

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) $\geq .08$ ⁴⁶⁵ §8-1567(a)(1), (a)(2) and (q)(1); persons under 21, $\geq .02$ §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 $\geq .08$ 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:

No §8-1001(b), §8-1012(a)&(b)

Arrest Required (Yes/No):

Yes §8-1001(a)

Implied Consent Law Applies to

Drugs (Yes/No):

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)

Other:

Other Bodily Substances §8-1001(a)Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

No

Anti-Plea-Bargaining Statute (Yes/No):

Yes §8-1567(o) Certain diversion programs are excepted.

⁴⁶⁵ 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)

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)

Pre-Sentencing Investigation Law (PSI) (Yes/No):	Yes Alcohol and Drug Evaluation required §§8-1008(c) and (d), 8-1567
<u>Sanctions for Refusal to Submit to a Chemical Test:</u>	
Refusal to Take a <u>Preliminary Breath Test</u> : Criminal Sanctions (Fine/Jail):	Yes Infraction A fine of not more than \$500 §§21-3105(2) and 21-4503(4), \$90 if a person <u>pleads guilty</u> or no contest under the uniform fine schedule. §8-2118(c)
Administrative Licensing Action (Susp/Rev):	None
Other:	None
Refusal to Take <u>Implied Consent Chemical Test</u> : Criminal Sanction (Fine/Jail):	None
Administrative Licensing Action (Susp/Rev):	<u>First occurrence- Suspension – 1 year</u> (mand); <u>second occurrence- Suspension – 2 years</u> ; <u>third occurrence- Suspension – 3 years</u> (mand); <u>fourth occurrence- Suspension – 10 years</u> ; <u>fifth or subsequent occurrence- Permanent Revocation</u> §§8-1002(a) and 8-1014(a)
<u>Sanctions Following a Conviction for a DWI Offense:</u>	
Criminal Sanctions: Imprisonment:	<u>First offense</u> (Class B misdemeanor) – 48 consecutive hours to 6 months ; <u>second offense</u> (Class A misdemeanor) – 90 days to 1 year ; <u>third and subsequent offenses</u> (felony) – 90 days to 1 year §§8-1567(d), (e), (f) and (g)
Mandatory Minimum Term:	<u>First offense</u> – 48 consecutive hours ; <u>second offense</u> – 5 consecutive days (or 48 consecutive hours, then work release or house arrest); <u>third and subsequent offenses</u> – 90 days (or 48 consecutive hours, then work release or house arrest); <u>fourth or subsequent offense</u> – 90 days (or 72 consecutive hours, then work release.)§8-1567(d), (e), (f) and (g). 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):	<u>First offense</u> – \$500 to \$1000 ; <u>second offense</u> – \$1000 to \$1500 ; <u>third and subsequent offenses</u> – \$1500 to \$2500 ; <u>fourth or subsequent offense</u> – \$2500 . §8-1567(d), (e) (f) and (g).
Mandatory Minimum Fine (\$): ⁴⁶⁷	<u>First offense</u> – \$500 ; <u>second offense</u> – \$1000 ; <u>third offense</u> – \$1500 ; <u>fourth or subsequent offense</u> – \$2500 .

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

§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 second, third, 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; second, third, 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 subsequent occurrence) – **Permanent Revocation** §§8-1001, 8-1002 and 8-1014(b)

Term of License Withdrawal

(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 subsequent occurrence – **Permanent Revocation**

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)

Mandatory Minimum Term of
Withdrawal:

First occurrence – **30 days** (mand) and **330 days** restricted driving privileges; second, third & 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 of 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

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

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 or 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 Misdemeanor §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

Mandatory Minimum Term:

None

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

Administrative Licensing Action:

Licensing Authorized and

Type of Action:

DWI Related Involuntary Manslaughter

Suspension⁴⁷¹

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)

⁴⁷¹ Drunk-driving-related suspension **Sentencing Guidelines:** Imprisonment sanctions for felony offenses are determined by a sentencing guidelines grid and supporting statutory provisions. For a Severity Level 9 Non-person Felony, the grid

