

SENATE BILL No. 86

By Committee on Judiciary

2-4

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to driving under the influence; sentencing; amending K.S.A. 2018
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. 2018 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 K.S.A. 8-1013(f)(1), and amendments thereto, is 0.08 or more;

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

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

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

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

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

23 (A) On a first conviction a class B, nonperson misdemeanor. The
24 person convicted shall be sentenced to not less than 48 consecutive hours
25 nor more than six months' imprisonment, or in the court's discretion 100
26 hours of public service, and fined not less than \$750 nor more than \$1,000.
27 The person convicted shall serve at least 48 consecutive hours'
28 imprisonment or 100 hours of public service either before or as a condition
29 of any grant of probation or suspension, reduction of sentence or parole.
30 The court may place the person convicted under a house arrest program
31 pursuant to K.S.A. 2018 Supp. 21-6609, and amendments thereto, to serve
32 the remainder of the sentence only after such person has served 48
33 consecutive hours' imprisonment;

34 (B) on a second conviction a class A, nonperson misdemeanor. The
35 person convicted shall be sentenced to not less than 90 days nor more than
36 one year's imprisonment and fined not less than \$1,250 nor more than

1 \$1,750. The person convicted shall serve at least five consecutive days'
2 imprisonment before the person is granted probation, suspension or
3 reduction of sentence or parole or is otherwise released. The five days'
4 imprisonment mandated by this subsection may be served in a work
5 release program only after such person has served 48 consecutive hours'
6 imprisonment, provided such work release program requires such person
7 to return to confinement at the end of each day in the work release
8 program. The person convicted, if placed into a work release program,
9 shall serve a minimum of 120 hours of confinement. Such 120 hours of
10 confinement shall be a period of at least 48 consecutive hours of
11 imprisonment followed by confinement hours at the end of and continuing
12 to the beginning of the ~~offender's~~ *person's* work day. The court may place
13 the person convicted under a house arrest program pursuant to K.S.A.
14 2018 Supp. 21-6609, and amendments thereto, to serve the five days'
15 imprisonment mandated by this subsection only after such person has
16 served 48 consecutive hours' imprisonment. The person convicted, if
17 placed under house arrest, shall be monitored by an electronic monitoring
18 device, ~~which~~ *that* verifies the ~~offender's~~ *person's* location. The ~~offender-~~
19 *person* shall serve a minimum of 120 hours of confinement within the
20 boundaries of the ~~offender's~~ *person's* residence. Any exceptions to
21 remaining within the boundaries of the ~~offender's~~ *person's* residence
22 provided for in the house arrest agreement shall not be counted as part of
23 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~~ *person's* work day. The court
39 may place the person convicted under a house arrest program pursuant to
40 K.S.A. 2018 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 that~~ verifies the ~~offender's person's~~ location. The ~~offender~~
2 ~~person~~ shall serve a minimum of 2,160 hours of confinement within the
3 boundaries of the ~~offender's person's~~ residence. Any exceptions to
4 remaining within the boundaries of the ~~offender's person's~~ residence
5 provided for in the house arrest agreement shall not be counted as part of
6 the 2,160 hours;

7 (D) on a third conviction a nonperson felony if the person has a prior
8 conviction ~~which that~~ occurred within the preceding 10 years, not
9 including any period of incarceration. The person convicted shall be
10 sentenced to not less than 90 days nor more than one year's imprisonment
11 and fined not less than \$1,750 nor more than \$2,500. The person convicted
12 shall not be eligible for release on probation, suspension or reduction of
13 sentence or parole until the person has served at least 90 days'
14 imprisonment. The 90 days' imprisonment mandated by this subsection
15 may be served in a work release program only after such person has served
16 48 consecutive hours' imprisonment, provided such work release program
17 requires such person to return to confinement at the end of each day in the
18 work release program. The person convicted, if placed into a work release
19 program, shall serve a minimum of 2,160 hours of confinement. Such
20 2,160 hours of confinement shall be a period of at least 48 consecutive
21 hours of imprisonment followed by confinement hours at the end of and
22 continuing to the beginning of the ~~offender's person's~~ work day. The court
23 may place the person convicted under a house arrest program pursuant to
24 K.S.A. 2018 Supp. 21-6609, and amendments thereto, to serve the 90 days'
25 imprisonment mandated by this subsection only after such person has
26 served 48 consecutive hours' imprisonment. The person convicted, if
27 placed under house arrest, shall be monitored by an electronic monitoring
28 device, ~~which that~~ verifies the ~~offender's person's~~ location. The ~~offender~~
29 ~~person~~ shall serve a minimum of 2,160 hours of confinement within the
30 boundaries of the ~~offender's person's~~ residence. Any exceptions to
31 remaining within the boundaries of the ~~offender's person's~~ residence
32 provided for in the house arrest agreement shall not be counted as part of
33 the 2,160 hours; and

