

As Further Amended by Senate Committee

As Amended by Senate Committee

As Amended by House Committee

Session of 2021

HOUSE BILL No. 2377

By Committee on Judiciary

2-12

1 AN ACT concerning driving; relating to driving under the influence;
2 authorizing reinstatement of a driver's license for certain persons with
3 an ignition interlock device restriction; removing the motorized bicycle
4 license option for persons whose driving privileges are suspended for a
5 DUI-related offense; ***relating to commercial drivers' licenses;***
6 ***increasing the period of disqualification for certain offenses and***
7 ***allowing certain persons disqualified from driving a commercial motor***
8 ***vehicle to have commercial driving privileges restored; prohibiting***
9 ***prosecuting attorneys from concealing certain traffic violations from***
10 ***the CDLIS driver report;*** modifying the criminal penalties for driving a
11 commercial motor vehicle under the influence and driving under the
12 influence, authorizing courts to waive certain fines and clarifying that
13 amendment or dismissal of certain charges is permitted; allowing
14 persons with suspended driving privileges to seek driving privileges
15 restricted to driving only a motor vehicle equipped with an ignition
16 interlock device earlier in the suspension period; requiring persons with
17 an ignition interlock device restriction to complete the ignition
18 interlock device program before driving privileges are fully reinstated;
19 ***providing that the highway patrol has oversight of state certification***
20 ***of ignition interlock manufacturers and their service providers;***
21 requiring the secretary of revenue to adopt certain rules and regulations
22 related to ignition interlock ~~devices~~ ***device program costs;*** providing
23 for reduced ignition interlock device program costs for certain persons;
24 reducing the restricted driving privileges period for certain persons less
25 than 21 years of age; clarifying that a city attorney or a county or
26 district attorney shall not enter into a diversion agreement for certain
27 traffic violations if the defendant is a commercial driver's license
28 holder; amending K.S.A. 8-1016 and K.S.A. ~~2020~~ ***2021*** Supp. 8-235,
29 ***8-241***, 8-2,142, 8-2,144, ***8-2,150, 8-1014***, 8-1015, 8-1567, 8-1567a, 12-
30 ***4415, 21-6604, 21-6804*** and 22-2908 and repealing the existing
31 sections.
32

1 *Be it enacted by the Legislature of the State of Kansas:*

2 New Section 1. (a) Any person whose license is restricted to
3 operating only a motor vehicle with an ignition interlock device installed
4 and who meets the requirements of subsection (b) may request
5 reinstatement of such person's driver's license by submitting a request to
6 the division in a form and manner prescribed by the division.

7 (b) The division shall approve the request for reinstatement of the
8 person's driver's license if the division determines all the following
9 conditions are met:

10 (1) The person's ignition interlock device restriction period has been
11 extended at least five years, not including any period of incarceration,
12 beyond the initial ignition interlock device restriction period required by
13 law due to the person's failure to provide the division with proof of
14 completion of the ignition interlock device program as required by K.S.A.
15 8-1015, and amendments thereto;

16 (2) during the person's ignition interlock device restriction period and
17 any extension thereof, the person has not had an alcohol or drug-related
18 conviction or occurrence, as those terms are defined by K.S.A. 8-1013,
19 and amendments thereto, or a conviction of a violation of K.S.A. 8-1017,
20 and amendments thereto, or of a law of another state, or of a political
21 subdivision thereof, that prohibits the acts prohibited by K.S.A. 8-1017,
22 and amendments thereto;

23 (3) during the person's ignition interlock device restriction period and
24 any extension thereof, the person has not had any of the following:

25 (A) Conviction of a violation of K.S.A. 8-1599, and amendments
26 thereto;

27 (B) conviction of a violation of K.S.A. 41-727, and amendments
28 thereto;

29 (C) conviction of any violation listed in K.S.A. 8-285(a), and
30 amendments thereto;

31 (D) conviction of two or more moving traffic violations committed on
32 separate occasions; or

33 (E) revocation, suspension, cancellation or withdrawal of the person's
34 driving privileges due to another action by the division or a court; and

35 (4) at the time of submitting the request to the division, the person
36 does not have any pending charges or proceedings involving any violation
37 listed in subsection (b)(2) or (3).

38 Sec. 2. K.S.A. ~~2020~~ **2021** Supp. 8-235 is hereby amended to read as
39 follows: 8-235. (a) No person, except those expressly exempted, shall
40 drive any motor vehicle upon a highway in this state unless such person
41 has a valid driver's license. No person shall receive a driver's license
42 unless and until such person surrenders or with the approval of the
43 division, lists to the division all valid licenses in such person's possession

1 issued to such person by any other jurisdiction. All surrendered licenses or
2 the information listed on foreign licenses shall be returned by the division
3 to the issuing department, together with information that the licensee is
4 now licensed in a new jurisdiction. No person shall be permitted to have
5 more than one valid license at any time.

6 (b) Any person licensed under the motor vehicle drivers' license act
7 may exercise the privilege granted upon all streets and highways in this
8 state and shall not be required to obtain any other license to exercise such
9 privilege by any local authority. Nothing herein shall prevent cities from
10 requiring licenses of persons who drive taxicabs or municipally franchised
11 transit systems for hire upon city streets, to protect the public from drivers
12 whose character or habits make them unfit to transport the public. If a
13 license is denied, the applicant may appeal such decision to the district
14 court of the county in which such city is located by filing within 14 days
15 after such denial, a notice of appeal with the clerk of the district court and
16 by filing a copy of such notice with the city clerk of the involved city. The
17 city clerk shall certify a copy of such decision of the city governing body
18 to the clerk of the district court and the matter shall be docketed as any
19 other cause and the applicant shall be granted a trial of such person's
20 character and habits. The matter shall be heard by the court de novo in
21 accordance with the code of civil procedure. The cost of such appeal shall
22 be assessed in such manner as the court may direct.

23 (c) Any person operating in this state a motor vehicle shall be the
24 holder of a driver's license that is classified for the operation of such motor
25 vehicle, and any person operating in this state a motorcycle that is
26 registered in this state shall be the holder of a class M driver's license.

27 (d) No person shall drive any motorized bicycle upon a highway of
28 this state unless such person:

29 (1) Has a valid driver's license that entitles the licensee to drive a
30 motor vehicle in any class or classes;

31 (2) is at least 15 years of age and has passed the written and visual
32 examinations required for obtaining a class C driver's license, in which
33 case the division shall issue to such person a class C license, which shall
34 clearly indicate that such license is valid only for the operation of
35 motorized bicycles; *or*

36 ~~(3) has had their driving privileges suspended, for a violation other than
37 a violation of K.S.A. 8-2,144, and amendments thereto, or a second or
38 subsequent violation of K.S.A. 8-1567 or 8-1567a, and amendments
39 thereto, and such person: (A) Has completed the mandatory period of
40 suspension as provided in K.S.A. 8-1014, and amendments thereto; and
41 (B) has made application and submitted a \$40 nonrefundable application
42 fee to the division for the issuance of a class C license for the operation of
43 motorized bicycles, in accordance with paragraph (2), in which case the~~

1 division shall issue to such person a class C license, which shall clearly
2 indicate that such license is valid only for the operation of motorized
3 bicycles; or (4) has had their driving privileges revoked under K.S.A. 8-
4 286, and amendments thereto, has not had a test refusal or test failure or
5 alcohol or drug-related conviction, as those terms are defined in K.S.A. 8-
6 1013, and amendments thereto, in the last five years, has not been
7 convicted of a violation of K.S.A. 8-1568(b), and amendments thereto, in
8 the last five years and has made application to the division for issuance of
9 a class C license for the operation of motorized bicycles, in accordance
10 with paragraph (2), in which case the division shall issue such person a
11 class C license, which shall clearly indicate that such license is valid only
12 for the operation of motorized bicycles. As used in this subsection,
13 "motorized bicycle" shall have the meaning ascribed to it in K.S.A. 8-126,
14 and amendments thereto.

15 ~~(e) All moneys received under subsection (d) from the nonrefundable~~
16 ~~application fee shall be applied by the division of vehicles for the~~
17 ~~additional administrative costs to implement restricted driving privileges.~~
18 ~~The division shall remit all restricted driving privilege application fees to~~
19 ~~the state treasurer in accordance with the provisions of K.S.A. 75-4215,~~
20 ~~and amendments thereto. Upon receipt of each such remittance, the state~~
21 ~~treasurer shall deposit the entire amount in the state treasury to the credit~~
22 ~~of the division of vehicles operating fund.~~

23 (f) Violation of this section shall constitute *is* a class B *nonperson*
24 misdemeanor.

25 ***Sec. 3. K.S.A. 2021 Supp. 8-241 is hereby amended to read as***
26 ***follows: 8-241. (a) Except as provided in K.S.A. 8-2,125 through 8-***
27 ***2,142, and amendments thereto, any person licensed to operate a motor***
28 ***vehicle in this state shall submit to an examination whenever: (1) The***
29 ***division of vehicles has good cause to believe that such person is***
30 ***incompetent or otherwise not qualified to be licensed; or (2) the division***
31 ***of vehicles has suspended such person's license pursuant to K.S.A. 8-***
32 ***1014, and amendments thereto, as the result of a test refusal, test failure***
33 ***or conviction for a violation of K.S.A. 8-1567, and amendments thereto,***
34 ***or a violation of a city ordinance or county resolution prohibiting the***
35 ***acts prohibited by K.S.A. 8-1567, and amendments thereto, except that***
36 ***no person shall have to submit to and successfully complete an***
37 ***examination more than once as the result of separate suspensions***
38 ***arising out of the same occurrence.***

39 ***(b) When a person is required to submit to an examination***
40 ***pursuant to subsection (a)(1), the fee for such examination shall be in***
41 ***the amount provided by K.S.A. 8-240, and amendments thereto. When a***
42 ***person is required to submit to an examination pursuant to subsection***
43 ***(a)(2), the fee for such examination shall be \$25. In addition, any person***

1 *required to submit to an examination pursuant to subsection (a)(2) as*
2 *the result of a test failure, a conviction for a violation of K.S.A. 8-1567,*
3 *and amendments thereto, or a violation of a city ordinance or county*
4 *resolution prohibiting the acts prohibited by K.S.A. 8-1567, and*
5 *amendments thereto, shall be required, at the time of examination, to*
6 *pay a reinstatement fee of \$200 after the first occurrence, \$400 after the*
7 *second occurrence, \$600 after the third occurrence and \$800 after the*
8 *fourth or subsequent occurrence; and as a result of a test refusal, shall*
9 *be required, at the time of examination, to pay a reinstatement fee of*
10 *\$600 after the first occurrence, \$900 after the second occurrence, \$1,200*
11 *after the third occurrence and \$1,500 after the fourth or subsequent*
12 *occurrence.*

13 *(1) All examination fees collected pursuant to this section shall be*
14 *remitted to the state treasurer, in accordance with the provisions of*
15 *K.S.A. 75-4215, and amendments thereto, who shall deposit the entire*
16 *amount in the state treasury and credit 80% to the state highway fund*
17 *and 20% shall be disposed of as provided in K.S.A. 8-267, and*
18 *amendments thereto.*

19 ~~*(2) On and after July 1, 2014, through June 30, 2018, all*~~
20 ~~*reinstatement fees collected pursuant to this section shall be remitted to the*~~
21 ~~*state treasurer, in accordance with the provisions of K.S.A. 75-4215, and*~~
22 ~~*amendments thereto, who shall deposit the entire amount in the state*~~
23 ~~*treasury and credit 26% to the community alcoholism and intoxication*~~
24 ~~*programs fund created pursuant to K.S.A. 41-1126, and amendments*~~
25 ~~*thereto, 12% to the juvenile alternatives to detention fund created by*~~
26 ~~*K.S.A. 79-4803, and amendments thereto, 12% to the forensic laboratory*~~
27 ~~*and materials fee fund created by K.S.A. 28-176, and amendments thereto,*~~
28 ~~*17% to the driving under the influence fund created by K.S.A. 75-5660,*~~
29 ~~*and amendments thereto, and 33% to the judicial branch nonjudicial salary*~~
30 ~~*adjustment fund created by K.S.A. 20-1a15, and amendments thereto.*~~
31 ~~*Moneys credited to the forensic laboratory and materials fee fund as*~~
32 ~~*provided herein shall be used to supplement existing appropriations and*~~
33 ~~*shall not be used to supplant general fund appropriations to the Kansas*~~
34 ~~*bureau of investigation.*~~

