



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 83- 123

The Honorable Robert A. Thiessen  
Judge of the Municipal Court  
City Hall, Third Floor  
455 North Main  
Wichita, Kansas 67202

Re: Automobiles -- Serious Traffic Offenses -- Driving  
While Under Influence of Alcohol; Definition of  
"Imprisonment"

Synopsis: As amended by L. 1983, ch. 37, K.S.A. 8-1567(c)  
provides that persons convicted for the first  
time for the offense of driving while under the  
influence of alcohol shall be sentenced to not  
less than 48 hours' imprisonment or 100 hours of  
public service. The term "imprisonment" includes  
not only actual incarceration in jail, but may  
refer to any situation in which the defendant's  
liberty is restrained and he or she is subject  
to additional sanctions should an escape be made.  
Cited herein: K.S.A. 8-1567, as amended by  
L. 1983, ch. 37.

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Dear Judge Thiessen:

As Judge of Division No. 1 of the Wichita Municipal Court,  
you request our opinion on a question of interpretation which  
has arisen from the wording of the Kansas statute which pro-  
scribes driving while under the influence of alcohol, K.S.A.  
8-1567, as amended by L. 1983, ch. 37. The City of Wichita

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has taken action under subsection (n) of the statute to enact a municipal ordinance which contains the same minimum penalties as does the statute. Accordingly, any interpretation of the penalty provisions of the statute can also be applied to the corresponding sections of the ordinance.

You inform us that the municipal court is considering ways in which to deal with the increasing number of persons who are sentenced as first time offenders under the ordinance. As is the case in subsection (c) of the statute, a person convicted of a first violation of the ordinance shall be sentenced to not less than 48 hours' imprisonment or 100 hours of public service, as the court in its discretion may determine. You inquire whether the minimum time which must be served as "imprisonment" can be spent at a location other than a jail or security facility. You give the example of a program by which such offenders would be required to "check in" to an enclosure such as a gymnasium or armory where they would remain for 48 hours. Food would be brought in and classes presented by personnel from the community alcohol and drug safety action program. While the facility would not be converted into a jail, it would be made clear to the individuals participating that they could not come and go as they pleased, and that to do so would result in the imposition of more restrictive penalties by the court. However, we note that you have not requested our opinion as to the specific details by which such a program would be set up or administered.

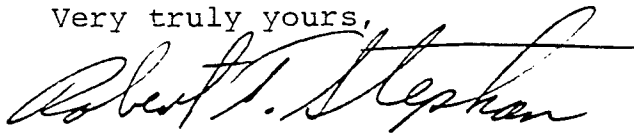
In our opinion, the concept of such a program would be permitted under both the statute and the city ordinance, given the traditionally broad interpretation which courts have given to the term "imprisonment." In its general sense, imprisonment is the restraint of one's liberty which is imposed as punishment by a court or other lawful tribunal. United States v. Mitchell, 163 F. 1014 (D. Ore. 1908). While it amounts to a physical detention of the defendant's person, it is not necessary that the restraint be behind prison bars. United States v. Curran, 297 F. 946, 950 (2nd Cir. 1924). Individuals placed in hospitals or rehabilitation facilities by court order have been held to be legally imprisoned for purposes of criminal laws which punish escape from custody. Commonwealth v. Jones, 211 Pa. Super. 366, 236 A.2d 834 (1967), State v. Michels, 30 A.D.2d 666, 292 N.Y.S.2d 323, 325 (1968). Even an individual on furlough from a correctional institution

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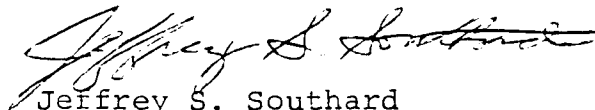
was held to be still imprisoned for the purposes of a statute providing criminal sanctions for breaking prison. Commonwealth v. Bey, 221 Pa.Super. 405, 292 A.2d 519, 521 (1972). In short, restrictions on individual liberty which are imposed by a court, even if not a total deprivation, have been widely held to constitute imprisonment. Therefore, it is our conclusion that the situation which you present would satisfy the statutory requirement concerning imprisonment.

In conclusion, as amended by L. 1983, ch. 37, K.S.A. 8-1567(c) provides that persons convicted for the first time for the offense of driving while under the influence of alcohol shall be sentenced to not less than 48 hours' imprisonment or 100 hours of public service. The term "imprisonment" includes not only actual incarceration in jail, but may refer to any situation in which the defendant's liberty is restrained and he or she is subject to additional sanctions should an escape be made.

Very truly yours,



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RTS:BJS:JSS:hle