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

1 shall serve a minimum of 2,160 hours of confinement. Such 2,160 hours of
2 confinement shall be a period of at least 72 consecutive hours of
3 imprisonment followed by confinement hours at the end of and continuing
4 to the beginning of the ~~offender's~~ person's work day. The court may place
5 the person convicted under a house arrest program pursuant to K.S.A.
6 2018 Supp. 21-6609, and amendments thereto, to serve the 90 days'
7 imprisonment mandated by this subsection only after such person has
8 served 72 consecutive hours' imprisonment. The person convicted, if
9 placed under house arrest, shall be monitored by an electronic monitoring
10 device, ~~which that~~ verifies the ~~offender's~~ person's location. The ~~offender-~~
11 ~~person~~ shall serve a minimum of 2,160 hours of confinement within the
12 boundaries of the ~~offender's~~ person's residence. Any exceptions to
13 remaining within the boundaries of the ~~offender's~~ person's residence
14 provided for in the house arrest agreement shall not be counted as part of
15 the 2,160 hours.

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

19 (A) *The 90 days' imprisonment mandated by subsection (b)(1)(D) or*
20 *(b)(1)(E) may be divided into three 30-day segments. The first 30-day*
21 *segment may be served in a work release program only after such person*
22 *has served 48 consecutive hours' imprisonment, provided such work*
23 *release program requires such person to return to confinement at the end*
24 *of each day in the work release program. The person convicted, if placed*
25 *into a work release program, shall serve a minimum of 672 hours of*
26 *confinement. Such 672 hours of confinement shall be a period of at least*
27 *48 consecutive hours of imprisonment followed by confinement hours at*
28 *the end of and continuing to the beginning of the person's work day. The*
29 *court may place the person convicted under a house arrest program*
30 *pursuant to K.S.A. 2018 Supp. 21-6609, and amendments thereto, to serve*
31 *the first 30-day segment only after such person has served 48 consecutive*
32 *hours' imprisonment. The person convicted, if placed under house arrest,*
33 *shall be monitored by an electronic monitoring device that verifies the*
34 *offender's location. The person shall serve a minimum of 672 hours of*
35 *confinement within the boundaries of the person's residence. Any*
36 *exceptions to remaining within the boundaries of the person's residence*
37 *provided for in the house arrest agreement shall not be counted as part of*
38 *the 672 hours.*

39 (B) *The court shall set a review hearing for such person 90 to 120*
40 *days after the initial sentencing, and again at 180 to 240 days after the*
41 *initial sentencing. The person shall participate in the multidisciplinary*
42 *model of services for substance use disorders required pursuant to*
43 *subsection (b)(4) prior to each such hearing as ordered by the court. At*

1 *each such hearing, the court shall consider any alcohol-monitoring results*
2 *and the recommendation of the multidisciplinary team, together with any*
3 *other factors deemed relevant by the court, in deciding whether to modify*
4 *the sentence by ordering a stay of the next following segment of*
5 *incarceration that the court had initially ordered to be executed.*

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

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

15 (3) The court may order that the term of imprisonment imposed
16 pursuant to subsection (b)(1)(D) or (b)(1)(E) be served in a state facility in
17 the custody of the secretary of corrections in a facility designated by the
18 secretary for the provision of substance abuse treatment pursuant to the
19 provisions of K.S.A. 2018 Supp. 21-6804, and amendments thereto. The
20 person shall remain imprisoned at the state facility only while participating
21 in the substance abuse treatment program designated by the secretary and
22 shall be returned to the custody of the sheriff for execution of the balance
23 of the term of imprisonment upon completion of or the person's discharge
24 from the substance abuse treatment program. Custody of the person shall
25 be returned to the sheriff for execution of the sentence imposed in the
26 event the secretary of corrections determines: (A) That substance abuse
27 treatment resources or the capacity of the facility designated by the
28 secretary for the incarceration and treatment of the person is not available;
29 (B) the person fails to meaningfully participate in the treatment program of
30 the designated facility; (C) the person is disruptive to the security or
31 operation of the designated facility; or (D) the medical or mental health
32 condition of the person renders the person unsuitable for confinement at
33 the designated facility. The determination by the secretary that the person
34 either is not to be admitted into the designated facility or is to be
35 transferred from the designated facility is not subject to review. The sheriff
36 shall be responsible for all transportation expenses to and from the state
37 correctional facility.