35 ~~*(3) On and after July 1, 2018, All reinstatement fees collected*~~
36 ~~*pursuant to this section shall be remitted to the state treasurer, in*~~
37 ~~*accordance with the provisions of K.S.A. 75-4215, and amendments*~~
38 ~~*thereto, who shall deposit the entire amount in the state treasury and*~~
39 ~~*credit 35% to the community alcoholism and intoxication programs fund*~~
40 ~~*created pursuant to K.S.A. 41-1126, and amendments thereto, 20% to the*~~
41 ~~*juvenile alternatives to detention fund created by K.S.A. 79-4803, and*~~
42 ~~*amendments thereto, 20% to the forensic laboratory and materials fee*~~
43 ~~*fund created by K.S.A. 28-176, and amendments thereto, and 25% to the*~~

1 *driving under the influence fund created by K.S.A. 75-5660, and*
2 *amendments thereto. Moneys credited to the forensic laboratory and*
3 *materials fee fund as provided herein shall be used to supplement*
4 *existing appropriations and shall not be used to supplant general fund*
5 *appropriations to the Kansas bureau of investigation.*

6 (c) *When an examination is required pursuant to subsection (a), at*
7 *least five days' written notice of the examination shall be given to the*
8 *licensee. The examination administered hereunder shall be at least*
9 *equivalent to the examination required by K.S.A. 8-247(e), and*
10 *amendments thereto, with such additional tests as the division deems*
11 *necessary. Upon the conclusion of such examination, the division shall*
12 *take action as may be appropriate and may suspend or revoke the license*
13 *of such person or permit the licensee to retain such license, or may issue*
14 *a license subject to restrictions as permitted under K.S.A. 8-245, and*
15 *amendments thereto.*

16 (d) *Refusal or neglect of the licensee to submit to an examination*
17 *as required by this section shall be grounds for suspension or revocation*
18 *of the license.*

19 (e) *The division may issue a driver's license with a DUI-IID*
20 *designation for a licensee that is operating under ignition interlock*
21 *restrictions required by K.S.A. 8-1014, and amendments thereto. The*
22 *reexamination requirement in subsection (a)(2) shall not require*
23 *reexamination and payment of reinstatement fees until the end of the*
24 *licensee's ignition interlock restriction period. If the applicant's Kansas*
25 *driver's license has been expired for one year or more, the applicant*
26 *must complete a reexamination and pay any applicable reinstatement*
27 *fees before qualifying for a driver's license with an ignition interlock*
28 *designation. All other requirements for issuance and renewal of a*
29 *driver's license under K.S.A. 8-240, and amendments thereto, shall*
30 *continue to apply. The renewal periods and other requirements in K.S.A.*
31 *8-247, and amendments thereto, shall apply. The fees charged for the*
32 *driver's license with ignition interlock designation shall include: (1) The*
33 *fee amounts set out in K.S.A. 8-240(f), and amendments thereto; (2) fees*
34 *prescribed by the secretary of revenue and required in K.S.A. 8-243(a),*
35 *and amendments thereto; and (3) a \$10 fee to the DUI-IID designation*
36 *fund. There is hereby created in the state treasury the DUI-IID*
37 *designation fund. All moneys credited to the DUI-IID designation fund*
38 *shall be used by the ~~department of revenue~~ highway patrol only for the*
39 *purpose of funding the administration and oversight of state certified*
40 *ignition interlock manufacturers and their service providers.*

41 Sec. ~~3~~ 4. K.S.A. ~~2020~~ 2021 Supp. 8-2,142 is hereby amended to read
42 as follows: 8-2,142. (a) A person is disqualified from driving a commercial
43 motor vehicle for a period of not less than one year upon a first occurrence

1 of any one of the following:

2 (1) While operating a commercial motor vehicle:

3 (A) The person is convicted of violating K.S.A. 8-2,144, and
4 amendments thereto;

5 (B) the person is convicted of violating K.S.A. 8-2,132(b), and
6 amendments thereto;

7 (C) the person is convicted of causing a fatality through the negligent
8 operation of a commercial motor vehicle;

9 (D) the person's test refusal or test failure, as defined in subsection
10 (m); or

11 (E) the person is convicted of a violation identified in subsection (a)
12 (2)(A); or

13 (2) while operating a noncommercial motor vehicle:

14 (A) The person is convicted of a violation of K.S.A. 8-1567, and
15 amendments thereto, or of a violation of an ordinance of any city in this
16 state, a resolution of any county in this state or any law of another state,
17 which ordinance or law declares to be unlawful the acts prohibited by that
18 statute; or

19 (B) the person's test refusal or test failure, as defined in K.S.A. 8-
20 1013, and amendments thereto; or

21 (3) while operating any motor vehicle:

22 (A) The person is convicted of leaving the scene of an accident; or

23 (B) the person is convicted of a felony, other than a felony described
24 in subsection (e), while using a motor vehicle to commit such felony.

25 (b) If any offenses, test refusal or test failure specified in subsection
26 (a) occurred in a commercial motor vehicle while transporting a hazardous
27 material required to be placarded, the person is disqualified for a period of
28 not less than three years.

29 (c) A person shall be disqualified for life upon the second or a
30 subsequent occurrence of any offense, test refusal or test failure specified
31 in subsection (a), or any combination thereof, arising from two or more
32 separate incidents *occurring on or after July 1, 2003*.

33 (d) ~~(1) The secretary of revenue may adopt rules and regulations~~
34 ~~establishing guidelines, including conditions, under which a~~
35 ~~disqualification for life under subsection (c) may be reduced to a period of~~
36 ~~not less than 10 years.~~ *Any person disqualified for life under subsection (c)*
37 *who seeks to have commercial driving privileges restored after such*
38 *person has been disqualified for at least 10 years shall apply in writing to*
39 *the division.*

40 (2) *The division shall restore a person's commercial driving*
41 *privileges if the division determines:*

42 (A) *None of the occurrences that led to the person's lifetime*
43 *disqualification under subsection (c) included violations described in*

1 subsection (a)(1)(A) or (a)(1)(E);

2 (B) the person has had no occurrence of any offense, test refusal or
3 test failure specified in subsection (a) during the 10-year period preceding
4 the application;

5 (C) the person has had no alcohol or drug related convictions as
6 defined in K.S.A. 8-2,128, and amendments thereto, in Kansas or any
7 other jurisdiction during the 10-year period preceding the application;

8 (D) the person has no pending alcohol or drug related criminal
9 charges in Kansas or any other jurisdiction;

10 (E) the person has had no convictions for violations that occurred
11 while operating a commercial motor vehicle in Kansas or any other
12 jurisdiction during the 10-year period preceding the application;

13 (F) the person has successfully completed an alcohol or drug
14 treatment program, or a comparable program, that meets or exceeds the
15 minimum standards approved by the Kansas department for aging and
16 disability services if any of the disqualifying offenses were drug or alcohol
17 related;

18 (G) the person is no longer a threat to the public safety of this state.
19 The division may request, and the person shall provide, any additional
20 information or documentation which the division deems necessary to
21 determine the person's fitness for relicensure;

22 (H) the person is otherwise eligible for licensure; and

23 (I) the person has not previously been restored to commercial motor
24 vehicle privileges following a prior 10-year-minimum disqualification.

25 (3) For purposes of verifying a person's prior 10-year alcohol and
26 drug history, the person shall provide a copy of the person's closed
27 criminal history from any jurisdiction to the division.

28 (4) If the division finds the person is eligible for restoration to
29 commercial driving status, such person shall complete the written and
30 driving skills examinations as specified in K.S.A. 8-2,133, and
31 amendments thereto, before a commercial driver license is issued.

32 (5) If the person is found ineligible for restoration of commercial
33 driving privileges, the division shall notify the person of such findings by
34 certified mail and continue the denial of commercial driving privilege
35 until such ineligibility has been disproven to the division's satisfaction.

36 (6) Any person who previously had such person's commercial motor
37 vehicle privileges restored pursuant to this statute shall not be eligible to
38 apply for restoration if such person receives another lifetime
39 disqualification.

40 (7) Any person who is aggrieved by the decision of the division may
41 appeal for review in accordance with the Kansas judicial review act,
42 K.S.A. 77-601 et seq., and amendments thereto.

43 (8) The secretary of revenue shall adopt rules and regulations

1 *necessary to administer the provisions of this subsection prior to March*
2 **1, ~~2022~~ 2023.**

3 (e) (1) A person is disqualified from driving a commercial motor
4 vehicle for life who uses a commercial motor vehicle or noncommercial
5 motor vehicle in the commission of any felony involving the manufacture,
6 distribution or dispensing of a controlled substance, or possession with
7 intent to manufacture, distribute or dispense a controlled substance.

8 (2) *A person is disqualified from driving a commercial motor vehicle*
9 *for life who uses a commercial motor vehicle in the commission of a felony*
10 *involving an act or practice of severe forms of trafficking in persons. The*
11 *term "severe forms of trafficking in persons" means:*

12 (A) *Sex trafficking in which a commercial sex act is induced by force,*
13 *fraud or coercion, or in which the person induced to perform such act has*
14 *not attained 18 years of age; or*

15 (B) *the recruitment, harboring, transportation, provision or obtaining*
16 *of a person for labor or services, through the use of force, fraud or*
17 *coercion for the purpose of subjection to involuntary servitude, peonage,*
18 *debt bondage or slavery.*

19 (f) A person is disqualified from driving a commercial motor vehicle
20 for a period of not less than 60 days if convicted of two serious traffic
21 violations, or 120 days if convicted of three or more serious traffic
22 violations, committed in a commercial motor vehicle arising from separate
23 incidents occurring within a three-year period. Any disqualification period
24 under this paragraph shall be in addition to any other previous period of
25 disqualification. The beginning date for any three-year period within a ten-
26 year period, required by this subsection, shall be the issuance date of the
27 citation which resulted in a conviction.

28 (g) A person is disqualified from driving a commercial motor vehicle
29 for a period of not less than 60 days if convicted of two serious traffic
30 violations, or 120 days if convicted of three or more serious traffic
31 violations, committed in a noncommercial motor vehicle arising from
32 separate incidents occurring within a three-year period, if such convictions
33 result in the revocation, cancellation or suspension of the person's driving
34 privileges.

35 (h) (1) A person who is convicted of operating a commercial motor
36 vehicle in violation of an out-of-service order shall be disqualified from
37 driving a commercial motor vehicle for a period of not less than:

38 (A) ~~Ninety~~ **One hundred and eighty** days nor more than one year, if
39 the driver is convicted of a first violation of an out-of-service order;

40 (B) ~~one year~~ **two years** nor more than five years if the person has one
41 prior conviction for violating an out-of-service order in a separate incident
42 and such prior offense was committed within the 10 years immediately
43 preceding the date of the present violation; or

1 (C) three years nor more than five years if the person has two or more
2 prior convictions for violating out-of-service orders in separate incidents
3 and such prior offenses were committed within the 10 years immediately
4 preceding the date of the present violation.

5 (2) A person who is convicted of operating a commercial motor
6 vehicle in violation of an out-of-service order while transporting a
7 hazardous material required to be placarded under 49 U.S.C. § 5101 et seq.
8 or while operating a motor vehicle designed to transport more than 15
9 passengers, including the driver, shall be disqualified from driving a
10 commercial motor vehicle for a period of not less than:

11 (A) One hundred and eighty days nor more than two years if the
12 driver is convicted of a first violation of an out-of-service order; or

13 (B) three years nor more than five years if the person has a prior
14 conviction for violating an out-of-service order in a separate incident and
15 such prior offense was committed within the 10 years immediately
16 preceding the date of the present violation.

17 (i) (1) A person who is convicted of operating a commercial motor
18 vehicle in violation of a federal, state or local law or regulation pertaining
19 to one of the following six offenses at a railroad-highway grade crossing
20 shall be disqualified from driving a commercial motor vehicle for the
21 period of time specified in paragraph (2) *for persons*:

22 (A) ~~For persons~~ Who are not required to always stop, failing to slow
23 down and check that the tracks are clear of an approaching train;

24 (B) ~~for persons~~ who are not required to always stop, failing to stop
25 before reaching the crossing, if the tracks are not clear;

26 (C) ~~for persons~~ who are always required to stop, failing to stop before
27 driving onto the crossing;

28 (D) ~~for all persons~~ failing to have sufficient space to drive completely
29 through the crossing without stopping;

30 (E) ~~for all persons~~ failing to obey a traffic control device or the
31 directions of an enforcement official at the crossing; or

32 (F) ~~for all persons~~ failing to negotiate a crossing because of
33 insufficient undercarriage clearance.

