



Kansas DUI Update

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DUI CHANGES IN HB 2377

Aircraft

Penalties

Ignition
Interlock
Device (IID)

DUI
Diversions

CDL DUI

Operating an Aircraft Under the Influence

- ▶ Creates the crime of Operating an Aircraft Under the Influence
- ▶ The bill defines “operating an aircraft under the influence” as operating or attempting to operate any aircraft within Kansas while:
 - ▶ The alcohol concentration in the person’s blood or breath, as shown by any competent evidence, including other competent evidence, is 0.04 or more;
 - ▶ The alcohol concentration in the person’s blood or breath, as measured within four hours of the time of operating or attempting to operate an aircraft, is 0.04 or more;
 - ▶ Under the influence of alcohol to a degree that renders the person incapable of safely operating an aircraft;
 - ▶ Under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely operating an aircraft; or
 - ▶ Under the influence of a combination of alcohol and any drug or drugs to a degree that renders the person incapable of safely operating an aircraft.

Operating an Aircraft Under the Influence Penalties

- ▶ Class A nonperson misdemeanor, unless it occurs while the person convicted is prohibited from operating an aircraft by a court order pursuant to the bill or because the person's pilot license is revoked or suspended by order of the Federal Aviation Administration for a prior alcohol or drug-related conviction, in which case it is a severity level 6 nonperson felony.
- ▶ Penalty provisions for misdemeanor and felony offenses are in the bill
- ▶ As part of the judgment of conviction, the court must order the person convicted not to operate an aircraft for any purposes for six months from the date of final discharge from the county jail, or the date of payment or satisfaction of a fine, whichever is later, or one year from such date on a second conviction. If the court suspends the sentence and places the person on probation, the court must order as a condition of probation that the person not operate an aircraft for any purpose for a period of 30 days from the date of the order on a first conviction or 60 days from the date of the order on a second conviction. In determining the number of occurrences of the offense, a conviction will include entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging commission of operating an aircraft under the influence, and it will be irrelevant whether an offense occurred before or after conviction or diversion for a previous offense.
- ▶ If a person is charged with a violation of the offense involving drugs, the fact that the person is or has been entitled to use the drug under Kansas law shall not constitute a defense against the charge.

Reinstatement of Driver's License

- ▶ The bill creates law allowing a person whose license is restricted to operating only a vehicle with an IID and who meets the conditions detailed below to request reinstatement of the person's driver's license by submitting a request to the Division of Vehicles (Division), Kansas Department of Revenue (KDOR), in a form and manner prescribed by the Division. The Division must approve such request if all of the following conditions are met:
 - ▶ The person's IID restriction period has been extended at least five years, not including any period of incarceration, beyond the initial IID period required by law due to the person's failure to provide the Division with proof of completion of the IID program;
 - ▶ During the person's IID restriction period and any extension, the person has not had an alcohol or drug-related conviction or occurrence and has not been convicted of an IID circumvention offense in Kansas or any other jurisdiction;
 - ▶ During the person's IID restriction period and any extension, the person has not been convicted of transportation of liquor in opened containers, purchase or consumption of alcohol by a minor, any offense listed in the statute defining a "habitual violator," or two or more moving traffic violations committed on separate occasions; and the person's driving privileges have not been revoked, suspended, canceled, or withdrawn due to another action by the Division or a court; and
 - ▶ At the time of submitting the request, the person does not have any pending charges or proceedings involving any of the above violations.

IID Program Completion

The bill removes a 90-day waiting period to apply for IID and various restrictions on driving with an IID and adds the following required conditions for a person to complete the IID program:

1. The person must have no more than two standard violations and no serious violation in the 90 consecutive days prior to application for reinstatement; and
2. The application must occur upon or after expiration of the applicable ignition interlock period required by law.

**There is an IID Cost Reduction Program and eligibility requirements for the program are listed in statute.*

**Standard violations and serious violations are defined in the statute.*

DUI under the age of 21; IID restriction period

The bill amends the offense of DUI under the age of 21 to reduce the required IID restriction period for a first offense with a breath or blood alcohol test result of 0.02 or greater but less than 0.08 from 330 to 180 days.

CDL DUI Penalties

- ▶ **First conviction of commercial DUI**
 - ▶ minimum imprisonment or public service hours requirement removed.
- ▶ **Second conviction of commercial DUI**
 - ▶ Requirement that the offender serve at least 48 hours of imprisonment is modified to remove requirements that this period be served consecutively and at the beginning of the overall period of confinement.
 - ▶ The bill specifies that an offender shall receive hour-for-hour credit in work release or house arrest for the minimum 120 hours of confinement required by the section and will then receive day-for-day credit for any additional confinement imposed, unless otherwise ordered by the court.

CDL DUI Penalties Cont'd.

