the court to order  
10 that the convicted person pay restitution to any victim who suffered loss  
11 due to the violation for which the person was convicted.

12 (l) (1) Upon the filing of a complaint, citation or notice to appear  
13 alleging a person has violated a city ordinance prohibiting the acts  
14 prohibited by this section, and prior to conviction thereof, a city attorney  
15 shall request and shall receive from the:

16 (A) Division a record of all prior convictions obtained against such  
17 person for any violations of any of the motor vehicle laws of this state; and

18 (B) Kansas bureau of investigation central repository all criminal  
19 history record information concerning such person.

20 (2) If the elements of such ordinance violation are the same as the  
21 elements of a violation of this section that would constitute, and be  
22 punished as, a felony, the city attorney shall refer the violation to the  
23 appropriate county or district attorney for prosecution.

24 (m) No plea bargaining agreement shall be entered into nor shall any  
25 judge approve a plea bargaining agreement entered into for the purpose of  
26 permitting a person charged with a violation of this section, or a violation  
27 of any ordinance of a city or resolution of any county in this state which  
28 prohibits the acts prohibited by this section, to avoid the mandatory  
29 penalties established by this section or by the ordinance. For the purpose  
30 of this subsection, entering into a diversion agreement pursuant to K.S.A.  
31 12-4413 et seq. or 22-2906 et seq., and amendments thereto, shall not  
32 constitute plea bargaining.

33 (n) The alternatives set out in subsections (a)(1), (a)(2) and (a)(3)  
34 may be pleaded in the alternative, and the state, city or county, but shall  
35 not be required to, may elect one or two of the three prior to submission of  
36 the case to the fact finder.

37 (o) As used in this section: (1) "Alcohol concentration" means the  
38 number of grams of alcohol per 100 milliliters of blood or per 210 liters of  
39 breath;

40 (2) "imprisonment" shall include any restrained environment in which  
41 the court and law enforcement agency intend to retain custody and control  
42 of a defendant and such environment has been approved by the board of  
43 county commissioners or the governing body of a city; and

1 (3) "drug" includes toxic vapors as such term is defined in K.S.A.  
2 2017 Supp. 21-5712, and amendments thereto.

3 (p) (1) The amount of the increase in fines as specified in this section  
4 shall be remitted by the clerk of the district court to the state treasurer in  
5 accordance with the provisions of K.S.A. 75-4215, and amendments  
6 thereto. Upon receipt of remittance of the increase provided in this act, the  
7 state treasurer shall deposit the entire amount in the state treasury and the  
8 state treasurer shall credit 50% to the community alcoholism and  
9 intoxication programs fund and 50% to the department of corrections  
10 alcohol and drug abuse treatment fund, which is hereby created in the state  
11 treasury.

12 (2) On and after July 1, 2011, the amount of \$250 from each fine  
13 imposed pursuant to this section shall be remitted by the clerk of the  
14 district court to the state treasurer in accordance with the provisions of  
15 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such  
16 remittance, the state treasurer shall credit the entire amount to the  
17 community corrections supervision fund established by K.S.A. 2017 Supp.  
18 75-52,113, and amendments thereto.

19 Sec. 2. K.S.A. 2017 Supp. 8-1567 is hereby repealed.

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