34 (2) A driver shall be disqualified from driving a commercial motor
35 vehicle for not less than:

36 (A) Sixty days if the driver is convicted of a first violation of a
37 railroad-highway grade crossing violation;

38 (B) one hundred and twenty days if, during any three-year period, the
39 driver is convicted of a second railroad-highway grade crossing violation
40 in separate incidents; or

41 (C) one year if, during any three-year period, the driver is convicted
42 of a third or subsequent railroad-highway grade crossing violation in
43 separate incidents.

1 (j) After suspending, revoking or canceling a commercial driver's
2 license, the division shall update its records to reflect that action within 10
3 days. After suspending, revoking or canceling a nonresident commercial
4 driver's privileges, the division shall notify the licensing authority of the
5 state which issued the commercial driver's license or nonresident
6 commercial driver's license within 10 days. The notification shall include
7 both the disqualification and the violation that resulted in the
8 disqualification, suspension, revocation or cancellation.

9 (k) Upon receiving notification from the licensing authority of
10 another state, that it has disqualified a commercial driver's license holder
11 licensed by this state, or has suspended, revoked or canceled such
12 commercial driver's license holder's commercial driver's license, the
13 division shall record such notification and the information such
14 notification provides on the driver's record.

15 (l) Upon suspension, revocation, cancellation or disqualification of a
16 commercial driver's license under this act, the license shall be immediately
17 surrendered to the division if still in the licensee's possession. If otherwise
18 eligible, and upon payment of the required fees, the licensee may be issued
19 a noncommercial driver's license for the period of suspension, revocation,
20 cancellation or disqualification of the commercial driver's license under
21 the same identifier number.

22 (m) As used in this section, "test refusal" means a person's refusal to
23 submit to and complete a test requested pursuant to K.S.A. 8-2,145, and
24 amendments thereto; "test failure" means a person's submission to and
25 completion of a test which determines that the person's alcohol
26 concentration is .04 or greater, pursuant to K.S.A. 8-2,145, and
27 amendments thereto.

28 (n) *If a person is disqualified for life under on subsection (c), and at*
29 *least one of the disqualifying incidents occurred prior to July 1, 2003, the*
30 *person may apply to the secretary of revenue for review of the incidents*
31 *and modification of the disqualification. The secretary shall adopt rules*
32 *and regulations establishing guidelines, including conditions, to*
33 *administer this subsection **prior to March 1, ~~2022~~ 2023.***

34 Sec. ~~4~~ 5. K.S.A. ~~2020~~ 2021 Supp. 8-2,144 is hereby amended to read
35 as follows: 8-2,144. (a) Driving a commercial motor vehicle under the
36 influence is operating or attempting to operate any commercial motor
37 vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, within this
38 state while:

39 (1) The alcohol concentration in the person's blood or breath, as
40 shown by any competent evidence, including other competent evidence, as
41 defined in K.S.A. 8-1013(f)(1), and amendments thereto, is 0.04 or more;

42 (2) the alcohol concentration in the person's blood or breath, as
43 measured within three hours of the time of driving a commercial motor

1 vehicle, is 0.04 or more; or

2 (3) committing a violation of K.S.A. 8-1567(a), and amendments
3 thereto, or the ordinance of a city or resolution of a county which prohibits
4 any of the acts prohibited thereunder or is otherwise comparable.

5 (b) (1) Driving a commercial motor vehicle under the influence is:

6 (A) On a first conviction, a class B, nonperson misdemeanor. The
7 person convicted shall be sentenced to not less than 48 consecutive hours
8 nor more than six months' imprisonment, or in the court's discretion, 100
9 hours of public service, and fined not less than \$750 nor more than \$1,000.
10 ~~The person convicted shall serve at least 48 consecutive hours'~~
11 ~~imprisonment or 100 hours of public service either before or as a condition~~
12 ~~of any grant of probation, suspension or reduction of sentence or parole or~~
13 ~~other release;~~

14 (B) on a second conviction, a class A, nonperson misdemeanor. The
15 person convicted shall be sentenced to not less than 90 days nor more than
16 one year's imprisonment and fined not less than \$1,250 nor more than
17 \$1,750. ~~The person convicted shall serve at least five consecutive days'~~
18 ~~imprisonment before the person is granted probation, suspension or~~
19 ~~reduction of sentence or parole or is otherwise released. The five days'~~
20 ~~imprisonment mandated by this subsection may be served in a work-~~
21 ~~release program only after such person has served 48 consecutive hours'~~
22 ~~imprisonment, provided such work release program requires such person~~
23 ~~to return to confinement at the end of each day in the work release~~
24 ~~program. The person convicted, if placed into a work release program,~~
25 ~~shall serve a minimum of 120 hours of confinement. Such 120 hours of~~
26 ~~confinement shall be a period of at least 48 consecutive hours of~~
27 ~~imprisonment followed by confinement hours at the end of and continuing~~
28 ~~to the beginning of the offender's work day. The court may place the~~
29 ~~person convicted under a house arrest program pursuant to K.S.A. 2020~~
30 ~~Supp. 21-6609, and amendments thereto, to serve the five days'~~
31 ~~imprisonment mandated by this subsection only after such person has~~
32 ~~served 48 consecutive hours' imprisonment. The person convicted, if~~
33 ~~placed under house arrest, shall be monitored by an electronic monitoring~~
34 ~~device, which verifies the offender's location. The offender shall serve a~~
35 ~~minimum of 120 hours of confinement within the boundaries of the~~
36 ~~offender's residence. Any exceptions to remaining within the boundaries of~~
37 ~~the offender's residence provided for in the house arrest agreement shall~~
38 ~~not be counted as part of the 120 hours; *The following conditions shall*~~
39 ~~*apply to such sentence:*~~

40 (i) *As a condition of any probation granted under this subsection, the*
41 *person shall serve at least 120 hours of confinement. The hours of*
42 *confinement shall include at least 48 hours of imprisonment and otherwise*
43 *may be served by a combination of: Imprisonment; a work release*

1 ~~program, provided if such work release program requires such person to~~
2 ~~return to the confinement at the end of each day in the work release~~
3 ~~program; or a house arrest program pursuant to K.S.A. ~~2020~~ 2021 Supp.~~
4 ~~21-6609, and amendments thereto; and~~

5 (ii) (a) ~~if the person is placed into a work release program or placed~~
6 ~~under a house arrest program for any portion of the minimum of 120~~
7 ~~hours of confinement mandated by this subsection, the person shall~~
8 ~~receive hour-for-hour credit for time served in such program until the~~
9 ~~minimum sentence is met. If the person is placed into a work release~~
10 ~~program or placed under a house arrest program for more than the~~
11 ~~minimum of 120 hours of confinement mandated by this subsection, the~~
12 ~~person shall receive hour-for-hour credit for time served in such program~~
13 ~~until the minimum of 120 hours of confinement is completed, and~~
14 ~~thereafter, the person shall receive day-for-day credit for time served in~~
15 ~~such program unless otherwise ordered by the court; and~~

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

22 (C) ~~on a third or subsequent conviction, a severity level 6, nonperson~~
23 ~~felony. The person convicted shall be sentenced to not less than 90 days~~
24 ~~nor more than one year's imprisonment and fined not less than \$1,750 nor~~
25 ~~more than \$2,500. The person convicted shall not be eligible for release on~~
26 ~~probation, suspension or reduction of sentence or parole until the person~~
27 ~~has served at least 90 days' imprisonment. The 90 days' imprisonment~~
28 ~~mandated by this subsection may be served in a work release program only~~
29 ~~after such person has served 48 consecutive hours' imprisonment, provided~~
30 ~~such work release program requires such person to return to confinement~~
31 ~~at the end of each day in the work release program. The person convicted,~~
32 ~~if placed into a work release program, shall serve a minimum of 2,160~~
33 ~~hours of confinement. Such 2,160 hours of confinement shall be a period~~
34 ~~of at least 48 consecutive hours of imprisonment followed by confinement~~
35 ~~hours at the end of and continuing to the beginning of the offender's work~~
36 ~~day. The court may place the person convicted under a house arrest~~
37 ~~program pursuant to K.S.A. 2020 Supp. 21-6609, and amendments thereto,~~
38 ~~to serve the 90 days' imprisonment mandated by this subsection only after~~
39 ~~such person has served 48 consecutive hours' imprisonment. The person~~
40 ~~convicted, if placed under house arrest, shall be monitored by an electronic~~
41 ~~monitoring device, which verifies the offender's location. The offender~~
42 ~~shall serve a minimum of 2,160 hours of confinement within the~~
43 ~~boundaries of the offender's residence. Any exceptions to remaining within~~

1 the boundaries of the offender's residence provided for in the house arrest
2 agreement shall not be counted as part of the 2,160 hours. *The following*
3 *conditions shall apply to such sentence:*

4 (i) *As a condition of any probation granted under this subsection,*
5 *the person shall serve at least 30 days of confinement. After at least 48*
6 *consecutive hours of imprisonment, the remainder of the period of*
7 *confinement may be served by a combination of: Imprisonment; a work*
8 *release program, ~~provided~~ if such work release program requires such*
9 *person to return to the confinement at the end of each day in the work*
10 *release program; or a house arrest program pursuant to K.S.A. ~~2020~~*
11 *2021 Supp. 21-6609, and amendments thereto; and*

12 (ii) (a) *if the person is placed into a work release program or placed*
13 *under a house arrest program for any portion of the minimum of 30*
14 *days of confinement mandated by this subsection, the person shall*
15 *receive hour-for-hour credit for time served in such program for the first*
16 *240 hours of confinement, and thereafter, the person shall receive day-*
17 *for-day credit for time served in such program unless otherwise ordered*
18 *by the court; and*

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

25 (2) ~~In addition, for any conviction pursuant to subsection (b)(1)(C), at~~
26 ~~the time of the filing of the judgment form or journal entry as required by~~
27 ~~K.S.A. 22-3426, and amendments thereto, or K.S.A. 2020 Supp. 21-6711,~~
28 ~~and amendments thereto, the court shall cause a certified copy to be sent to~~
29 ~~the officer having the offender in charge. The court shall determine~~
30 ~~whether the offender, upon release from imprisonment, shall be supervised~~
31 ~~by community correctional services or court services based upon the risk~~
32 ~~and needs of the offender. The risk and needs of the offender shall be~~
33 ~~determined by use of a risk assessment tool specified by the Kansas~~
34 ~~sentencing commission. The law enforcement agency maintaining custody~~
35 ~~and control of a defendant for imprisonment shall cause a certified copy of~~
36 ~~the judgment form or journal entry to be sent to the supervision office~~
37 ~~designated by the court and upon expiration of the term of imprisonment~~
38 ~~shall deliver the defendant to a location designated by the supervision~~
39 ~~office designated by the court. After the term of imprisonment imposed by~~
40 ~~the court, the person shall be placed on supervision to community~~
41 ~~correctional services or court services, as determined by the court, for a~~
42 ~~mandatory one-year period of supervision, which such period of~~
43 ~~supervision shall not be reduced. During such supervision, the person shall~~

1 ~~be required to participate in a multidisciplinary model of services for~~
2 ~~substance use disorders facilitated by a Kansas department for aging and~~
3 ~~disability services designated care coordination agency to include~~
4 ~~assessment and, if appropriate, referral to a community based substance~~
5 ~~use disorder treatment including recovery management and mental health~~
6 ~~counseling as needed. The multidisciplinary team shall include the~~
7 ~~designated care coordination agency, the supervision officer, the aging and~~
8 ~~disability services department designated treatment provider and the~~
9 ~~offender. An offender for whom a warrant has been issued by the court~~
10 ~~alleging a violation of such supervision shall be considered a fugitive from~~
11 ~~justice if it is found that the warrant cannot be served. If it is found the~~
12 ~~offender has violated the provisions of this supervision, the court shall~~
13 ~~determine whether the time from the issuing of the warrant to the date of~~
14 ~~the court's determination of an alleged violation, or any part of it, shall be~~
15 ~~counted as time served on supervision. Any violation of the conditions of~~
16 ~~such supervision may subject such person to revocation of supervision and~~
17 ~~imprisonment in jail for the remainder of the period of imprisonment, the~~
18 ~~remainder of the supervision period, or any combination or portion~~
19 ~~thereof. The term of supervision may be extended at the court's discretion~~
20 ~~beyond one year, and any violation of the conditions of such extended term~~
21 ~~of supervision may subject such person to the revocation of supervision~~
22 ~~and imprisonment in jail of up to the remainder of the original sentence,~~
23 ~~not the term of the extended supervision.~~

24 ~~(3)~~—In addition, prior to sentencing for any conviction pursuant to
25 subsection (b)(1)(A) or (b)(1)(B), the court shall order the person to
26 participate in an alcohol and drug evaluation conducted by a provider in
27 accordance with K.S.A. 8-1008, and amendments thereto. The person shall
28 be required to follow any recommendation made by the provider after such
29 evaluation, unless otherwise ordered by the court.

