

STATE:

KANSAS

General Reference:

Kansas Statutes Annotated

Basis for a DWI Charge:

Illegal Per Se Law (BAC/BrAC):

Standard DWI Offense: Under the influence of alcohol to a degree that renders the person incapable of safely driving a vehicle. §8-1567(a)(3)

≥.08⁴⁶⁴ §8-1567(a)(1), (a)(2) and (q)(1); persons under 21, **≥.02** §8-1567a. Violation of §8-1567a is not a criminal offense – civil penalties only. *State v. Shuster*, 46 P.3d 1140- (Kan.2002)

Presumption (BAC):

None

Types of Drugs/Drugs and Alcohol:

Under the influence of (1) **Any Drug** or (2) a **Combination of Alcohol and Drugs**. §8-1567(a)(4) and (5)

Other:

A BAC/BrAC **≥.08** is *prima facie* evidence that the defendant was under the influence of alcohol. §8-1005(b)

No person who is an habitual user of narcotics shall operate or attempt to operate a motor vehicle. §8-1567(b)

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

Yes §§ 8-1001.(a), 8-1012,

Implied Consent Law:

Yes⁴⁶⁵ §8-1001(b) {Except an arrest is not required if the person has been involved in a vehicle accident or collision resulting in property damage, personal injury or death.}

Arrest Required (Yes/No):

Implied Consent Law Applies to
Drugs (Yes/No):**Yes** §8-1001(a)Refusal to Submit to Chemical Test
Admitted into Evidence:**Yes** (Criminal Cases) §8-1001(f) and *State v. Rubick*, 827 P.2d 771 (Kan. App. 1992)

Other Information:

A blood test may be administered without the driver's consent in situations where there is probable cause of any DWI offense and there was either a serious injury or the death of another person⁴⁶⁶. §8-1001(k)Chemical Tests of Other Substances for Alcohol ConcentrationWhich Are Authorized Under the Implied Consent Law:

Blood:

Yes §8-1001(a)

Urine:

Yes §8-1001(a)

⁴⁶⁴ Standards: Grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §§8-1013(a) and 1567(r)(1)

⁴⁶⁵ No arrest is required if the person has been involved in a motor vehicle accident resulting in property damage, personal injury or death.

⁴⁶⁶ Based on §8-11001(a) and (b), a blood test of an unconscious driver involved in an injury-causing accident may be taken without consent or an arrest. However, probable cause is needed. *State v. Murry*, 21 P. 3d 528 (Kan. 2001)

Other:
Adjudication of DWI Charges:
 Mandatory Adjudication Law (Yes/No):
 Anti-Plea-Bargaining Statute (Yes/No):
 Pre-Sentencing Investigation Law (PSI) (Yes/No):

Other Bodily Substances §8-1001(a)
No
Yes §8-1567(o) Certain diversion programs are
 excepted.
Yes Alcohol and Drug Evaluation required §§8-1008(c)
 and (d), 8-1567

Sanctions for Refusal to Submit to a
 Chemical Test:
 Refusal to Take a Preliminary Breath Test:
 Criminal Sanctions (Fine/Jail):

Yes Infraction A fine of not more than **\$500**
 §§21-3105(2) and 21-4503(4), \$90 if a person pleads
guilty or no contest under the uniform fine schedule.
 §8-2118(c)

Administrative Licensing Action
 (Susp/Rev):

None
None

Other:
 Refusal to Take Implied Consent
Chemical Test:
 Criminal Sanction (Fine/Jail):
 Administrative Licensing Action
 (Susp/Rev):

None
 First occurrence- Suspension – 1 year (mand); 2d
occurrence- Suspension – 2 years; 3d occurrence-
Suspension – 3 years (mand); fourth occurrence-
suspension – 10 years; fifth or subsequent occurrence-
Permanent Revocation §§8-1002(a) and 8-1014(a)

Sanctions Following a Conviction for a DWI Offense:
 Criminal Sanctions:
 Imprisonment:

First offense (Class B misdemeanor) – **48 consecutive**
hours to 6 months; second offense (Class A
 misdemeanor) – **90 days to 1 year**; third and
subsequent offenses (felony) – **90 days to 1 year**
 §§8-1567(d), (e), (f) and (g)
 First offense – 48 consecutive hours; second offense -5
consecutive days (or 48 con hours, then work release or
 house arrest); third and subsequent offenses – **90 days**
 (or 48 con hours, then work release or receive house
 arrest); fourth or subsequent offense – 90 days (or 72
 con hours, then work release.)§8-1567(d), (e), (f) and
 (g).