38 (3) (4) In addition, for any conviction pursuant to subsection (b)(1)
39 (C), (b)(1)(D) or (b)(1)(E), at the time of the filing of the judgment form or
40 journal entry as required by K.S.A. 22-3426 or K.S.A. 2018 Supp. 21-
41 6711, and amendments thereto, the court shall cause a certified copy to be
42 sent to the officer having the ~~offender~~ *person convicted* in charge. The
43 court shall determine whether the ~~offender~~ *person*, upon release from

1 imprisonment, shall be supervised by community correctional services or
2 court services based upon the risk and needs of the ~~offender~~ person. The
3 risk and needs of the offender shall be determined by use of a risk
4 assessment tool specified by the Kansas sentencing commission. The law
5 enforcement agency maintaining custody and control of a defendant for
6 imprisonment shall cause a certified copy of the judgment form or journal
7 entry to be sent to the supervision office designated by the court and upon
8 expiration of the term of imprisonment shall deliver the defendant to a
9 location designated by the supervision office designated by the court. After
10 the term of imprisonment imposed by the court, the person shall be placed
11 on supervision to community correctional services or court services, as
12 determined by the court, for a mandatory one-year period of supervision,
13 which such period of supervision shall not be reduced. During such
14 supervision, the person shall be required to participate in a
15 multidisciplinary model of services for substance use disorders facilitated
16 by a Kansas department for aging and disability services designated care
17 coordination agency to include assessment and, if appropriate, referral to a
18 community based substance use disorder treatment including recovery
19 management and mental health counseling as needed. The
20 multidisciplinary team shall include the designated care coordination
21 agency, the supervision officer, the Kansas department for aging and
22 disability services designated treatment provider and the ~~offender~~ person
23 convicted. ~~An offender~~ A person for whom a warrant has been issued by
24 the court alleging a violation of this supervision shall be considered a
25 fugitive from justice if it is found that the warrant cannot be served. If it is
26 found the ~~offender~~ person has violated the provisions of this supervision,
27 the court shall determine whether the time from the issuing of the warrant
28 to the date of the court's determination of an alleged violation, or any part
29 of it, shall be counted as time served on supervision. Any violation of the
30 conditions of such supervision may subject such person to revocation of
31 supervision and imprisonment in jail for the remainder of the period of
32 imprisonment, the remainder of the supervision period, or any combination
33 or portion thereof. The term of supervision may be extended at the court's
34 discretion beyond one year, and any violation of the conditions of such
35 extended term of supervision may subject such person to the revocation of
36 supervision and imprisonment in jail of up to the remainder of the original
37 sentence, not the term of the extended supervision.

38 (4) (5) In addition, prior to sentencing for any conviction pursuant to
39 subsection (b)(1)(A) or (b)(1)(B), the court shall order the person to
40 participate in an alcohol and drug evaluation conducted by a provider in
41 accordance with K.S.A. 8-1008, and amendments thereto. The person shall
42 be required to follow any recommendation made by the provider after such
43 evaluation, unless otherwise ordered by the court.

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

12 (d) If a person is charged with a violation of subsection (a)(4) or (a)
13 (5), the fact that the person is or has been entitled to use the drug under the
14 laws of this state shall not constitute a defense against the charge.

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

20 (f) In lieu of payment of a fine imposed pursuant to this section, the
21 court may order that the person perform community service specified by
22 the court. The person shall receive a credit on the fine imposed in an
23 amount equal to \$5 for each full hour spent by the person in the specified
24 community service. The community service ordered by the court shall be
25 required to be performed not later than one year after the fine is imposed
26 or by an earlier date specified by the court. If by the required date the
27 person performs an insufficient amount of community service to reduce to
28 zero the portion of the fine required to be paid by the person, the
29 remaining balance of the fine shall become due on that date.

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

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

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

36 (h) The court shall electronically report every conviction of a
37 violation of this section and every diversion agreement entered into in lieu
38 of further criminal proceedings on a complaint alleging a violation of this
39 section to the division including any finding regarding the alcohol
40 concentration in the ~~offender's~~ *person's* blood or breath. Prior to
41 sentencing under the provisions of this section, the court shall request and
42 shall receive from the division a record of all prior convictions obtained
43 against such person for any violations of any of the motor vehicle laws of

1 this state.