30 (c) Any person 18 years of age or older convicted of a violation of
31 this section, or a violation of a city ordinance or county resolution
32 prohibiting the acts prohibited by this section, who had one or more
33 children under the age of 18 years in the vehicle at the time of the offense
34 shall have such person's punishment enhanced by one month of
35 imprisonment. This imprisonment shall be served consecutively to any
36 other minimum mandatory penalty imposed for a violation of this section,
37 or a violation of a city ordinance or county resolution prohibiting the acts
38 prohibited by this section. Any enhanced penalty imposed shall not exceed
39 the maximum sentence allowable by law. During the service of the
40 enhanced penalty, the judge may order the person on house arrest, work
41 release or other conditional release.

42 (d) If a person is charged with a violation of K.S.A. 8-1567(a)(4) or
43 (a)(5), and amendments thereto, as incorporated in this section, the fact

1 that the person is or has been entitled to use the drug under the laws of this
2 state shall not constitute a defense against the charge.

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

8 (f) (1) In lieu of payment of a fine imposed pursuant to this section,
9 the court may order that the person perform community service specified
10 by the court. The person shall receive a credit on the fine imposed in an
11 amount equal to \$5 for each full hour spent by the person in the specified
12 community service. The community service ordered by the court shall be
13 required to be performed not later than one year after the fine is imposed
14 or by an earlier date specified by the court. If by the required date the
15 person performs an insufficient amount of community service to reduce to
16 zero the portion of the fine required to be paid by the person, the
17 remaining balance of the fine shall become due on that date.

18 (2) *The court may, in its discretion, waive any portion of a fine*
19 *imposed pursuant to this section, except the \$250 required to be remitted*
20 *to the state treasurer pursuant to subsection (q), upon a showing that the*
21 *person successfully completed court-ordered education or treatment.*

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

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

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

28 (h) The court shall electronically report every conviction of a
29 violation of this section to the division. Prior to sentencing under the
30 provisions of this section, the court shall request and shall receive from
31 the:

32 (1) Division a record of all prior convictions obtained against such
33 person for any violation 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 (i) Upon conviction of a person of a violation of this section or a
37 violation of a city ordinance or county resolution prohibiting the acts
38 prohibited by this section, the division, upon receiving a report of
39 conviction, shall:

40 (1) Disqualify the person from driving a commercial motor vehicle
41 under K.S.A. 8-2,142, and amendments thereto; and

42 (2) suspend, restrict or suspend and restrict the person's driving
43 privileges as provided by K.S.A. 8-1014, and amendments thereto.

1 (j) (1) Nothing contained in this section shall be construed as
2 preventing any city from enacting ordinances, or any county from adopting
3 resolutions, declaring acts prohibited or made unlawful by this section as
4 unlawful or prohibited in such city or county and prescribing penalties for
5 violation thereof.

6 (2) The minimum penalty prescribed by any such ordinance or
7 resolution shall not be less than the minimum penalty prescribed by this
8 section for the same violation, and the maximum penalty in any such
9 ordinance or resolution shall not exceed the maximum penalty prescribed
10 for the same violation.

11 (3) Any such ordinance or resolution shall authorize the court to order
12 that the convicted person pay restitution to any victim who suffered loss
13 due to the violation for which the person was convicted.

14 (k) (1) Upon the filing of a complaint, citation or notice to appear
15 alleging a person has violated a city ordinance prohibiting the acts
16 prohibited by this section, and prior to conviction thereof, a city attorney
17 shall request and shall receive from the:

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

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

23 (2) If the elements of such ordinance violation are the same as the
24 elements of a violation of this section that would constitute, and be
25 punished as, a felony, the city attorney shall refer the violation to the
26 appropriate county or district attorney for prosecution. The county or
27 district attorney shall accept such referral and pursue a disposition of such
28 violation, and shall not refer any such violation back to the city attorney.

29 (l) No plea bargaining agreement shall be entered into nor shall any
30 judge approve a plea bargaining agreement entered into for the purpose of
31 permitting a person charged with a violation of this section, or a violation
32 of any ordinance of a city or resolution of any county in this state which
33 prohibits the acts prohibited by this section, to avoid the mandatory
34 penalties established by this section or by the ordinance or resolution. *This*
35 *subsection shall not be construed to prohibit an amendment or dismissal*
36 *of any charge where the admissible evidence is not sufficient to support a*
37 *conviction beyond a reasonable doubt on such charge.*

38 (m) The alternatives set out in subsection (a) may be pleaded in the
39 alternative, and the state, city or county may, but shall not be required to,
40 elect one or more of such alternatives prior to submission of the case to the
41 fact finder.

42 (n) For the purpose of determining whether a conviction is a first,
43 second, third or subsequent conviction in sentencing under this section:

1 (1) Convictions for a violation of K.S.A. 8-1567, and amendments
2 thereto, or a violation of an ordinance of any city or resolution of any
3 county that prohibits the acts that such section prohibits, or entering into a
4 diversion agreement in lieu of further criminal proceedings on a complaint
5 alleging any such violations, shall be taken into account, but only
6 convictions or diversions occurring on or after July 1, 2001. Nothing in
7 this provision shall be construed as preventing any court from considering
8 any convictions or diversions occurring during the person's lifetime in
9 determining the sentence to be imposed within the limits provided for a
10 first, second, third, fourth or subsequent offense;

11 (2) any convictions for a violation of the following sections occurring
12 during a person's lifetime shall be taken into account:

13 (A) This section;

14 (B) operating a vessel under the influence of alcohol or drugs, K.S.A.
15 32-1131, and amendments thereto;

16 (C) involuntary manslaughter while driving under the influence of
17 alcohol or drugs, K.S.A. 21-3442, prior to its repeal, or K.S.A. ~~2020~~ 2021
18 Supp. 21-5405(a)(3) or (a)(5), and amendments thereto;

19 (D) aggravated battery as described in K.S.A. ~~2020~~ 2021 Supp. 21-
20 5413(b)(3) or (b)(4), and amendments thereto; and

21 (E) aggravated vehicular homicide, K.S.A. 21-3405a, prior to its
22 repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the
23 crime was committed while committing a violation of K.S.A. 8-1567, and
24 amendments thereto;

25 (3) "conviction" includes:

26 (A) Entering into a diversion agreement in lieu of further criminal
27 proceedings on a complaint alleging a violation of a crime described in
28 subsection (n)(2); and

29 (B) conviction of a violation of an ordinance of a city in this state, a
30 resolution of a county in this state or any law of another jurisdiction that
31 would constitute an offense that is comparable to the offense described in
32 subsection (n)(1) or (n)(2);

33 (4) it is irrelevant whether an offense occurred before or after
34 conviction for a previous offense; and

35 (5) multiple convictions of any crime described in subsection (n)(1)
36 or (n)(2) arising from the same arrest shall only be counted as one
37 conviction.

38 (o) For the purposes of determining whether an offense is
39 comparable, the following shall be considered:

40 (1) The name of the out-of-jurisdiction offense;

41 (2) the elements of the out-of-jurisdiction offense; and

42 (3) whether the out-of-jurisdiction offense prohibits similar conduct
43 to the conduct prohibited by the closest approximate Kansas offense.

1 (p) For the purpose of this section:

2 (1) "Alcohol concentration" means the number of grams of alcohol
3 per 100 milliliters of blood or per 210 liters of breath;

4 (2) "imprisonment"~~shall include~~ *includes* any restrained environment
5 in which the court and law enforcement agency intend to retain custody
6 and control of a defendant and such environment has been approved by the
7 board of county commissioners or the governing body of a city; and

8 (3) "drug" includes toxic vapors as such term is defined in K.S.A.
9 ~~2020~~ **2021** Supp. 21-5712, and amendments thereto.

10 (q) On and after July 1, 2011, the amount of \$250 from each fine
11 imposed pursuant to this section shall be remitted by the clerk of the
12 district court to the state treasurer in accordance with the provisions of
13 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
14 remittance, the state treasurer shall credit the entire amount to the
15 community corrections supervision fund established by K.S.A. 75-52,113,
16 and amendments thereto.

17 ***Sec. 6. K.S.A. 2021 Supp. 8-2,150 is hereby amended to read as***
18 ***follows: 8-2,150. (a) A driver or a holder of a commercial driver's license***
19 ***may not enter into a diversion agreement in lieu of further criminal***
20 ***proceedings that would prevent such person's conviction for any***
21 ***violation, in any type of motor vehicle, of a state or local traffic control***
22 ***law, except a parking violation, from appearing on the person's record,***
23 ***whether the person was convicted for an offense committed in the state***
24 ***where the person is licensed or another state.***

25 ***(b) For purposes of subsection (a), a person shall be considered a***
26 ***holder of a commercial driver's license if the person was a holder of a***
27 ***commercial driver's license at the time the person was arrested or was***
28 ***issued a citation and shall remain a holder of a commercial driver's***
29 ***license even if the person surrenders the commercial driver's license***
30 ***after the arrest or citation.***

31 ***(c) (1) A prosecuting attorney as defined in K.S.A. 22-2202, and***
32 ***amendments thereto, shall not mask or defer imposition of judgment or***
33 ***allow an individual to enter into a diversion program that would prevent a***
34 ***commercial learner's permit or commercial driver's license holder's***
35 ***conviction from appearing on the CDLIS driver record of any violation of***
36 ***a state or local traffic control law that occurred in any type of motor***
37 ***vehicle. The provisions of this subsection shall apply regardless of whether***
38 ***the driver was convicted for an offense committed in the state where the***
39 ***driver is licensed or in any another state.***

40 ***(2) The provisions of this subsection shall not apply to parking,***
41 ***vehicle weight or vehicle defect violations.***

42 ***(d) The provisions of this section shall be a part of and***
43 ***supplemental to the Kansas uniform commercial drivers' license act.***

1 *Sec. 7. K.S.A. 2021 Supp. 8-1014 is hereby amended to read as*
2 *follows: 8-1014. (a) Except as provided by subsection (e) and K.S.A. 8-*
3 *2,142, and amendments thereto, if a person refuses a test, the division,*
4 *pursuant to K.S.A. 8-1002, and amendments thereto, shall:*

5 *(1) On the person's first occurrence, suspend the person's driving*
6 *privileges for one year and at the end of the suspension, restrict the*
7 *person's driving privileges for two years to driving only a motor vehicle*
8 *equipped with an ignition interlock device;*

9 *(2) on the person's second occurrence, suspend the person's driving*
10 *privileges for one year and at the end of the suspension, restrict the*
11 *person's driving privileges for three years to driving only a motor vehicle*
12 *equipped with an ignition interlock device;*

13 *(3) on the person's third occurrence, suspend the person's driving*
14 *privileges for one year and at the end of the suspension, restrict the*
15 *person's driving privileges for four years to driving only a motor vehicle*
16 *equipped with an ignition interlock device;*

17 *(4) on the person's fourth occurrence, suspend the person's driving*
18 *privileges for one year and at the end of the suspension, restrict the*
19 *person's driving privileges for five years to driving only a motor vehicle*
20 *equipped with an ignition interlock device; and*

21 *(5) on the person's fifth or subsequent occurrence, suspend the*
22 *person's driving privileges for one year and at the end of the suspension,*
23 *restrict the person's driving privileges for 10 years to driving only a*
24 *motor vehicle equipped with an ignition interlock device.*

25 *(b) (1) Except as provided by subsections (b)(2) and (e) and K.S.A.*
26 *8-2,142, and amendments thereto, if a person fails a test or has an*
27 *alcohol or drug-related conviction in this state, the division shall:*

28 *(A) On the person's first occurrence, suspend the person's driving*
29 *privileges for 30 days and at the end of the suspension, restrict the*
30 *person's driving privileges as provided by K.S.A. 8-1015(b), and*
31 *amendments thereto;*

32 *(B) on the person's second occurrence, suspend the person's*
33 *driving privileges for one year and at the end of the suspension, restrict*
34 *the person's driving privileges for one year to driving only a motor*
35 *vehicle equipped with an ignition interlock device;*