▶ **Third or subsequent conviction of commercial DUI**

- ▶ Penalty increased from a non-grid, nonperson felony to a severity level 6 nonperson felony, and reorganizes and standardizes minimum confinement requirements, setting the required minimum confinement as 30 days.
- ▶ The bill specifies that an offender shall receive hour-for-hour credit in work release or house arrest for the first 240 hours of confinement required by these provisions and will then receive day-for-day credit for subsequent confinement, unless otherwise ordered by the court. The bill removes postrelease supervision provisions that could conflict with the general postrelease supervision conditions that will now apply to the offense as a severity level 6 nonperson felony.
- ▶ The bill gives a court discretion to waive any portion of a fine imposed for commercial DUI, except for \$250 required to be remitted to the State Treasurer and credited to the Community Correction Supervision Fund upon a showing the offender successfully completed court-ordered education or treatment.

CDL Lifetime Disqualification

- ▶ The bill amends the statute governing disqualification from driving a commercial motor vehicle to specify that a continuing provision for lifetime disqualification upon a second or subsequent occurrence of certain specific offenses, test refusals, or test failures (second offense lifetime disqualification) applies to occurrences arising from two or more separate incidents occurring on or after July 1, 2003. If a person is disqualified for life under this provision, and at least one of the disqualifying incidents occurred prior to July 1, 2003, the bill will allow the person to apply to the Secretary for review of the incidents and modification of the disqualification.
- ▶ The bill replaces a provision allowing the Secretary to adopt rules and regulations establishing guidelines under which a second offense lifetime disqualification may be reduced to a period of not less than ten years with a provision requiring any person with a second offense lifetime disqualification who seeks to have commercial driving privileges restored after ten years of disqualification to apply in writing to the Division.

CDL Lifetime Disqualification Cont'd.

- ▶ The bill requires the Division to restore the person's commercial driving privileges if:
 - ▶ the Division determines none of the occurrences leading to lifetime disqualification included DUI or commercial DUI;
 - ▶ the person has not had an occurrence of certain specific offenses, test refusal, or test failure during the 10-year period preceding application;
 - ▶ the person has had no alcohol-or drug-related convictions during the 10-year period preceding the application;
 - ▶ the person has no pending alcohol-or drug-related criminal charges;
 - ▶ the person has had no convictions for violations that occurred while operating a commercial motor vehicle during the 10-year period preceding application;
 - ▶ the person has successfully completed an alcohol or drug treatment or comparable program that meets or exceeds the minimum standards approved by the Kansas Department for Aging and Disability Services if any of the disqualifying offenses were drug or alcohol related;
 - ▶ the person is no longer a threat to the public safety of Kansas. The Division may request, and the person would be required to provide, any additional information or documentation the Division deems necessary to determine the person's fitness for relicensure;
 - ▶ the person is otherwise eligible for licensure;
 - ▶ and the person has not previously been restored to commercial motor vehicle privileges following a prior 10-year minimum disqualification.

DUI Penalties

▶ **First conviction of DUI**

- ▶ Requirement of minimum imprisonment or public service hours removed

▶ **Second conviction of DUI**

- ▶ 48 hour imprisonment requirement is modified to remove requirements that this period be served consecutively and at the beginning of the overall period of confinement.
- ▶ Hour-for-hour credit in work release or house arrest for the minimum 120 hours of confinement required by the section and will then receive day-for-day credit for any additional confinement, unless otherwise ordered by the court.

▶ **Third conviction of DUI (misdemeanor)**

- ▶ 30 days custody, 48 consecutive mandatory then hour for hour to 240 and day for day thereafter.

DUI Penalties Cont'd.

- ▶ **Third conviction of DUI and fourth or subsequent conviction of DUI**
 - ▶ The bill increases the penalty for a third conviction if the person has a prior conviction within the preceding 10 years (not including any period of incarceration) or a fourth or subsequent conviction of DUI from a non-grid, nonperson felony to a severity level 6 nonperson felony, and accordingly removes specific imprisonment and fine requirements.
 - ▶ The bill also amends provisions regarding imprisonment at a state facility for the felony offense and related responsibilities of a sheriff to reflect the amendment making the penalty a sentencing guidelines offense, rather than a non-grid felony.
 - ▶ Additionally, the bill removes the felony offense from postrelease supervision provisions that could conflict with the general postrelease supervision conditions that will now apply to the offense as a felony on the sentencing grid.

DUI Penalties Cont'd.