Mandatory Minimum Term:

Note: I. Under the DWI law, "imprisonment" includes
 "any restrained environment" under the control of a
 court and law enforcement agency". §8-1567(r)(2).
 However, incarceration for a felony DWI offense is not
 to be served in a facility operated by the State secretary
 of corrections. §21-4704(i). II. All offenses
 committed by a person during a lifetime are considered
 in determining the number of priors. §8-1567(l)(3).

Fine:
 Amount (\$ Range):

First offense – **\$500 to \$1000**; second offense – **\$1000**
to \$1500; third and subsequent offenses (– **\$1500 to**
\$2500; fourth or subsequent offense – **\$2500**. §8-
 1567(d), (e) (f) and (g).

Mandatory Minimum Fine (\$):⁴⁶⁷First offense – \$500; second offense – \$1000; third offense – \$1500; fourth or subsequent offense – \$2500. §8-1567(d), (e), (f) and (g). Community service may be performed in lieu of a fine. §8-1567(j).

Other Penalties:

Community Service:

First offense – 100 hours (in lieu of imprisonment) §8-1567(d); second and subsequent offenses – may be ordered in lieu of fine. A \$5 credit is allowed on the fine for every hour of community service. §8-1567(i)

Restitution (e.g., Victim's Fund)

Yes (1) Direct compensation by defendants to victims as a condition of probation or parole. §§8-1019(c), 21-4603(b)(3), 21-4610(d)(1) and 22-3717(l). (2) Victims may also receive restitution for damages from the State's crime victims' compensation fund. The maximum amount that can be received from this fund is \$25,000. §74-7301 et seq.

Other:

"Ignition interlock" device use required for one year after license reinstatement for 2d, 3d, or fourth offense. §8-1014(b)(2)

Assessments: Unless indigent, an offender must pay an assessment of \$150. This assessment is deposited into an alcohol and drug safety fund. §8-1008(e). II. An offender is assessed \$9 in addition to any fine; this assessment is used to fund various law enforcement and crime victim activities. §12-4117(a).

Administrative Licensing Actions:

Pre-DWI Conviction Licensing Action:

Administrative Per Se Law:

Yes ≥.08 (BAC/BrAC §§8-1013(a) and (h), 8-1014(b) and 8-1015(a) First occurrence- Suspension **30 days** (mand) and **330 days** restricted driving privileges ; 2d, 3d, fourth occurrence– suspension **1 year** (mand) followed by ignition interlock for 1 year; fifth and subsequent occurrence-**Permanent Revocation** (mand) §§8-1001, 8-1002 and 8-1014(b) and 8-1015(c).

Persons under 21: ≥.02 but<.08: first occurrence– suspension 30 days (mand) and **330 days** restricted driving privileges; second or subsequent occurrence or BAC >.08- Suspension **1 year** (mand). §§8-1014(c), 8-1015 and 8-1567a(f).

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

First – fourth occurrence⁴⁶⁸ - **Suspension**; fifth or sub. occurrence) – **Revocation** §§8-1001, 8-1002 and 8-1014(b)

Term of License Withdrawal

⁴⁶⁷ An "assessment" of \$110 is levied against persons who are either convicted of a DWI offense or who enter a DWI diversion program. The "assessment" funds are used to support community-based alcohol and drug safety action programs. §8-1008(e)

⁴⁶⁸ An "occurrence" includes either a test refusal, test failure (admin. per se violations) or a DWI offense conviction. §8-11013(e)

(Days, Months, Years, etc.): First occurrence - **30 days**; **second** – fourth occurrence) – **1 year** followed by use of an ignition interlock for 1 year; fifth or sub. occurrence – **Permanent Revocation**

Mandatory Minimum Term of
Withdrawal:

First occurrence - **30 days** (mand) and **330 days** restricted driving privileges; second – fourth occurrence- **1 year** (mand) followed by use of an ignition interlock for 1 year; fifth or subsequent occurrence – **Permanent Revocation** (mand) §§8-1001, 8-1002, 8-1014(b) and 8-1567(m)
First offenses – A person's driving privileges may be restricted to operating a motor vehicle for educational, employment and medical purposes for 90 days – 1 year or the court may require the person to operate only vehicles equipped with an "**ignition interlock**" device. §§8-292 and 8-1015

Rehabilitation:
Alcohol Education:

First offense – As a condition of probation, parole, etc., a defendant must complete either an alcohol education or treatment program. §8-1567(d). Attendance at an alcohol education or treatment program could be a condition for issuing a restricted license. §8-1015

Alcohol Treatment:

Second offense – As a condition of probation, suspended sentence or parole, an offender shall be required to complete an inpatient or outpatient treatment program. Third offense – As a condition or parole, an offender may be required to complete an inpatient or outpatient treatment program. fourth or subsequent offenses – Following release from prison, the offender is required to participate in an inpatient or outpatient program during a 1-year mandatory post release supervision program. §8-1567(e), (f) and (g).

