

LEGISLATIVE BILL 594

Approved by the Governor June 3, 2005

Introduced by Kruse, 13; Baker, 44; Brown, 6; Burling, 33; Byars, 30; Combs, 32; Erdman, 47; Howard, 9; Hudkins, 21; Jensen, 20; Johnson, 37; Kopplin, 3; Kremer, 34; D. Pederson, 42; Redfield, 12; Schimek, 27; Schrock, 38; Stuhr, 24; Thompson, 14; Wehrbein, 2

AN ACT relating to driving under the influence; to amend sections 60-6,197.02 and 60-6,197.03, Reissue Revised Statutes of Nebraska, and section 28-106, Revised Statutes Supplement, 2004; to change and provide penalties; to change provisions relating to driving under the influence; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 28-106, Revised Statutes Supplement, 2004, is amended to read:

28-106. (1) For purposes of the Nebraska Criminal Code and any statute passed by the Legislature after the date of passage of the code, misdemeanors are divided into seven classes which are distinguished from one another by the following penalties which are authorized upon conviction:

- Class I misdemeanor..... Maximum -- not more than one year imprisonment, or one thousand dollars fine, or both
Minimum -- none
- Class II misdemeanor..... Maximum -- six months imprisonment, or one thousand dollars fine, or both
Minimum -- none
- Class III misdemeanor..... Maximum -- three months imprisonment, or five hundred dollars fine, or both
Minimum -- none
- Class IIIA misdemeanor.... Maximum -- seven days imprisonment, five hundred dollars fine, or both
Minimum -- none
- Class IV misdemeanor..... Maximum -- no imprisonment, five hundred dollars fine
Minimum -- one hundred dollars fine
- Class V misdemeanor..... Maximum -- no imprisonment, one hundred dollars fine
Minimum -- none
- ~~Class W misdemeanor..... Driving while intoxicated — implied consent refusal~~
- Class W misdemeanor..... Driving under the influence or implied consent
First conviction
Maximum -- sixty days imprisonment and five hundred dollars fine
Mandatory minimum -- seven days imprisonment and four hundred dollars fine
Second conviction
~~Maximum — ninety days imprisonment and five hundred dollars fine~~
Maximum -- six months imprisonment and five hundred dollars fine
Mandatory minimum -- thirty days imprisonment and five hundred dollars fine
Third conviction
Maximum -- one year imprisonment and six hundred dollars fine
Mandatory minimum -- ninety days imprisonment and six hundred dollars fine

(2) Sentences of imprisonment in misdemeanor cases shall be served in the county jail, except that in the following circumstances the court may, in its discretion, order that such sentences be served in institutions under the jurisdiction of the Department of Correctional Services:

- (a) If the sentence is for a term of one year upon conviction of a Class I misdemeanor;
- (b) If the sentence is to be served concurrently or consecutively with a term for conviction of a felony; or
- (c) If the Department of Correctional Services has certified as

provided in section 28-105 as to the availability of facilities and programs for short-term prisoners and the sentence is for a term of six months or more.

Sec. 2. Section 60-6,197.02, Reissue Revised Statutes of Nebraska, is amended to read:

60-6,197.02. (1) A violation of section 60-6,196 or 60-6,197 shall be punished as provided in section 60-6,197.03. For purposes of sentencing under section 60-6,197.03:

(a) Prior conviction means a conviction for a violation committed within the twelve-year period prior to the offense for which the sentence is being imposed as follows:

(i) For a violation of section 60-6,196:

(A) Any conviction for a violation of section 60-6,196;

(B) Any conviction for a violation of a city or village ordinance enacted in conformance with section 60-6,196;

(C) Any conviction under a law of another state if, at the time of the conviction under the law of such other state, the offense for which the person was convicted would have been a violation of section 60-6,196; or

(D) Any conviction for a violation of section 60-6,198; or

(ii) For a violation of section 60-6,197;

(A) Any conviction for a violation of section 60-6,197;

(B) Any conviction for a violation of a city or village ordinance enacted in conformance with section 60-6,197; or

(C) Any conviction under a law of another state if, at the time of the conviction under the law of such other state, the offense for which the person was convicted would have been a violation of section 60-6,197;

(b) Prior conviction includes any conviction under section 60-6,196, 60-6,197, or 60-6,198, or any city or village ordinance enacted in conformance with any of such sections, as such sections or city or village ordinances existed at the time of such conviction regardless of subsequent amendments to any of such sections or city or village ordinances; and

(c) Twelve-year period means the period computed from the date of the prior offense to the date of the offense which resulted in the conviction for which the sentence is being imposed.

(2) In any case charging a violation of section 60-6,196 or 60-6,197, the prosecutor or investigating agency shall use due diligence to obtain the person's driving record from the Department of Motor Vehicles and the person's driving record from other states where he or she is known to have resided within the last twelve years. The prosecutor shall certify to the court, prior to sentencing, that such action has been taken. The prosecutor shall present as evidence for purposes of sentence enhancement a court-certified copy or an authenticated copy of a prior conviction in another state. The court-certified or authenticated copy shall be prima facie evidence of such prior conviction.