36 *(C) on the person's third occurrence, suspend the person's driving*
37 *privileges for one year and at the end of the suspension, restrict the*
38 *person's driving privileges for two years to driving only a motor vehicle*
39 *equipped with an ignition interlock device;*

40 *(D) on the person's fourth occurrence, suspend the person's driving*
41 *privileges for one year and at the end of the suspension, restrict the*
42 *person's driving privileges for three years to driving only a motor vehicle*
43 *equipped with an ignition interlock device; and*

1 *(E) on the person's fifth or subsequent occurrence, suspend the*
2 *person's driving privileges for one year and at the end of the suspension,*
3 *restrict the person's driving privileges for 10 years to driving only a*
4 *motor vehicle equipped with an ignition interlock device.*

5 *(2) Except as provided by subsection (e) and K.S.A. 8-2,142, and*
6 *amendments thereto, if a person fails a test or has an alcohol or drug-*
7 *related conviction in this state and the person's blood or breath alcohol*
8 *concentration is 0.15 or greater, the division shall:*

9 *(A) On the person's first occurrence, suspend the person's driving*
10 *privileges for one year and at the end of the suspension, restrict the*
11 *person's driving privileges for one year to driving only a motor vehicle*
12 *equipped with an ignition interlock device;*

13 *(B) on the person's second occurrence, suspend the person's*
14 *driving privileges for one year and at the end of the suspension, restrict*
15 *the person's driving privileges for two years to driving only a motor*
16 *vehicle equipped with an ignition interlock device;*

17 *(C) on the person's third occurrence, suspend the person's driving*
18 *privileges for one year and at the end of the suspension restrict the*
19 *person's driving privileges for three years to driving only a motor vehicle*
20 *equipped with an ignition interlock device;*

21 *(D) on the person's fourth occurrence, suspend the person's driving*
22 *privileges for one year and at the end of the suspension, restrict the*
23 *person's driving privileges for four years to driving only a motor vehicle*
24 *equipped with an ignition interlock device; and*

25 *(E) on the person's fifth or subsequent occurrence, suspend the*
26 *person's driving privileges for one year and at the end of the suspension,*
27 *restrict the person's driving privileges for 10 years to driving only a*
28 *motor vehicle equipped with an ignition interlock device.*

29 *(3) Whenever a person's driving privileges have been restricted to*
30 *driving only a motor vehicle equipped with an ignition interlock device*
31 *for 10 years under this section, such person may petition any district*
32 *court for relief from such restriction after five years of such restriction*
33 *have been served. The court shall consider, but not be limited to,*
34 *whether: (A) Such person's driving privileges have been restricted,*
35 *suspended, revoked or disqualified pursuant to another action by the*
36 *division or a court; and (B) such person proves installation,*
37 *maintenance and use of an ignition interlock device approved by the*
38 *division highway patrol throughout the five-year period. If the court*
39 *finds that the person's driving privileges should be restored, then the*
40 *court shall electronically report such order to the division. The division,*
41 *upon receiving such order, shall restore such person's driving privileges,*
42 *unless such person's driving privileges have been restricted, suspended,*
43 *revoked or disqualified pursuant to another action by the division or a*

1 *court.*

2 (c) *Except as provided by subsection (e) and K.S.A. 8-2,142, and*
3 *amendments thereto, if a person who is less than 21 years of age fails a*
4 *test or has an alcohol or drug-related conviction in this state, penalties*
5 *shall be imposed pursuant to subsection (b).*

6 (d) *Whenever the division is notified by a provider, as defined in*
7 *K.S.A. 8-1008, and amendments thereto, or a court that the person has*
8 *failed to follow any recommendation made by the provider or otherwise*
9 *ordered by a court for a conviction of a violation of K.S.A. 8-1567, and*
10 *amendments thereto, the division shall suspend the person's driving*
11 *privileges until the division receives notice of the person's completion of*
12 *such recommendation.*

13 (e) (1) *Except as provided in K.S.A. 8-2,142, and amendments*
14 *thereto, if a person's driving privileges are subject to suspension*
15 *pursuant to this section for a test refusal, test failure or alcohol or drug-*
16 *related conviction arising from the same arrest, the period of such*
17 *suspension shall not exceed the longest applicable period authorized by*
18 *subsection (a) or (b), and such suspension periods shall not be added*
19 *together or otherwise imposed consecutively. In addition, in determining*
20 *the period of such suspension as authorized by subsection (a) or (b),*
21 *such person shall receive credit for any period of time for which such*
22 *person's driving privileges were suspended while awaiting any hearing*
23 *or final order authorized by this act.*

24 (2) *If a person's driving privileges are subject to restriction*
25 *pursuant to this section for a test failure or alcohol or drug-related*
26 *conviction arising from the same arrest, the restriction periods shall not*
27 *be added together or otherwise imposed consecutively. In addition, in*
28 *determining the period of restriction, the person shall receive credit for*
29 *any period of suspension imposed for a test refusal arising from the*
30 *same arrest.*

31 (f) *If the division has taken action under subsection (a) for a test*
32 *refusal or under subsection (b) for a test failure and such action is*
33 *stayed pursuant to K.S.A. 8-259, and amendments thereto, or if*
34 *temporary driving privileges are issued pursuant to K.S.A. 8-1020, and*
35 *amendments thereto, the stay or temporary driving privileges shall not*
36 *prevent the division from taking the action required by subsection (b) for*
37 *an alcohol or drug-related conviction.*

38 (g) *The provisions of subsections (a), (b) and (c), as amended by*
39 *this act and section 14 of chapter 105 of the 2011 Session Laws of*
40 *Kansas, may be applied retroactively only if requested by a person who*
41 *has had such person's driving privileges suspended or restricted*
42 *pursuant to subsection (a), (b) or (c) prior to such amendment. Such*
43 *person may apply to the division to have the penalties applied*

1 *retroactively, as provided under K.S.A. 8-1015(g), and amendments*
2 *thereto.*

3 *(h) When modifying penalties pursuant to subsection (g), the*
4 *division shall credit any suspension or revocation time in excess of one*
5 *year which was imposed and served prior to retroactive application of*
6 *the provisions of subsections (a), (b) and (c), as amended by this act and*
7 *section 14 of chapter 105 of the 2011 Session Laws of Kansas, toward*
8 *the required ignition interlock restriction period imposed pursuant to the*
9 *retroactive application of such provisions if:*

10 *(1) The person's driving record indicates no driving by the person*
11 *during the applicable suspension or revocation period; and*

12 *(2) the person completes a form prescribed by the division*
13 *indicating that the person did not drive during the applicable suspension*
14 *or revocation period.*

15 *(i) As used in this section, "suspension" includes any period of*
16 *suspension and any period of restriction as provided in K.S.A. 8-1015(a),*
17 *and amendments thereto.*

18 ~~Sec. 5. 8. K.S.A. 2020 2021 Supp. 8-1015 is hereby amended to read~~
19 ~~as follows: 8-1015. (a) (1) Except as provided in subsection (a)(2),~~
20 ~~Whenever a person's driving privileges have been suspended for one year~~
21 ~~as provided in K.S.A. 8-1014(a), and amendments thereto, after 90 days of~~
22 ~~such suspension, such person may apply to the division for such person's~~
23 ~~driving privileges to be restricted for the remainder of the one-year~~
24 ~~suspension period to driving only a motor vehicle equipped with an~~
25 ~~ignition interlock device and only for the purposes of getting to and from:~~
26 ~~Work, school or an alcohol treatment program; and the ignition interlock~~
27 ~~provider for maintenance and downloading of data from the device.~~

28 ~~(2) Whenever a person's driving privileges have been suspended for~~
29 ~~one year as provided in K.S.A. 8-1014(a)(1), and amendments thereto,~~
30 ~~after 90 days of such suspension, such person may apply to the division for~~
31 ~~such person's driving privileges to be restricted for the remainder of the~~
32 ~~one-year suspension period to driving only a motor vehicle equipped with~~
33 ~~an ignition interlock device and only: Under the circumstances provided~~
34 ~~by K.S.A. 8-292(a)(1), (2), (3) and (4), and amendments thereto; and for~~
35 ~~the purpose of getting to and from the ignition interlock provider for~~
36 ~~maintenance and downloading of data from the device.~~

37 ~~(3) Except as provided in subsection (a)(4), whenever a person's~~
38 ~~driving privileges have been suspended for one year as provided in K.S.A.~~
39 ~~8-1014(b), and amendments thereto, after 45 days of such suspension, such~~
40 ~~person may apply to the division for such person's driving privileges to be~~
41 ~~restricted for the remainder of the one-year suspension period to driving~~
42 ~~only a motor vehicle equipped with an ignition interlock device and only~~
43 ~~for the purposes of getting to and from: Work, school or an alcohol~~

1 treatment program; and the ignition interlock provider for maintenance and
2 downloading of data from the device.

3 ~~(4) Whenever a person's driving privileges have been suspended for~~
4 ~~one year as provided in K.S.A. 8-1014(b)(2)(A), and amendments thereto,~~
5 ~~after 45 days of such suspension, such person may apply to the division for~~
6 ~~such person's driving privileges to be restricted for the remainder of the~~
7 ~~one-year suspension period to driving only a motor vehicle equipped with~~
8 ~~an ignition interlock device and only. Under the circumstances provided~~
9 ~~by K.S.A. 8-292(a)(1), (2), (3) and (4), and amendments thereto; and for~~
10 ~~the purpose of getting to and from the ignition interlock provider for~~
11 ~~maintenance and downloading of data from the device.~~

12 (5)(2) The division shall assess an application fee of \$100 for a
13 person to apply to modify the suspension to restricted ignition interlock
14 status.

15 ~~(6)(3)~~ The division shall approve the request for such restricted
16 license unless such person's driving privileges have been restricted,
17 suspended, revoked or disqualified pursuant to another action by the
18 division or a court. If the request is approved, upon receipt of proof of the
19 installation of such device, the division shall issue a copy of the order
20 imposing such restrictions on the person's driving privileges and such
21 order shall be carried by the person at any time the person is operating a
22 motor vehicle on the highways of this state. Except as provided in K.S.A.
23 8-1017, and amendments thereto, if such person is convicted of a violation
24 of the restrictions, such person's driving privileges shall be suspended for
25 an additional year, in addition to any term of suspension or restriction as
26 provided in K.S.A. 8-1014(a) or (b), and amendments thereto.

27 (b) (1) Except as provided in subsection (b)(2), when a person has
28 completed the suspension pursuant to K.S.A. 8-1014(b)(1)(A), and
29 amendments thereto, the division shall restrict the person's driving
30 privileges for 180 days to driving only a motor vehicle equipped with an
31 ignition interlock device.

32 (2) When a person has completed the suspension pursuant to K.S.A.
33 8-1014(b)(1)(A), and amendments thereto, the division shall restrict the
34 person's driving privileges for one year to driving only a motor vehicle
35 equipped with an ignition interlock device if the records maintained by the
36 division indicate that such person has previously:

37 (A) Been convicted of a violation of K.S.A. 8-1599, and amendments
38 thereto;

39 (B) been convicted of a violation of K.S.A. 41-727, and amendments
40 thereto;

41 (C) been convicted of any violations listed in K.S.A. 8-285(a), and
42 amendments thereto;

43 (D) been convicted of three or more moving traffic violations

1 committed on separate occasions within a 12-month period; or

2 (E) had such person's driving privileges revoked, suspended, canceled
3 or withdrawn.

4 (c) Except as provided in subsection (b), when a person has
5 completed the suspension pursuant to K.S.A. 8-1014(a) or (b), and
6 amendments thereto, the division shall restrict the person's driving
7 privileges pursuant to K.S.A. 8-1014(a) or (b), and amendments thereto, to
8 driving only a motor vehicle equipped with an ignition interlock device.
9 Upon restricting a person's driving privileges pursuant to this subsection,
10 the division shall issue a copy of the order imposing the restrictions which
11 is required to be carried by the person at any time the person is operating a
12 motor vehicle on the highways of this state.

13 (d) (1) Whenever an ignition interlock device is required by law, such
14 ignition interlock device shall be approved by the ~~division~~ **highway patrol**
15 and maintained at the person's expense. Proof of the installation of such
16 ignition interlock device, for the entire period required by the applicable
17 law, shall be provided to the division before the person's driving privileges
18 are fully reinstated.