Vehicle Impoundment/Confiscation:
Authorized by Specific Statutory Authority:
Terms Upon Which Vehicle
Will Be Released:
Other:

No

License Plate Revocation: For a fourth or subsequent DWI conviction, the license plate of the vehicle used in the offense may be revoked for 1 year. §8-1567(q)

Miscellaneous Sanctions
Not Included Elsewhere:

Under §21-4603b, a defendant may be sentenced to "**house arrest**". The defendant may be required to use an electronic monitoring system while participating in a "house arrest" program. Second and subsequent DWI offenders must, nevertheless, serve at least 48 consecutive hours of imprisonment. §8-1567(g) Any city or county may enact ordinances allowing or requiring courts to order a convicted person's vehicle to be impounded for a period not to exceed one year and for the driver to pay all towing and

storage fees. § 8-1567(o)⁴⁶⁹

Injury to a Pregnant Woman: It is a Severity Level 5 Person felony to injure a pregnant woman that causes a miscarriage while violating the DWI law. The sanctions for this offense are an imprisonment term of 50 to 55 months and/or a fine of not more than \$300,000. §§ 21-3441, 21-4503a(a)(2) and 21-4704.

Child Endangerment: If at the time of the offense, a person was driving with a passenger <14, the incarceration period is increased by 1 month consecutive to any other sanction, to be served in jail or as house arrest, work release of other conditional release. §8-1567(h)

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law:

Yes. Involuntary Manslaughter – An unintentional death associated with a DWI -Severity Level 4 Person Felony §21-3442.

Vehicle Homicide- Death caused by operation of a vehicle in a manner that causes unreasonable risk. Class A Personal Misd. §21-3405

Criminal Sanction:

Sanctions:

Imprisonment (Term):

Severity Level 4 Person Felony- 62 to 69 months.⁴⁷⁰

Class A Misdemeanor – Not more than 1 year

§§21-4502 and 21-4704

None

Mandatory Minimum Term:

Fine (\$ Range):

Severity Level 4 Person Felony – Not more than

\$300,000. §8-4503(a)(2)

Class A Misdemeanor – Not more than \$2,500. §21-4503(b)(1)

Mandatory Minimum Fine:

None

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

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

(A) Whether the impoundment or immobilization of the motor vehicle would result in the loss of employment by the convicted person or a member of such person's family; and

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

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

(5) As used in this subsection, the convicted person's motor vehicle or vehicles shall include any vehicle leased by such person. If the lease on the convicted person's motor vehicle subject to impoundment or immobilization expires in less than one year from the date of the impoundment or immobilization, the time of impoundment or immobilization of such vehicle shall be the amount of time remaining on the lease. § 8-1567.(k)

⁴⁷⁰ For second or third convictions, the incarceration sanction may be increased by twice or three times these time periods respectively. §21-4504(a) and (b)

Fine (\$ Range): First offense – Not more than **\$1,000**; second offense – Not more than **\$2,500**; third and subsequent offense – Not more than **\$100,000**. §21-4503a(a)(3)and(b)(1)and(2)
 Mandatory Minimum Fine: **\$100** appears to be mandatory. §8-262(a)(3)
 Administrative Licensing Actions:
 Type of Licensing Action
 (Susp/Rev): Suspension or revocation §8-262(b)

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): A person is "disqualified" from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person (1) has a BAC/BrAC ≥.04, (2) is under the influence of alcohol or any drug or (3) refuses to submit to a chemical test for either alcohol or drug concentrations. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed violations, the "disqualification" is for life (10 years mand). A person, operating a CMV with either an alcohol concentration ≥.04 or while under the influence of alcohol or drugs, in addition to being subject to the regular DWI criminal sanctions, is subject to the following "special" sanctions: Jail for 48 con hours to 6 months and/or a fine of \$200 to \$500. Such a person may not be subject to administrative actions against their normal driving privileges. Also, a CMV operator who has any measurable (or detectable) amount of alcohol in the system must be placed "out-of-service" for 24 hours. §§8-1001(g) and (j), 8-1002, 8-2,128(b), (f), (h), (i), and (s), 8-2,136, 8-2,137, 8-2,142 and 8-2,144

