

ORDINANCE NO. 24-20

AN ORDINANCE PERTAINING TO THE OLATHE TRAFFIC CODE; AMENDING SECTION 10.01.030 AND REPEALING THE EXISTING SECTION.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF OLATHE, KANSAS:

SECTION ONE: Section 10.01.030 of the Olathe Municipal Code is hereby amended to read as follows:

“10.01.030 Driving Under the Influence of Intoxicating Liquor or Drugs - Penalties.

(a) Driving under the influence is operating or attempting to operate any vehicle within this City while:

(1) The alcohol concentration in the person’s blood or breath as shown by any competent evidence including other competent evidence as defined in K.S.A. 8-1013(f)(1), and amendments thereto, is 0.08 or more;

(2) The alcohol concentration in the person’s blood or breath, as measured within three (3) hours of the time of operating or attempting to operate a vehicle, is 0.08 or more;

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

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

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

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

(A) On a first conviction a Class B public offense. The person convicted shall be sentenced to not less than forty-

eight (48) consecutive hours nor more than six (6) months' imprisonment, or in the court's discretion one hundred (100) hours of public service, and fined not less than Seven Hundred Fifty Dollars (\$750.00) nor more than one thousand dollars (\$1,000.00). In addition to any fines imposed, the court shall order that the convicted person pay restitution to any victim who suffered loss due to the violation for which the person was convicted;

(B) On a second conviction a Class A public offense. The person convicted shall be sentenced to not less than ninety (90) days nor more than one (1) year's imprisonment and fined not less than one thousand two hundred fifty dollars (\$1,250.00) nor more than one thousand seven hundred fifty dollars (\$1,750.00). In addition to any fines imposed, the court shall order that the convicted person pay restitution to any victim who suffered loss due to the violation for which the person was convicted. The person convicted shall serve at least five (5) consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. The following conditions shall apply to such sentence:

(i) As a condition of any probation granted under this subsection, the person shall serve at least one hundred twenty (120) hours of confinement. The hours of confinement shall include at least forty-eight (48) hours of imprisonment and otherwise may be served by a combination of: imprisonment; a work release program, if such work release program requires such person to return to the confinement at the end of each day in the work release program; or a house arrest program pursuant to K.S.A. 21-6609, and amendments thereto;

(ii) (a) If the person is placed into a work release program or placed under a house arrest program for any portion of the minimum of one hundred twenty (120) hours of confinement mandated by this subsection, the person shall receive hour-for-hour credit for time served in such program until the minimum sentence is

met. If the person is placed into a work release program or placed under a house arrest program for more than the minimum of one hundred twenty (120) hours of confinement mandated by this subsection, the person shall receive hour-for-hour credit for time served in such program until the minimum of one hundred twenty (120) hours of confinement is completed, and thereafter, the person shall receive day-for-day credit for time served in such program unless otherwise ordered by the court; and

(b) When in a work release program, the person shall only be given credit for the time served in confinement at the end of and continuing to the beginning of the person's workday. When under a house arrest program, the person shall be monitored by an electronic monitoring device that verifies the person's location and shall only be given credit for the time served within the boundaries of the person's residence; and

(C) On a third conviction a Class A public offense, except as provided in K.S.A. 8-1567. The person convicted shall be sentenced to not less than ninety (90) days nor more than one (1) year's imprisonment and fined not less than one thousand seven hundred fifty dollars (\$1,750.00) nor more than two thousand five hundred dollars (\$2,500.00). In addition to any fines imposed, the court shall order that the convicted person pay restitution to any victim who suffered loss due to the violation for which the person was convicted. The following conditions shall apply to such sentence:

(i) As a condition of any probation granted under this subsection, the person shall serve at least thirty (30) days of confinement. After at least forty-eight (48) consecutive hours of imprisonment, the remainder of the period of confinement may be served by a combination of: imprisonment; a work release program, if such work release program requires such

person to return to the confinement at the end of each day in the work release program; or a house arrest program pursuant to K.S.A. 21-6609, and amendments thereto; and