(3) For each conviction for a violation of section 60-6,196 or 60-6,197, the court shall, as part of the judgment of conviction, make a finding on the record as to the number of the convicted person's prior convictions. The convicted person shall be given the opportunity to review the record of his or her prior convictions, bring mitigating facts to the attention of the court prior to sentencing, and make objections on the record regarding the validity of such prior convictions.

Sec. 3. Section 60-6,197.03, Reissue Revised Statutes of Nebraska, is amended to read:

60-6,197.03. Any person convicted of a violation of section 60-6,196 or 60-6,197 shall be punished as follows:

(1) If such person has not had a prior conviction, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order ~~such person not to drive any motor vehicle for any purpose that the operator's license of such person be revoked or impounded for a period of six months from the date ordered by the court. and shall order that the operator's license of such person be revoked for a like period.~~ Such revocation or impoundment shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order ~~such person not to drive any motor vehicle for any purpose that the operator's license of such person be revoked or impounded~~ for a period of sixty days from the date ordered by the court unless otherwise authorized by an order issued pursuant to section 60-6,211.05, and such order of probation or sentence suspension shall also include, as one of its conditions, the payment of a four-hundred-dollar fine;

(2) ~~If~~ Except as provided in subdivision (4) of this section, if

such person has had one prior conviction, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order ~~such person not to drive any motor vehicle for any purpose that the operator's license of such person be revoked for a period of one year from the date ordered by the court, shall order that the operator's license of such person be revoked for a like period,~~ and shall issue an order pursuant to section 60-6,197.01 with respect to all motor vehicles owned by such person. Such orders shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order ~~such person not to drive any motor vehicle for any purpose that the operator's license of such person be revoked or impounded~~ for a period of one year from the date ordered by the court unless otherwise authorized by an order issued pursuant to section 60-6,211.05 and shall issue an order pursuant to section 60-6,197.01 with respect to all motor vehicles owned by such person, and such order of probation or sentence suspension shall also include, as conditions, the payment of a five-hundred-dollar fine and either confinement in the city or county jail for five days or the imposition of not less than two hundred forty hours of community service;

(3) ~~If~~ Except as provided in subdivision (4) of this section, if such person has had two prior convictions, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order ~~such person not to drive any motor vehicle for any purpose that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court, shall order that the operator's license of such person be revoked for a like period,~~ and shall issue an order pursuant to section 60-6,197.01 with respect to all motor vehicles owned by such person. Such orders shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order ~~such person not to drive any motor vehicle for any purpose that the operator's license of such person be revoked or impounded~~ for a period of one year from the date ordered by the court ~~and shall order that the operator's license of such person be suspended for a like period~~ unless otherwise authorized by an order issued pursuant to section 60-6,211.05 and shall issue an order pursuant to section 60-6,197.01 with respect to all motor vehicles owned by such person, and such order of probation or sentence suspension shall also include, as conditions, the payment of a six-hundred-dollar fine and either confinement in the city or county jail for ten days or the imposition of not less than four hundred eighty hours of community service; ~~and~~

(4) If such person has had one or two prior convictions and, as part of the current violation, had a concentration of sixteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or sixteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath, such person shall be guilty of a Class I misdemeanor, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for any purpose for a period of at least one year but not more than fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01 with respect to all motor vehicles owned by such person. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. The court shall also sentence such person to serve at least thirty days' imprisonment in the city or county jail or an adult correctional facility.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked or impounded for a period of at least one year but not more than fifteen years from the date ordered by the court unless otherwise authorized by an order issued pursuant to section 60-6,211.05 and shall issue an order pursuant to section 60-6,197.01 with respect to all motor vehicles owned by such person, and such order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and either confinement in the city or county jail for ten days or the imposition of not less than four hundred eighty hours of community service; and

(5) If such person has had three or more prior convictions, such person shall be guilty of a Class IV felony, and the court shall, as part of

the judgment of conviction, order ~~such person not to drive any motor vehicle for any purpose that the operator's license of such person be revoked~~ for a period of fifteen years from the date ordered by the court, ~~shall order that the operator's license of such person be revoked for a like period,~~ and shall issue an order pursuant to section 60-6,197.01 with respect to all motor vehicles owned by such person. Such orders shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. The court shall also sentence such person to serve at least ten days' imprisonment in the city or county jail or an adult correctional facility.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order ~~such person not to drive any motor vehicle for any purpose that the operator's license of such person be revoked or impounded~~ for a period of one year from the date ordered by the court ~~and shall order that the operator's license of such person be suspended for a like period~~ unless otherwise authorized by an order issued pursuant to section 60-6,211.05 and shall issue an order pursuant to section 60-6,197.01 with respect to all motor vehicles owned by such person, and such order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and either confinement in the city or county jail for ten days or the imposition of not less than four hundred eighty hours of community service.

Sec. 4. Original sections 60-6,197.02 and 60-6,197.03, Reissue Revised Statutes of Nebraska, and section 28-106, Revised Statutes Supplement, 2004, are repealed.