	<u>DWI Related Involuntary Manslaughter-Vehicle Homicide – Revocation</u> §8-254
Length of Term of Licensing Withdrawal:	<u>DWI Related Involuntary Manslaughter-</u> same as for DWI offenses. <u>Vehicle Homicide</u> – 1 year §8-256
Mandatory Action--Minimum Length of License Withdrawal	<u>DWI Related Involuntary Manslaughter-</u> Mandatory suspensions are the same as for DWI offenses. <u>Vehicle Homicide</u> – None . Restricted driving privileges may be granted. §8-254(b)
Other:	Assessment. For vehicle homicide (§21-3405), an offender is assessed \$9 in addition to any other fine. §§8-249(b) and 12-4117.
<u>Driving While License Suspended or Revoked Where the Basis Was a DWI Offense*:</u>	§8-262
Sanction:	
Criminal:	
Imprisonment (Term):	<u>First offense</u> (Class B Non-person Misdemeanor) – Not more than 6 months ; <u>second or subsequent offense</u> (Class A Non-person Misdemeanor) – Not more than 1 year ; §§8-262, 21-4502 and 21-4704.
Mandatory Minimum Term of Imprisonment:	<u>Second and subsequent offense</u> – 5 days ^{472and473} §8-262(a)(3)
Fine (\$ Range):	<u>First offense</u> – Not more than \$1,000 ; <u>second offense</u> – Not more than \$2,500 ; <u>third and subsequent offense</u> – Not more than \$100,000 . §21-503a(a)(3)and(b)(1)and(2)
Mandatory Minimum Fine:	\$100 appears to be mandatory. §8-262(a)(3)

provides for an imprisonment sanction of **7 to 9 months** but "presumes" that a non-incarceration sanction will be imposed. The imprisonment sanction can only be imposed if aggravating circumstances warrant. For a Severity Level 4 Person Felony, there is a "presumed" incarceration sanction of **62-69 months**. These imprisonment periods, as listed in the grid, may be increased (by not more than twice the maximum sentence listed in the grid) depending upon the aggravating circumstances. However, if sufficient mitigating circumstances exist, the court may either decrease the imprisonment sentence or not impose an incarceration sanction. The grid also provides for increased incarceration periods for subsequent felony offenses. §§21-4704, 21-4716, 21-4718 and 21-4719

*There is no specific statutory provision on this subject. The sanctions given are for the general offense of operating a motor vehicle while driving privileges are either suspended or revoked.

Special Note: It is a Class B misdemeanor to operate a CMV during either a CDL disqualification or a CDL out-of-service order. The sanctions for this offense are a jail term of not more than 6 months and/or a fine of not more than \$1,000. §§8-2,132(b) and (c), 21-4502(1)(b) and 21-4503(b)(2) In addition, for a violation of a CDL out-of-service order, a person is disqualified from operating a CMV for the following periods: first violation – 90 days; second violation – 1 year; and, third or subsequent violation-3 years. These disqualifications appear to be mandatory. §8-2,136(c).

⁴⁷² *State v. Harpool*, 788 P.2d 281 (Kan. 1990)

⁴⁷³ A 90-day jail term is mandatory if the person commits a DWI offense while driving on a suspended license where the suspension was for a previous DWI offense conviction. §8-262(a)(4), and Atty. Gen. Op 88-23 (Feb. 19, 1988) and *State v. Gee*, 8 P. 3d 45 (Kan. App. 2000)

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 $\geq .04$, (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 $\geq .04$ 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 consecutive hours to 6 months and/or a fine of \$500 to \$1000. In lieu of jail, the court may impose 100 hours of public service. In addition, as a condition of probation, the violator must complete either an Alcohol and Drug Safety Action Education Program or an Alcohol and Drug Treatment Program, or both. On a second conviction, mandatory jail sentence of 5-90 days and a fine of not less than \$1000 or more than \$1500, and completion of a Drug and Alcohol Treatment Program. On a third conviction, 90 days (minimum) to one year, fine - \$1500 - \$2500. {After 48 hours consecutive confinement, the remainder of all of these jail sentences may be served in a work-release program .} 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

Administrative Licensing Actions:

Type of Licensing Action (Susp/Rev):	Suspension or revocation §8-262(b)
Length of Term of License Withdrawal Action:	The original suspension/revocation is extended for an additional period of 90 days . §8-262(b)
<u>Habitual Traffic Offender Law:</u> 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:	7 to 9 months . §21-4704
Imprisonment (Term): Mandatory Minimum Term of Imprisonment:	None
Fine (\$ Range): Mandatory Minimum Fine (\$):	Not more than \$100,000 . §21-4503a(a)(3)
Licensing Actions (Specify):	None

Other State Laws Related To Alcohol Use:

<u>Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:</u> State Has Such a Law (Yes/No):	No
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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) Fine: \$200 if violator age 18 or older but less than 21; \$200-\$500 if violator less than 18. 41-727 b, c

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)

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.

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons 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 A Personal 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): **\$1,000.** § 21-4503(2)(b), §21-3610.

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)**⁴⁷⁷ Driver and passengers §41-719(a)

⁴⁷⁷ 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