(ii) (a) If the person is placed into a work release program or placed under a house arrest program for any portion of the minimum of thirty (30) days of confinement mandated by this subsection (b)(1)(C), the person shall receive hour-for-hour credit for time served in such program for the first two hundred and forty (240) hours of confinement, and thereafter, the person shall receive day-for-day credit for time served in such program unless otherwise ordered by the court; and

(b) When in a work release program, the person shall only be given credit for the time served in confinement at the end of and continuing to the beginning of the person's workday. When under a house arrest program, the person shall be monitored by an electronic monitoring device that verifies the person's location and shall only be given credit for the time served within the boundaries of the person's residence.

(2) In addition to the provisions of subsection (b)(1), for any conviction pursuant to subsection (b)(1)(C), ~~of this section, at the time of the filing of the judgment form or journal entry as required by K.S.A. 22-3426 or 21-6711, and amendments thereto, the court shall cause a certified copy to be sent to the officer having the offender in charge. The court shall determine whether the offender, upon release from imprisonment, shall be supervised by community correctional services or court services based upon the risk and needs of the offender. The~~ the risk and needs of the ~~offender~~ person shall be determined by use of a risk assessment tool specified by the ~~Kansas Sentencing Commission. The law enforcement agency maintaining custody and control of a defendant for imprisonment shall cause a certified copy of the judgment form or journal entry to be sent to the supervision office~~

~~designated by the court and upon expiration of the term of imprisonment shall deliver the defendant to a location designated by the supervision office appointed by the court.~~ After the term of imprisonment imposed by the court, the person shall be placed on supervision ~~to community correctional services or court services, as determined by the court,~~ for a mandatory one-year period of supervision, which such period of supervision shall not be reduced. During such supervision, the person shall be required to participate in a multidisciplinary model of services for substance use disorders ~~facilitated by a department of social and rehabilitation services designated care coordination agency~~ to include assessment and, if appropriate, referral to a community-based substance use disorder treatment including recovery management and mental health counseling as needed. ~~The multidisciplinary team shall include the designated care coordination agency, the supervision officer, the social and rehabilitation services department designated treatment provider and the offender.~~ A person for whom a warrant has been issued by the court alleging a violation of this supervision shall be considered a fugitive from justice if it is found that the warrant cannot be served. If it is found the person has violated the provisions of this supervision, the court shall determine whether the time from the issuing of the warrant to the date of the court's determination of an alleged violation, or any part of it, shall be counted as time served on supervision. Any violation of the conditions of such supervision may subject such person to revocation of supervision and imprisonment in jail for the remainder of the period of imprisonment, the remainder of the supervision period, or any combination or portion thereof. The term of supervision may be extended at the court's discretion beyond one year, and any violation of the conditions of such extended term of supervision may subject such person to the revocation of supervision and imprisonment in jail of up to the remainder of the original sentence, not the term of the extended supervision.

(3) In addition to the provisions of subsection (b)(1), prior to sentencing for any conviction pursuant to subsection (b)(1)(A) or (B) ~~of this section~~, the court shall order the person to participate in an alcohol and drug evaluation conducted by a provider in accordance with K.S.A. 8-1008, and amendments thereto. The person shall be required to follow any recommendation made by

the provider after such evaluation, unless otherwise ordered by the court.

(c) Any person eighteen (18) years of age or older convicted of violating this section who had one (1) or more children under the age of eighteen (18) years in the vehicle at the time of the offense shall have such person's punishment enhanced by one (1) month of imprisonment. This imprisonment must be served consecutively to any other minimum mandatory penalty imposed for a violation of this section. Any enhanced penalty imposed shall not exceed the maximum sentence allowable by law. During the service of the enhanced penalty, the judge may order the person on house arrest, work release or other conditional release.