Length of Term of License
 Withdrawal Action: The original suspension/revocation is extended for an additional period of **90 days**. §8-262(b)
Habitual Traffic Offender Law:
 State Has Such a Law (Yes/No): **Yes** §§8-284 and 8-285
 Grounds for Being Declared an Habitual Offender: Three serious offenses within 5 years. §8-285(a)
 Term of License Rev While Under Habitual Offender Status: **3 years** §§8-286 and 8-288
 Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status: Class A Misdemeanor §8-287
 Sanctions Following a Conviction of Driving While on Habitual Offender Status:
 Imprisonment (Term): **7 to 9 months**. §21-4704
 Mandatory Minimum Term of Imprisonment: **None**
 Fine (\$ Range): Not more than **\$100,000**. §21-4503a(a)(3)
 Mandatory Minimum Fine (\$): **None**
 Licensing Actions (Specify): **None**

Other State Laws Related To Alcohol Use:

Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:
 State Has Such a Law (Yes/No): **No**
 BAC Chemical Test Is Given to the the Following Persons:

Driver: N/A
 Vehicle Passengers: N/A
 Pedestrian: N/A

Laws Establishing the Minimum Ages
 Concerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase: **21** §§21-3610, 41-102(q), 41-715, 41-727(a) and 41-2701(h)
 Minimum Age (Years) Possession: **21** §§41-715 and 41-727(a). There is an employment exception. §47-2704(e)
 Minimum Age (Years) Consumption: **21** §41-727(a)

Dram Shop Laws and Related Legal Actions:

State Has a Dram Shop Law (Yes/No): **No**

"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):

No. Note: For recent cases denying liability, see *Ling v. Jan's Liquors*, 703 P.2d 731 (1985) and *Meyers v. Grubaugh*, 750 P.2d 1031 (Kan. 1988).

Dram Shop Actions-Social Hosts:

No. *Thies v. Cooper*, 753 P.2d 1280 (Kan. 1988)⁴⁷⁴

Other: A licensee is not liable for the injuries sustained by an intoxicated patron who was under the legal drinking age. *Mills v. City of Overland Park*, 837 P.2d 370 (Kan. 1992)

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action: Misdemeanor §41-715⁴⁷⁵
 Term of Imprisonment: Not more than **30 days**. §41-715
 Fine (\$ Range): **\$100 to 250**. §41-715

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages Withdrawn (Yes/No): **Yes. Revocation**⁴⁷⁶ §§41-314, 41-2611(f) and 41-2626
 Length of Term of License Withdrawal: Not specified in the statute
Civil Fine. A "civil fine" on not more than **\$1,000** may also be imposed. §41-328(a)

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons

⁴⁷⁴ This case concerned whether an employer was responsible for injuries caused by an employee who became intoxicated at a social event hosted by the employer. The court held that there was no liability

⁴⁷⁵ These sanctions only apply to the service of alcoholic beverages containing more than 3.2 percent alcohol to intoxicated persons. §§41-102(b) and 41-715

⁴⁷⁶ Appears only to apply to the service of alcoholic beverages containing more than 3.2 percent alcohol.

Under the Minimum Legal Drinking Age: It is a misdemeanor for a "liquor by the drink" licensee to allow a person under 21 years old to consume either alcoholic liquor or cereal malt beverages on the licensed premises. The sanctions for this offense are a jail term on not more than 30 days, a fine of from \$100 to \$250, a "civil fine" of not more than \$1,000 and/or license suspension or revocation. §§41-2615, 41-2626 and 41-2633a(a).

Type of Criminal Action: Class B Person Misdemeanor (Furnishing alcoholic beverages to any person under 21 years of age) §21-3610

Term of Imprisonment: Not more than **6 months.** §21-4502(1)(b)

Fine (\$ Range): Not more than **\$1,000.**⁴⁷⁷ § 21-4503(2)(b)

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

Withdrawn (Yes/No): **Yes. Suspension or Revocation** §§41-2611(f), 41-2626 and 41-2708(a)

Length of Term License Withdrawal: Not specified for alcoholic beverages with an alcoholic content of more than 3.2 percent. For cereal malt beverages (alcoholic beverages with an alcoholic content below 3.2 percent), license revocation for 6 months.

Anti-Happy Hour Laws/Regulations: **Yes.** §§41-2640(a)(3) and 41-2722(a)(4)

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No): **Yes.** §8-1599; Exception for persons in passenger compartment of recreational vehicles or buses §8-1599(b)(3)

Anti-Consumption Law (Yes/No): **Yes (Limited)**⁴⁷⁸ Driver and passengers §41-719(a)

⁴⁷⁷ Mandatory minimum fine of \$200. §§21-3610

⁴⁷⁸ The law only applies to the consumption of alcoholic beverages which have an alcoholic content >3.2 percent alcohol by weight. i.e., the law does not prohibit the consumption of cereal malt beverages with an alcoholic content ≤3.2 percent alcohol by weight