- ▶ **Third conviction of DUI and fourth or subsequent conviction of DUI**
 - ▶ The bill amends the penalties for a third conviction of DUI, a third conviction of DUI with a prior conviction within the preceding 10 years, and a fourth or subsequent conviction to reorganize and standardize minimum confinement requirements, setting the required minimum confinement as 30 days. The bill specifies that an offender shall receive hour for-hour credit in work release or house arrest for the first 240 hours of confinement required by these provisions and will then receive day-for-day credit for subsequent confinement, unless otherwise ordered by the court.
 - ▶ Court given discretion to waive any portion of a fine imposed for DUI, except for \$250 required to be remitted to the State Treasurer and credited to the Community Correction Supervision Fund, upon a showing the offender successfully completed court-ordered education or treatment.

FAQ

Please explain
the hour for
hour credit for
house arrest.

Does probation start on the date of sentence or upon completion of mandatory jail and/or house arrest?

DUI Plea Bargaining

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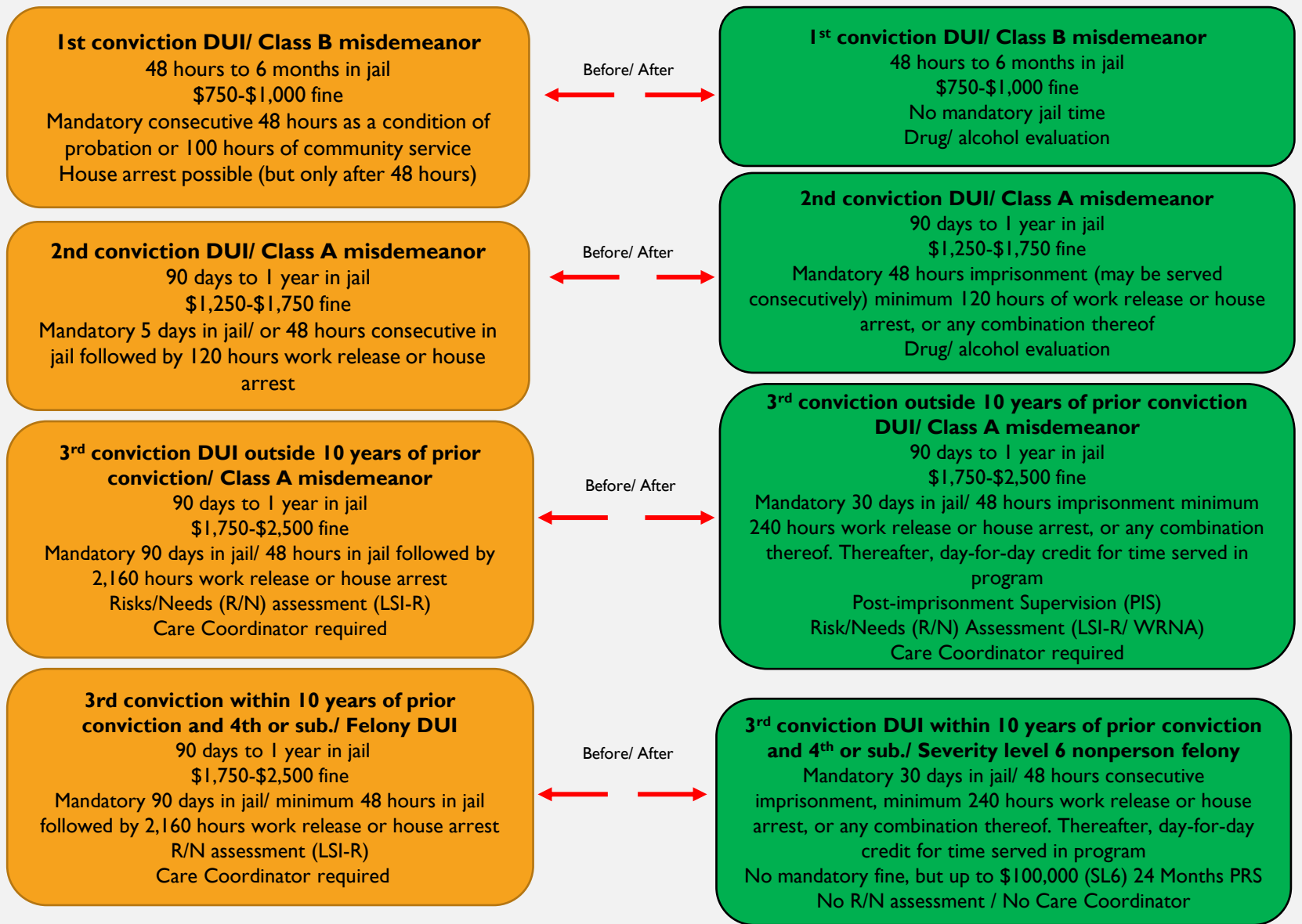
▶ Plea Bargaining

- ▶ Clarifies that amendment or dismissal of any charge is allowed where the admissible evidence is not sufficient to support a conviction beyond a reasonable doubt on such charge.
- ▶ No masking, deferred imposition of judgement or diversion of conviction that would prevent a commercial learner's permit or CDL conviction from showing up on CDLIS record
 - ▶ Applies to violation of a state or local traffic control law that occurred in any type of motor vehicle, regardless of whether the driver was convicted for an offense committed in the state where the driver is licensed or in any other state.
 - ▶ The bill states this provision would not apply to parking, vehicle weight, or vehicle defect violations.