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

(e) The court may establish the terms and time for payment of any fines, fees, assessments and costs imposed pursuant to this section. Any assessments and costs shall be required to be paid not later than ninety (90) days after imposed, and any remainder of the fine shall be paid prior to the final release of the ~~defendant~~ person by the court.

(f) (1) In lieu of payment of a fine imposed pursuant to this section, the court may order that the person perform community service specified by the court. The person shall receive a credit on the fine imposed in an amount equal to Five Dollars (\$5.00) for each full hour spent by the person in the specified community service. The community service ordered by the court shall be required to be performed not later than one (1) year after the fine is imposed or by an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero (0) the portion of the fine required to be paid by the person, the remaining balance of the fine shall become due on that date.

(2) The court may, in its discretion, waive any portion of a fine imposed pursuant to this section, except the Two Hundred Fifty Dollars (\$250.00) required to be remitted to the state treasurer pursuant to K.S.A. 12-4120, upon a showing that the person successfully completed court-ordered education or treatment.

- (g) (1) Upon the filing of a complaint, citation or notice to appear alleging a person has violated the acts prohibited by this section and prior to conviction thereof, the City Prosecutor shall request and shall receive from the:
- (a) Division, a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state; and
 - (b) Kansas Bureau of Investigation Central Repository, all criminal history record information concerning such person.
- (2) If the elements of such ordinance violation are the same as the elements of a violation of this section that would constitute, and be punished, as a felony, the City Prosecutor shall refer the violation to the appropriate county or district attorney for prosecution.
- (h) The court shall electronically report every conviction of a violation of this section and every diversion agreement entered into in lieu of further criminal proceedings on a complaint alleging a violation of this section to the Division including any finding regarding the alcohol concentration in the offender's person's blood or breath. Prior to sentencing under the provisions of this section, the court shall request and shall receive from the Division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state.
- (i) For the purpose of determining whether a conviction is a first, second, third, fourth or subsequent conviction in sentencing under this section:
- (1) Convictions for a violation of this section, K.S.A. 8-1567, and amendments thereto, or a violation of an ordinance of any city or resolution of any county that prohibits the acts that this section prohibits, or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging any such violations, shall be taken into account, but only convictions or diversions occurring on or after July 1, 2001. Nothing in this provision shall be construed as preventing any court from considering any convictions or diversions occurring during the person's lifetime in determining the sentence to be imposed within the limits provided for a first, second, third, fourth or subsequent offense;
 - (2) Any convictions for a violation of the following sections occurring during a person's lifetime shall be taken into account: (A)

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

(3) "Conviction" includes: (A) Entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging an offense described in subsection (i)(2) of this section; and (B) conviction of a violation of an ordinance of a city in this state, a resolution of a county in this state or any law of another jurisdiction that would constitute an offense that is comparable to the offense described in subsection (i)(1) or (2) of this section;

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

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

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

(j) 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) Upon conviction of a person of a violation of this section, the Division, upon receiving a report of conviction, shall suspend, restrict or suspend and restrict the person's driving privileges as provided by K.S.A. 8-1014, and amendments thereto.

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

(m) The alternatives set out in subsection (a) of this section may be pleaded in the alternative, and the City, may, but shall not be required to, elect one (1) or more of such alternatives prior to submission of the case to the fact finder.

(n) As used in this section:

(1) "Alcohol concentration" means the number of grams of alcohol per one hundred (100) milliliters of blood or per two hundred ten (210) liters of breath;

(2) "Imprisonment" includes any restrained environment in which the court and law enforcement agency intend to retain custody and control of a ~~defendant~~ person and such environment has been approved by the Board of County Commissioners or the governing body of a city; and

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

SECTION TWO: Existing Section 10.01.030 is hereby repealed.

SECTION THREE: This Ordinance shall take effect and be in force from and after its passage and publication as provided by law.

PASSED by the Governing Body this _____ day of _____, 2024.

SIGNED by the Mayor this _____ day of _____, 2024.

Mayor

ATTEST:

City Clerk

(SEAL)

APPROVED AS TO FORM:

City Attorney