19 (2) Every person who has an ignition interlock device installed as
20 required by law shall be required to complete the ignition interlock device
21 program pursuant to *this section and* rules and regulations adopted by the
22 secretary of revenue ~~and proof of completion shall be provided to the~~
23 ~~division by.~~ *A person may only complete the ignition interlock device*
24 *program if the person has not more than ~~three standard violations~~ **one***
25 *standard violation and no serious violation in the 90 consecutive days*
26 *prior to application for reinstatement and the application occurs upon or*
27 *after expiration of the applicable ignition interlock period required by law.*
28 The approved service provider *shall provide proof of completion to the*
29 *division* before the person's driving privileges are fully reinstated.

30 (3) *As used in this subsection:*

31 (A) *"Standard violation" means any of the following, as reported by*
32 *the approved service provider:*

33 (i) *The driver has blown a BrAC fail when attempting an initial*
34 *engine start-up breath test;*

35 (ii) *the driver has blown a BrAC fail when attempting a required*
36 *rolling retest;*

37 (iii) *the driver fails to execute a valid rolling retest;*

38 (iv) *the driver fails to submit to a requested rolling retest by turning*
39 *the vehicle off to avoid submitting to the rolling retest; or*

40 (v) *the driver has blown a high BrAC during an initial engine start-*
41 *up breath test;*

42 (B) *"serious violation" means any of the following, as reported by the*
43 *approved service provider:*

- 1 (i) *Tampering with the ignition interlock device;*
2 (ii) *circumventing the ignition interlock device; or*
3 (iii) *the driver has blown a high BrAC during a rolling retest;*
4 (C) *"BrAC" means the breath alcohol concentration expressed as*
5 *weight divided by volume, based upon grams of alcohol per 210 liters of*
6 *breath;*
7 (D) *"BrAC fail" means the ignition interlock device registers a BrAC*
8 *value equal to or greater than the alcohol setpoint, as defined in rules and*
9 *regulations adopted by the secretary of revenue, when the intended driver*
10 *conducts an initial test or retest;*
11 (E) *"high BrAC" means a BrAC fail result that registers an alcohol*
12 *setpoint of 0.08 or greater; and*
13 (F) *"rolling retest" means a breath test that is required after the*
14 *initial engine start-up breath test and while the engine is running.*
15 (e) Except as provided further, any person whose license is restricted
16 to operating only a motor vehicle with an ignition interlock device
17 installed may operate an employer's vehicle without an ignition interlock
18 device installed during normal business activities, provided that the person
19 does not partly or entirely own or control the employer's vehicle or
20 business. The provisions of this subsection shall not apply to any person
21 whose driving privileges have been restricted for the remainder of the one-
22 year suspension period as provided in subsection (a)(1) ~~or (a)(3)~~.
23 (f) Upon expiration of the ~~period of time for which restrictions are~~
24 ~~imposed pursuant to this section~~ *applicable ignition interlock period*
25 *required by law and completion of the ignition interlock device program*
26 *as described in subsection (d)*, the licensee may apply to the division for
27 the return of any license previously surrendered by the licensee. If the
28 license has expired, the person may apply to the division for a new license,
29 which shall be issued by the division upon payment of the proper fee and
30 satisfaction of the other conditions established by law, unless the person's
31 driving privileges have been suspended or revoked prior to expiration.
32 (g) Any person who has had the person's driving privileges
33 suspended, restricted or revoked pursuant to K.S.A. 8-1014(a), (b) or (c),
34 prior to the amendments by section 16 of chapter 172 of the 2012 Session
35 Laws of Kansas and section 14 of chapter 105 of the 2011 Session Laws of
36 Kansas, may apply to the division to have the suspension, restriction or
37 revocation penalties modified in conformity with the provisions of K.S.A.
38 8-1014(a), (b) or (c), and amendments thereto. The division shall assess an
39 application fee of \$100 for a person to apply to modify the suspension,
40 restriction or revocation penalties previously issued. The division shall
41 modify the suspension, restriction or revocation penalties, unless such
42 person's driving privileges have been restricted, suspended, revoked or
43 disqualified pursuant to another action by the division or a court.

1 (h) The division shall remit all application fees collected pursuant to
2 subsections (a) and (g) to the state treasurer in accordance with the
3 provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of
4 each such remittance, the state treasurer shall deposit the entire amount in
5 the state treasury and shall credit such moneys to the division of vehicles
6 operating fund until an aggregate amount of \$100,000 is credited to the
7 division of vehicles operating fund each fiscal year. On and after an
8 aggregate amount of \$100,000 is credited to such fund each fiscal year, the
9 entire amount of such remittance shall be credited to the community
10 corrections supervision fund created by K.S.A. 75-52,113, and
11 amendments thereto. The application fee established in this section shall
12 be the only fee collected or moneys in the nature of a fee collected for such
13 application. Such fee shall only be established by an act of the legislature
14 and no other authority is established by law or otherwise to collect a fee.

15 ~~Sec. 6.~~ **9.** K.S.A. 8-1016 is hereby amended to read as follows: 8-
16 1016. (a) ~~The secretary of revenue may shall~~ **superintendent of the**
17 **highway patrol may** adopt rules and regulations ~~prior to March 1, 2022,~~
18 for:

19 (1) The approval by the ~~division~~ **highway patrol** of models and
20 classes of ignition interlock devices suitable for use by persons whose
21 driving privileges have been restricted to driving a vehicle equipped with
22 such a device;

23 (2) the calibration and maintenance of such devices, which shall be
24 the responsibility of the manufacturer; ~~and~~

25 (3) ensuring that each manufacturer ~~approved~~ provides a reasonable
26 statewide service network where such devices may be obtained, repaired,
27 replaced or serviced and such service network can be accessed 24 hours
28 per day through a toll-free phone service;

29 (4) *the requirements for proper use and maintenance of a certified*
30 *ignition interlock device by a person during any time period the person's*
31 *license is restricted by the division to only operating a motor vehicle with*
32 *an ignition interlock device installed; and*

33 (5) *the reporting requirements for the manufacturer to the division*
34 **and the highway patrol** *relating to a person's proper use and maintenance*
35 *of a certified ignition interlock device; and*

36 ~~(6) the requirements and guidelines for receiving reduced ignition-~~
37 ~~interlock device program costs pursuant to subsection (c).~~

38 (b) In adopting rules and regulations for approval of ignition interlock
39 devices under ~~this section~~ **subsection (a)**, the ~~secretary of revenue~~
40 **superintendent of the highway patrol** shall require that the manufacturer
41 or the manufacturer's representatives calibrate and maintain the devices at
42 intervals not to exceed 60 days. Calibration and maintenance shall include,
43 but not be limited to: Physical inspection of the device, the vehicle and

1 wiring of the device to the vehicle for signs of tampering; calibration of
2 the device and downloading of all data contained within the device's
3 memory; and reporting of any violation or noncompliance to the division
4 **and the highway patrol.**

5 ~~(4) The division shall adopt by rules and regulations participant~~
6 ~~requirements for proper use and maintenance of a certified ignition~~
7 ~~interlock device during any time period the person's license is restricted by~~
8 ~~the division to only operating a motor vehicle with an ignition interlock~~
9 ~~device installed and by rules and regulations the reporting requirements of~~
10 ~~the approved manufacturer to the division relating to the person's proper~~
11 ~~use and maintenance of a certified ignition interlock device.~~

12 (5) The division shall require that each manufacturer provide a credit
13 of at least 2% of the gross program revenues in the state as a credit for
14 those persons who have otherwise qualified to obtain an ignition interlock
15 restricted license under this act who are indigent as evidenced by
16 qualification and eligibility for the federal food stamp program.

17 ~~(b)(c) (1) If the division highway patrol approves an ignition~~
18 ~~interlock device in accordance with rules and regulations adopted under~~
19 ~~this section subsection (a), the division highway patrol shall give written~~
20 ~~notice of the approval to the manufacturer of the device. Such notice shall~~
21 ~~be admissible in any civil or criminal proceeding in this state.~~

22 ~~(e)(2) The manufacturer of an ignition interlock device shall~~
23 ~~reimburse the division highway patrol for any cost incurred in approving~~
24 ~~or disapproving such device under this section.~~

25 (d) Neither the state nor any agency, officer or employee thereof shall
26 be liable in any civil or criminal proceeding arising out of the use of an
27 ignition interlock device approved under this section.

28 (e) **All rules and regulations of the secretary of revenue adopted**
29 **pursuant to this section, prior to its amendment by this act, that are**
30 **described in subsection (a) and are in effect on June 30, 2022, shall be**
31 **deemed to be the rules and regulations of the superintendent of the**
32 **highway patrol and shall continue to be effective until amended, revoked**
33 **or nullified pursuant to law.**

34 (f) (1) Any person whose license is restricted to operating only a
35 motor vehicle with an ignition interlock device installed may request
36 reduced ignition interlock device program costs by submitting a request to
37 the division in a form and manner prescribed by the division. The division
38 shall review each request submitted pursuant to this subsection to
39 determine whether the person is eligible for reduced ignition interlock
40 device program costs. A person shall be eligible for reduced ignition
41 interlock device program costs if the:

42 (A) Person's annual household income is less than or equal to ~~300%~~
43 **150% of the federal poverty level;**

1 (B) person is enrolled in the food assistance, child care subsidy or
 2 cash assistance program pursuant to K.S.A. 39-709, and amendments
 3 thereto; or

4 (C) person is currently eligible for the low income energy assistance
 5 program as determined by the department for children and families.

6 (2) If the division determines that the person is eligible for reduced
 7 ignition interlock device program costs, the person shall be responsible
 8 for paying ~~the following amounts, and~~ **50% of the program costs.** The
 9 manufacturer providing the person's device shall adjust the manufacturer's
 10 charge for services accordingly;

11 ~~(A) Except as provided in subsection (e)(2)(B), for a person whose~~
 12 ~~household income is less than or equal to:~~

13 ~~(i) 300% but greater than 200% of the federal poverty level, 90% of~~
 14 ~~the program costs;~~

15 ~~(ii) 200% but greater than 150% of the federal poverty level, 75% of~~
 16 ~~the program costs;~~

17 ~~(iii) 150% but greater than 100% of the federal poverty level, 50% of~~
 18 ~~the program costs; and~~

19 ~~(iv) 100% of the federal poverty level, 25% of the program costs; and~~

20 ~~(B) for a person who is enrolled in the food assistance, child care~~
 21 ~~subsidy or cash assistance program pursuant to K.S.A. 39-709, and~~
 22 ~~amendments thereto, or currently eligible for the low income energy~~
 23 ~~assistance program as determined by the department for children and~~
 24 ~~families, 25% of the program costs.~~

25 (3) **The secretary of revenue shall adopt rules and regulations prior**
 26 **to March 1, 2023, establishing the requirements and guidelines for**
 27 **receiving reduced ignition interlock device program costs pursuant to**
 28 **this subsection.**

29 ~~(g)~~ **(g)** As used in this section, "federal poverty level" means the most
 30 recent poverty income guidelines published in the calendar year by the
 31 United States department of health and human services.

32 ~~Sec. 7, 10.~~ **Sec. 10.** K.S.A. ~~2020~~ **2021** Supp. 8-1567 is hereby amended to
 33 read as follows: 8-1567. (a) Driving under the influence is operating or
 34 attempting to operate any vehicle within this state while:

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

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

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

43 (4) under the influence of any drug or combination of drugs to a

1 degree that renders the person incapable of safely driving a vehicle; or
2 (5) under the influence of a combination of alcohol and any drug or
3 drugs to a degree that renders the person incapable of safely driving a
4 vehicle.