▶ Diversion

- ▶ No diversion for CDL holder (at the time of the violation or at any subsequent time prior to being considered for diversion)
 - ▶ Doesn't matter if in personal vehicle when DUI occurs
 - ▶ A statute prohibiting certain diversions for CDL holders is amended to prohibit a prosecuting attorney from masking or deferring imposition of judgment or allowing an individual to enter into a diversion that would prevent a commercial learner's permit or CDL holder's conviction from appearing on the Commercial Driver's License Information System (CDLIS) driver record of any violation of a state or local traffic control law that occurred in any type of motor vehicle, and this provision will apply regardless of whether the driver was convicted for an offense committed in the state where the driver is licensed or in any other state. The bill states this provision would not apply to parking, vehicle weight, or vehicle defect violations.
- ▶ Diversion is allowed in a personal injury crash **where defendant was the only one injured**

K.S.A. 8-1567 - DUI Laws Before and After June 30, 2022



- ### Changes
- *No mandatory consecutive jail time for **1st time DUI**
 - * Drug/Alcohol Eval for **1st and 2nd time DUI** only
 - *At least 48 hours imprisonment for **2nd time DUI** Does need to be consecutive
 - *PIS **only** for **3rd time misdemeanor DUI**
 - *No mandated fine on SL6 felony for **3rd and subsequent DUI**
 - *Grid postrelease for SL6 on **felony DUI**
 - *Court can waive any portion of fine (except \$250 for CCSF)
 - * LSI-R prior to 6/30/2021 occurrence of crime of conviction, or the LS/CMI for males and the WRNA for females on or after 7/1/2021

Sentencing court should apply the version of DUI statute in effect at the time of sentencing, unless the legislature amended the statutory provisions after the offense was committed, and that amendment increases the defendant's penalty. *State v. Patton*, 315 Kan. , 503 P.3d 1022 (2022).

DISCUSSION

DUI PIS Changes?

Is HB 2377
retroactive?

- The Kansas Supreme Court recently held that a sentencing court should apply the version of the DUI statute, K.S.A. 8-1567, in effect at the time of sentencing *unless* the Legislature amended the statutory provisions after the offense was committed *and* that amendment increases the defendant's penalty (or otherwise disadvantages the defendant as contemplated in *Beazell*). See *State v. Patton*, 503 P.3d 1022, 1032 (Kan. February 11, 2022). In those circumstances, the sentencing court must apply the law in effect when the offense was committed. *Id.*

How do you score prior
DUI convictions?

Scoring Prior DUI Convictions

- ▶ Out of state convictions can be counted in determining whether the DUI conviction is the second, third, fourth or greater. This applies to DUI and Commercial DUI.
- ▶ For the purposes of determining whether an offense is comparable, the following shall be considered: 1. The name of the out-of-jurisdiction offense; 2. The elements of the out-of-jurisdiction offense; and 3. Whether the out-of-jurisdiction offense prohibits similar conduct to the conduct prohibited by the closest approximate Kansas offense. K.S.A. 2022 Supp. 8-1567(j) and K.S.A. 2022 Supp. 8-2,144(o).

State v. Mejia

- ▶ Defendant had 3 prior Missouri convictions that were used to elevate the DUI from a misdemeanor to a felony
- ▶ The Court of Appeals ruled that the holding in *Wetrich* does not apply to DUI cases because the Legislature has amended K.S.A. 8-1567 to permit charging and sentencing enhancements for DUIs based on out-of-state convictions under statutes that are comparable to Kansas law—meaning “similar to” rather than the same as or narrower than Kansas law. See *State v. Mejia*, 58 Kan.App.2d 229, 229, 466 P.3d 1217 at *1 (Kan. App. 2020) (rev. denied September 29, 2020).

Is there a
lifetime
lookback on
DUI offenses?



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FAQ

How does this legislation impact care coordination services with RADAC/SACK and funding for treatment?

Is the previous mandated treatment still in effect for felony DUI Convictions? If so, is it still paid for by the state?

If treatment is completed after offense date, but prior to sentencing, and no treatment rec on risk/needs can fine be waived?

How will these
changes affect
Community
Corrections?

Is it required that a person take an 8 hour education class if they get convicted of DUI?

Will the sentences for habitual violators be lengthened?

Who supervises
the 3rd DUI if no
R/N Assessment
required?

How do the PSI and
JE look different
now?



QUESTIONS?

KSSC Resources

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