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

5 (1) Convictions for a violation of this section, or a violation of an
6 ordinance of any city or resolution of any county that prohibits the acts
7 that this section prohibits, or entering into a diversion agreement in lieu of
8 further criminal proceedings on a complaint alleging any such violations,
9 shall be taken into account, but only convictions or diversions occurring
10 on or after July 1, 2001. Nothing in this provision shall be construed as
11 preventing any court from considering any convictions or diversions
12 occurring during the person's lifetime in determining the sentence to be
13 imposed within the limits provided for a first, second, third, fourth or
14 subsequent offense;

15 (2) any convictions for a violation of the following sections occurring
16 during a person's lifetime shall be taken into account: (A) Driving a
17 commercial motor vehicle under the influence, K.S.A. 8-2,144, and
18 amendments thereto; (B) operating a vessel under the influence of alcohol
19 or drugs, K.S.A. 32-1131, and amendments thereto; (C) involuntary
20 manslaughter while driving under the influence of alcohol or drugs, K.S.A.
21 21-3442, prior to its repeal, or K.S.A. 2018 Supp. 21-5405(a)(3) or (a)(5),
22 and amendments thereto; (D) aggravated battery as described in K.S.A.
23 2018 Supp. 21-5413(b)(3) or (b)(4), and amendments thereto; and (E)
24 aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or
25 vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was
26 committed while committing a violation of K.S.A. 8-1567, and
27 amendments thereto;

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

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

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

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

42 (j) For the purposes of determining whether an offense is comparable,
43 the following shall be considered:

- 1 (1) The name of the out-of-jurisdiction offense;
2 (2) the elements of the out-of-jurisdiction offense; and
3 (3) whether the out-of-jurisdiction offense prohibits similar conduct
4 to the conduct prohibited by the closest approximate Kansas offense.

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

10 (l) (1) Nothing contained in this section shall be construed as
11 preventing any city from enacting ordinances, or any county from adopting
12 resolutions, declaring acts prohibited or made unlawful by this act as
13 unlawful or prohibited in such city or county and prescribing penalties for
14 violation thereof.

15 (2) The minimum penalty prescribed by any such ordinance or
16 resolution shall not be less than the minimum penalty prescribed by this
17 section for the same violation, and the maximum penalty in any such
18 ordinance or resolution shall not exceed the maximum penalty prescribed
19 for the same violation.

20 (3) On and after July 1, 2007, and retroactive for ordinance violations
21 committed on or after July 1, 2006, an ordinance may grant to a municipal
22 court jurisdiction over a violation of such ordinance which is concurrent
23 with the jurisdiction of the district court over a violation of this section,
24 notwithstanding that the elements of such ordinance violation are the same
25 as the elements of a violation of this section that would constitute, and be
26 punished as, a felony.

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

30 (m) (1) Upon the filing of a complaint, citation or notice to appear
31 alleging a person has violated a city ordinance prohibiting the acts
32 prohibited by this section, and prior to conviction thereof, a city attorney
33 shall request and shall receive from the:

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

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

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

42 (n) No plea bargaining agreement shall be entered into nor shall any
43 judge approve a plea bargaining agreement entered into for the purpose of

1 permitting a person charged with a violation of this section, or a violation
2 of any ordinance of a city or resolution of any county in this state which
3 prohibits the acts prohibited by this section, to avoid the mandatory
4 penalties established by this section or by the ordinance. For the purpose
5 of this subsection, entering into a diversion agreement pursuant to K.S.A.
6 12-4413 et seq. or 22-2906 et seq., and amendments thereto, shall not
7 constitute plea bargaining.

8 (o) The alternatives set out in subsection (a) may be pleaded in the
9 alternative, and the state, city or county may, but shall not be required to,
10 elect one or more of such alternatives prior to submission of the case to the
11 fact finder.

12 (p) As used in this section: (1) "Alcohol concentration" means the
13 number of grams of alcohol per 100 milliliters of blood or per 210 liters of
14 breath;

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

19 (3) "drug" includes toxic vapors as such term is defined in K.S.A.
20 2018 Supp. 21-5712, and amendments thereto.

21 (q) (1) The amount of the increase in fines as specified in this section
22 shall be remitted by the clerk of the district court to the state treasurer in
23 accordance with the provisions of K.S.A. 75-4215, and amendments
24 thereto. Upon receipt of remittance of the increase provided in this act, the
25 state treasurer shall deposit the entire amount in the state treasury and the
26 state treasurer shall credit 50% to the community alcoholism and
27 intoxication programs fund and 50% to the department of corrections
28 alcohol and drug abuse treatment fund, which is hereby created in the state
29 treasury.

30 (2) On and after July 1, 2011, the amount of \$250 from each fine
31 imposed pursuant to this section shall be remitted by the clerk of the
32 district court to the state treasurer in accordance with the provisions of
33 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
34 remittance, the state treasurer shall credit the entire amount to the
35 community corrections supervision fund established by K.S.A. 2018 Supp.
36 75-52,113, and amendments thereto.

37 Sec. 2. K.S.A. 2018 Supp. 8-1567 is hereby repealed.

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