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

6 (A) On a first conviction, a class B, nonperson misdemeanor. The
7 person convicted shall be sentenced to not less than 48 consecutive hours
8 nor more than six months' imprisonment, or in the court's discretion 100
9 hours of public service, and fined not less than \$750 nor more than \$1,000.
10 ~~The person convicted shall serve at least 48 consecutive hours'~~
11 ~~imprisonment or 100 hours of public service either before or as a condition~~
12 ~~of any grant of probation or suspension, reduction of sentence or parole.~~
13 ~~The court may place the person convicted under a house arrest program~~
14 ~~pursuant to K.S.A. 2020 Supp. 21-6609, and amendments thereto, to serve~~
15 ~~the remainder of the sentence only after such person has served 48~~
16 ~~consecutive hours' imprisonment;~~

17 (B) on a second conviction, a class A, nonperson misdemeanor. The
18 person convicted shall be sentenced to not less than 90 days nor more than
19 one year's imprisonment and fined not less than \$1,250 nor more than
20 \$1,750. ~~The person convicted shall serve at least five consecutive days'~~
21 ~~imprisonment before the person is granted probation, suspension or~~
22 ~~reduction of sentence or parole or is otherwise released. The five days'~~
23 ~~imprisonment mandated by this subsection may be served in a work~~
24 ~~release program only after such person has served 48 consecutive hours'~~
25 ~~imprisonment, provided such work release program requires such person~~
26 ~~to return to confinement at the end of each day in the work release~~
27 ~~program. The person convicted, if placed into a work release program,~~
28 ~~shall serve a minimum of 120 hours of confinement. Such 120 hours of~~
29 ~~confinement shall be a period of at least 48 consecutive hours of~~
30 ~~imprisonment followed by confinement hours at the end of and continuing~~
31 ~~to the beginning of the offender's work day. The court may place the~~
32 ~~person convicted under a house arrest program pursuant to K.S.A. 2020~~
33 ~~Supp. 21-6609, and amendments thereto, to serve the five days'~~
34 ~~imprisonment mandated by this subsection only after such person has~~
35 ~~served 48 consecutive hours' imprisonment. The person convicted, if~~
36 ~~placed under house arrest, shall be monitored by an electronic monitoring~~
37 ~~device, which verifies the offender's location. The offender shall serve a~~
38 ~~minimum of 120 hours of confinement within the boundaries of the~~
39 ~~offender's residence. Any exceptions to remaining within the boundaries of~~
40 ~~the offender's residence provided for in the house arrest agreement shall~~
41 ~~not be counted as part of the 120 hours; *The following conditions shall*~~
42 ~~*apply to such sentence:*~~

43 (i) *As a condition of any probation granted under this subsection, the*

1 person shall serve at least 120 hours of confinement. The hours of
2 confinement shall include at least 48 hours of imprisonment and otherwise
3 may be served by a combination of: Imprisonment; a work release
4 program, ~~provided~~ if such work release program requires such person to
5 return to the confinement at the end of each day in the work release
6 program; or a house arrest program pursuant to K.S.A. ~~2020~~ 2021 Supp.
7 21-6609, and amendments thereto;

8 (ii) (a) if the person is placed into a work release program or placed
9 under a house arrest program for any portion of the minimum of 120
10 hours of confinement mandated by this subsection, the person shall
11 receive hour-for-hour credit for time served in such program until the
12 minimum sentence is met. If the person is placed into a work release
13 program or placed under a house arrest program for more than the
14 minimum of 120 hours of confinement mandated by this subsection, the
15 person shall receive hour-for-hour credit for time served in such program
16 until the minimum of 120 hours of confinement is ~~complete~~ completed,
17 and thereafter, the person shall receive day-for-day credit for time served
18 in such program unless otherwise ordered by the court; and

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

25 (C) on a third conviction, a class A, nonperson misdemeanor, except
26 as provided in subsection (b)(1)(D). The person convicted shall be
27 sentenced to not less than 90 days nor more than one year's imprisonment
28 and fined not less than \$1,750 nor more than \$2,500. ~~The person convicted~~
29 ~~shall not be eligible for release on probation, suspension or reduction of~~
30 ~~sentence or parole until the person has served at least 90 days'~~
31 ~~imprisonment. The 90 days' imprisonment mandated by this subsection~~
32 ~~may be served in a work release program only after such person has served~~
33 ~~48 consecutive hours' imprisonment, provided such work release program~~
34 ~~requires such person to return to confinement at the end of each day in the~~
35 ~~work release program. The person convicted, if placed into a work release~~
36 ~~program, shall serve a minimum of 2,160 hours of confinement. Such~~
37 ~~2,160 hours of confinement shall be a period of at least 48 consecutive~~
38 ~~hours of imprisonment followed by confinement hours at the end of and~~
39 ~~continuing to the beginning of the offender's work day. The court may~~
40 ~~place the person convicted under a house arrest program pursuant to~~
41 ~~K.S.A. 2020 Supp. 21-6609, and amendments thereto, to serve the 90 days'~~
42 ~~imprisonment mandated by this subsection only after such person has~~
43 ~~served 48 consecutive hours' imprisonment. The person convicted, if~~

1 placed under house arrest, shall be monitored by an electronic monitoring
2 device, which verifies the offender's location. The offender shall serve a
3 minimum of 2,160 hours of confinement within the boundaries of the
4 offender's residence. Any exceptions to remaining within the boundaries of
5 the offender's residence provided for in the house arrest agreement shall
6 not be counted as part of the 2,160 hours; *The following conditions shall*
7 *apply to such sentence:*

8 (i) *As a condition of any probation granted under this subsection, the*
9 *person shall serve at least 30 days of confinement. After at least 48*
10 *consecutive hours of imprisonment, the remainder of the period of*
11 *confinement may be served by a combination of: Imprisonment; a work*
12 *release program, provided if such work release program requires such*
13 *person to return to the confinement at the end of each day in the work*
14 *release program; or a house arrest program pursuant to K.S.A. 2020 2021*
15 *Supp. 21-6609, and amendments thereto; and*

16 (ii) (a) *if the person is placed into a work release program or placed*
17 *under a house arrest program for any portion of the minimum of 30 days*
18 *of confinement mandated by this subsection, the person shall receive hour-*
19 *for-hour credit for time served in such program for the first 240 hours of*
20 *confinement, and thereafter, the person shall receive day-for-day credit*
21 *day-for-day credit for time served in such program unless otherwise*
22 *ordered by the court; and*

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

29 (D) *on a third conviction, a severity level 6, nonperson felony if the*
30 *person has a prior conviction which occurred within the preceding 10*
31 *years, not including any period of incarceration. ~~The person convicted~~*
32 *shall be sentenced to not less than 90 days nor more than one year's*
33 *imprisonment and fined not less than \$1,750 nor more than \$2,500. The*
34 *person convicted shall not be eligible for release on probation, suspension*
35 *or reduction of sentence or parole until the person has served at least 90*
36 *days' imprisonment. ~~The 90 days' imprisonment mandated by this~~*
37 *subsection may be served in a work release program only after such person*
38 *has served 48 consecutive hours' imprisonment, provided such work*
39 *release program requires such person to return to confinement at the end of*
40 *each day in the work release program. ~~The person convicted, if placed into~~*
41 *a work release program, shall serve a minimum of 2,160 hours of*
42 *confinement. Such 2,160 hours of confinement shall be a period of at least*
43 *48 consecutive hours of imprisonment followed by confinement hours at*

1 the end of and continuing to the beginning of the offender's work day. The
2 court may place the person convicted under a house arrest program
3 pursuant to K.S.A. 2020 Supp. 21-6609, and amendments thereto, to serve
4 the 90 days' imprisonment mandated by this subsection only after such
5 person has served 48 consecutive hours' imprisonment. The person
6 convicted, if placed under house arrest, shall be monitored by an electronic
7 monitoring device, which verifies the offender's location. The offender
8 shall serve a minimum of 2,160 hours of confinement within the
9 boundaries of the offender's residence. Any exceptions to remaining within
10 the boundaries of the offender's residence provided for in the house arrest
11 agreement shall not be counted as part of the 2,160 hours. *The following*
12 *conditions shall apply to such sentence:*

13 (i) *As a condition of any probation granted under this subsection,*
14 *the person shall serve at least 30 days of confinement. After at least 48*
15 *consecutive hours of imprisonment, the remainder of the period of*
16 *confinement may be served by a combination of: Imprisonment; a work*
17 *release program, ~~provided~~ if such work release program requires such*
18 *person to return to the confinement at the end of each day in the work*
19 *release program; or a house arrest program pursuant to K.S.A. ~~2020~~*
20 *2021 Supp. 21-6609, and amendments thereto; and*

21 (ii) (a) *if the person is placed into a work release program or placed*
22 *under a house arrest program for any portion of the minimum of 30*
23 *days of confinement mandated by this subsection, the person shall*
24 *receive hour-for-hour credit for time served in such program for the first*
25 *240 hours of confinement, and thereafter, the person shall receive day-*
26 *for-day credit for time served in such program unless otherwise ordered*
27 *by the court; and*

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

34 (E) on a fourth or subsequent conviction, a severity level 6, nonperson
35 felony. The person convicted shall be sentenced to not less than 90 days
36 nor more than one year's imprisonment and fined \$2,500. The person
37 convicted shall not be eligible for release on probation, suspension or
38 reduction of sentence or parole until the person has served at least 90 days'
39 imprisonment. The 90 days' imprisonment mandated by this subsection
40 may be served in a work release program only after such person has served
41 72 consecutive hours' imprisonment, provided such work release program
42 requires such person to return to confinement at the end of each day in the
43 work release program. The person convicted, if placed into a work release

1 program, shall serve a minimum of 2,160 hours of confinement. Such
2 2,160 hours of confinement shall be a period of at least 72 consecutive
3 hours of imprisonment followed by confinement hours at the end of and
4 continuing to the beginning of the offender's work day. The court may
5 place the person convicted under a house arrest program pursuant to
6 K.S.A. 2020 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 verifies the offender's location. The offender shall serve a
11 minimum of 2,160 hours of confinement within the boundaries of the
12 offender's residence. Any exceptions to remaining within the boundaries of
13 the offender's residence provided for in the house arrest agreement shall
14 not be counted as part of the 2,160 hours. *The following conditions shall*
15 *apply to such sentence:*

16 *(i) As a condition of any probation granted under this subsection,*
17 *the person shall serve at least 30 days of confinement. After at least 48*
18 *consecutive hours of imprisonment, the remainder of the period of*
19 *confinement may be served by a combination of: Imprisonment; a work*
20 *release program, ~~provided~~ if such work release program requires such*
21 *person to return to the confinement at the end of each day in the work*
22 *release program; or a house arrest program pursuant to K.S.A. ~~2020~~*
23 *2021 Supp. 21-6609, and amendments thereto; and*

24 *(ii) (a) if the person is placed into a work release program or placed*
25 *under a house arrest program for any portion of the minimum of 30*
26 *days of confinement mandated by this subsection, the person shall*
27 *receive hour-for-hour credit for time served in such program for the first*
28 *240 hours of confinement, and thereafter, the person shall receive day-*
29 *for-day credit for time served in such program unless otherwise ordered*
30 *by the court; and*

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

37 (2) The court may order that the term of imprisonment imposed
38 pursuant to subsection (b)(1)(D) or (b)(1)(E) be served in a state facility in
39 the custody of the secretary of corrections in a facility designated by the
40 secretary for the provision of substance abuse treatment pursuant to the
41 provisions of K.S.A. ~~2020~~ 2021 Supp. 21-6804, and amendments thereto.
42 The person shall remain imprisoned at the state facility only while
43 participating in the substance abuse treatment program designated by the

1 ~~secretary and shall be returned to the custody of the sheriff for execution~~
2 ~~of the balance of the term of imprisonment upon completion of or the~~
3 ~~person's discharge from the substance abuse treatment program. Custody~~
4 ~~of the person shall be returned to the sheriff for execution of the sentence~~
5 ~~imposed in the event~~ The secretary of corrections *may refuse to admit the*
6 *person to the designated facility and place the person in a different state*
7 *facility, or admit the person and subsequently transfer the person to a*
8 *different state facility, if the secretary determines: (A) That substance*
9 *abuse treatment resources or the capacity of the facility designated by the*
10 *secretary for the incarceration and treatment of the person is not available;*
11 *(B) the person ~~fails~~ has failed to meaningfully participate in the treatment*
12 *program of the designated facility; (C) the person is disruptive to the*
13 *security or operation of the designated facility; or (D) the medical or*
14 *mental health condition of the person renders the person unsuitable for*
15 *confinement at the designated facility. The determination by the secretary*
16 *that the person either is not to be admitted into the designated facility or is*
17 *to be transferred from the designated facility is not subject to review. ~~The~~*
18 *sheriff shall be responsible for all transportation expenses to and from the*
19 *state correctional facility.*

20 (3) In addition, for any conviction pursuant to subsection (b)(1)(C);
21 ~~or (b)(1)(D) or (b)(1)(E)~~, at the time of the filing of the judgment form or
22 journal entry as required by K.S.A. 22-3426 or K.S.A. ~~2020~~ 2021 Supp.
23 21-6711, and amendments thereto, the court shall cause a certified copy to
24 be sent to the officer having the offender in charge. The court shall
25 determine whether the offender, upon release from imprisonment, shall be
26 supervised by community correctional services or court services based
27 upon the risk and needs of the offender. The risk and needs of the offender
28 shall be determined by use of a risk assessment tool specified by the
29 Kansas sentencing commission. The law enforcement agency maintaining
30 custody and control of a defendant for imprisonment shall cause a certified
31 copy of the judgment form or journal entry to be sent to the supervision
32 office designated by the court and upon expiration of the term of
33 imprisonment shall deliver the defendant to a location designated by the
34 supervision office designated by the court. After the term of imprisonment
35 imposed by the court, the person shall be placed on supervision to
36 community correctional services or court services, as determined by the
37 court, for a mandatory one-year period of supervision, which such period
38 of supervision shall not be reduced. During such supervision, the person
39 shall be required to participate in a multidisciplinary model of services for
40 substance use disorders facilitated by a Kansas department for aging and
41 disability services designated care coordination agency to include
42 assessment and, if appropriate, referral to a community based substance
43 use disorder treatment including recovery management and mental health

1 counseling as needed. The multidisciplinary team shall include the
2 designated care coordination agency, the supervision officer, the Kansas
3 department for aging and disability services designated treatment provider
4 and the offender. An offender for whom a warrant has been issued by the
5 court alleging a violation of this supervision shall be considered a fugitive
6 from justice if it is found that the warrant cannot be served. If it is found
7 the offender has violated the provisions of this supervision, the court shall
8 determine whether the time from the issuing of the warrant to the date of
9 the court's determination of an alleged violation, or any part of it, shall be
10 counted as time served on supervision. Any violation of the conditions of
11 such supervision may subject such person to revocation of supervision and
12 imprisonment in jail for the remainder of the period of imprisonment, the
13 remainder of the supervision period, or any combination or portion
14 thereof. The term of supervision may be extended at the court's discretion
15 beyond one year, and any violation of the conditions of such extended term
16 of supervision may subject such person to the revocation of supervision
17 and imprisonment in jail of up to the remainder of the original sentence,
18 not the term of the extended supervision.

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

25 (c) Any person 18 years of age or older convicted of violating this
26 section or an ordinance which prohibits the acts that this section prohibits
27 who had one or more children under the age of 18 years in the vehicle at
28 the time of the offense shall have such person's punishment enhanced by
29 one month of imprisonment. This imprisonment must be served
30 consecutively to any other minimum mandatory penalty imposed for a
31 violation of this section or an ordinance which prohibits the acts that this
32 section prohibits. Any enhanced penalty imposed shall not exceed the
33 maximum sentence allowable by law. During the service of the enhanced
34 penalty, the judge may order the person on house arrest, work release or
35 other conditional release.

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

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

1 (f) (1) In lieu of payment of a fine imposed pursuant to this section,
2 the court may order that the person perform community service specified
3 by the court. The person shall receive a credit on the fine imposed in an
4 amount equal to \$5 for each full hour spent by the person in the specified
5 community service. The community service ordered by the court shall be
6 required to be performed not later than one year after the fine is imposed
7 or by an earlier date specified by the court. If by the required date the
8 person performs an insufficient amount of community service to reduce to
9 zero the portion of the fine required to be paid by the person, the
10 remaining balance of the fine shall become due on that date.

11 (2) *The court may, in its discretion, waive any portion of a fine*
12 *imposed pursuant to this section, except the \$250 required to be remitted*
13 *to the state treasurer pursuant to subsection (q)(2), upon a showing that*
14 *the person successfully completed court-ordered education or treatment.*

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

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

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

21 (h) The court shall electronically report every conviction of a
22 violation of this section and every diversion agreement entered into in lieu
23 of further criminal proceedings on a complaint alleging a violation of this
24 section to the division including any finding regarding the alcohol
25 concentration in the offender's blood or breath. Prior to sentencing under
26 the provisions of this section, the court shall request and shall receive from
27 the division a record of all prior convictions obtained against such person
28 for any violations of any of the motor vehicle laws of this state.

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

32 (1) Convictions for a violation of this section, or a violation of an
33 ordinance of any city or resolution of any county that prohibits the acts
34 that this section prohibits, or entering into a diversion agreement in lieu of
35 further criminal proceedings on a complaint alleging any such violations,
36 shall be taken into account, but only convictions or diversions occurring
37 on or after July 1, 2001. Nothing in this provision shall be construed as
38 preventing any court from considering any convictions or diversions
39 occurring during the person's lifetime in determining the sentence to be
40 imposed within the limits provided for a first, second, third, fourth or
41 subsequent offense;

42 (2) any convictions for a violation of the following sections occurring
43 during a person's lifetime shall be taken into account:

- 1 (A) Driving a commercial motor vehicle under the influence, K.S.A.
2 8-2,144, and amendments thereto;
- 3 (B) operating a vessel under the influence of alcohol or drugs, K.S.A.
4 32-1131, and amendments thereto;
- 5 (C) involuntary manslaughter while driving under the influence of
6 alcohol or drugs, K.S.A. 21-3442, prior to its repeal, or K.S.A. ~~2020~~ 2021
7 Supp. 21-5405(a)(3) or (a)(5), and amendments thereto;
- 8 (D) aggravated battery as described in K.S.A. ~~2020~~ 2021 Supp. 21-
9 5413(b)(3) or (b)(4), and amendments thereto; and
- 10 (E) aggravated vehicular homicide, K.S.A. 21-3405a, prior to its
11 repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the
12 crime was committed while committing a violation of K.S.A. 8-1567, and
13 amendments thereto;
- 14 (3) "conviction" includes:
- 15 (A) Entering into a diversion agreement in lieu of further criminal
16 proceedings on a complaint alleging an offense described in subsection (i)
17 (2); and
- 18 (B) conviction of a violation of an ordinance of a city in this state, a
19 resolution of a county in this state or any law of another jurisdiction that
20 would constitute an offense that is comparable to the offense described in
21 subsection (i)(1) or (i)(2);
- 22 (4) multiple convictions of any crime described in subsection (i)(1) or
23 (i)(2) arising from the same arrest shall only be counted as one conviction;
- 24 (5) it is irrelevant whether an offense occurred before or after
25 conviction for a previous offense; and
- 26 (6) a person may enter into a diversion agreement in lieu of further
27 criminal proceedings for a violation of this section, and amendments
28 thereto, or an ordinance which prohibits the acts of this section, and
29 amendments thereto, only once during the person's lifetime.
- 30 (j) For the purposes of determining whether an offense is comparable,
31 the following shall be considered:
- 32 (1) The name of the out-of-jurisdiction offense;
- 33 (2) the elements of the out-of-jurisdiction offense; and
- 34 (3) whether the out-of-jurisdiction offense prohibits similar conduct
35 to the conduct prohibited by the closest approximate Kansas offense.
- 36 (k) Upon conviction of a person of a violation of this section or a
37 violation of a city ordinance or county resolution prohibiting the acts
38 prohibited by this section, the division, upon receiving a report of
39 conviction, shall suspend, restrict or suspend and restrict the person's
40 driving privileges as provided by K.S.A. 8-1014, and amendments thereto.
- 41 (l) (1) Nothing contained in this section shall be construed as
42 preventing any city from enacting ordinances, or any county from adopting
43 resolutions, declaring acts prohibited or made unlawful by this act as

1 unlawful or prohibited in such city or county and prescribing penalties for
2 violation thereof.

3 (2) The minimum penalty prescribed by any such ordinance or
4 resolution shall not be less than the minimum penalty prescribed by this
5 section for the same violation, and the maximum penalty in any such
6 ordinance or resolution shall not exceed the maximum penalty prescribed
7 for the same violation.

8 (3) On and after July 1, 2007, and retroactive for ordinance violations
9 committed on or after July 1, 2006, an ordinance may grant to a municipal
10 court jurisdiction over a violation of such ordinance which is concurrent
11 with the jurisdiction of the district court over a violation of this section,
12 notwithstanding that the elements of such ordinance violation are the same
13 as the elements of a violation of this section that would constitute, and be
14 punished as, a felony.

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

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

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

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

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

30 (n) No plea bargaining agreement shall be entered into nor shall any
31 judge approve a plea bargaining agreement entered into for the purpose of
32 permitting a person charged with a violation of this section, or a violation
33 of any ordinance of a city or resolution of any county in this state which
34 prohibits the acts prohibited by this section, to avoid the mandatory
35 penalties established by this section or by the ordinance. For the purpose
36 of this subsection, entering into a diversion agreement pursuant to K.S.A.
37 12-4413 et seq. or 22-2906 et seq., and amendments thereto, shall not
38 constitute plea bargaining. *This subsection shall not be construed to*
39 *prohibit an amendment or dismissal of any charge where the admissible*
40 *evidence is not sufficient to support a conviction beyond a reasonable*
41 *doubt on such charge.*

42 (o) The alternatives set out in subsection (a) may be pleaded in the
43 alternative, and the state, city or county may, but shall not be required to,

1 elect one or more of such alternatives prior to submission of the case to the
2 fact finder.

3 (p) As used in this section:

4 (1) "Alcohol concentration" means the number of grams of alcohol
5 per 100 milliliters of blood or per 210 liters of breath;

6 (2) "imprisonment"~~shall include~~ *includes* any restrained environment
7 in which the court and law enforcement agency intend to retain custody
8 and control of a defendant and such environment has been approved by the
9 board of county commissioners or the governing body of a city; and

10 (3) "drug" includes toxic vapors as such term is defined in K.S.A.
11 ~~2020~~ 2021 Supp. 21-5712, and amendments thereto.

12 (q) (1) The amount of the increase in fines as specified in this section
13 shall be remitted by the clerk of the district court to the state treasurer in
14 accordance with the provisions of K.S.A. 75-4215, and amendments
15 thereto. Upon receipt of remittance of the increase provided in this act, the
16 state treasurer shall deposit the entire amount in the state treasury and the
17 state treasurer shall credit 50% to the community alcoholism and
18 intoxication programs fund and 50% to the department of corrections
19 alcohol and drug abuse treatment fund, which is hereby created in the state
20 treasury.

21 (2) On and after July 1, 2011, the amount of \$250 from each fine
22 imposed pursuant to this section shall be remitted by the clerk of the
23 district court to the state treasurer in accordance with the provisions of
24 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
25 remittance, the state treasurer shall credit the entire amount to the
26 community corrections supervision fund established by K.S.A. 75-52,113,
27 and amendments thereto.

28 ~~Sec. 8.~~ **II.** K.S.A. ~~2020~~ 2021 Supp. 8-1567a is hereby amended to
29 read as follows: 8-1567a. (a) It shall be unlawful for any person less than
30 21 years of age to operate or attempt to operate a vehicle in this state with
31 a breath or blood alcohol content of .02 or greater.

32 (b) Whenever a law enforcement officer determines that a breath or
33 blood alcohol test is to be required of a person less than 21 years of age
34 pursuant to K.S.A. 8-1001 or K.S.A. 8-2,142, and amendments thereto, in
35 addition to any other notices required by law, the law enforcement officer
36 shall provide written and oral notice that:

37 (1) It is unlawful for any person less than 21 years of age to operate
38 or attempt to operate a vehicle in this state with a breath or blood alcohol
39 content of .02 or greater; and

40 (2) if the person is less than 21 years of age at the time of the test
41 request and submits to and completes the test or tests and the test results
42 show an alcohol concentration of .02 or greater, but less than .08, on the
43 person's first occurrence, the person's driving privileges will be suspended

1 for 30 days and on the person's second or subsequent occurrence, the
2 person's driving privileges shall be suspended for one year.

3 (c) Any suspension and restriction of driving privileges pursuant to
4 this section shall be in addition to any disqualification from driving a
5 commercial motor vehicle pursuant to K.S.A. 8-2,142, and amendments
6 thereto.

7 (d) Whenever a breath or blood alcohol test is requested pursuant to
8 K.S.A. 8-1001, and amendments thereto, from a person less than 21 years
9 of age, and results in a test result of .02 or greater, but less than .08, a law
10 enforcement officer's certification under this section shall be prepared. The
11 certification required by this section shall be signed by one or more
12 officers to certify that:

13 (1) (A) There existed reasonable grounds to believe the person was
14 operating a vehicle while under the influence of alcohol or drugs, or both,
15 or to believe that the person had been driving a commercial motor vehicle,
16 as defined in K.S.A. 8-2,128, and amendments thereto, while having
17 alcohol or other drugs in such person's system or was under the age of 21
18 years and was operating or attempting to operate a vehicle while having
19 alcohol or other drugs in such person's system;

20 (B) the person had been placed under arrest, was in custody or had
21 been involved in a vehicle accident or collision;

22 (C) a law enforcement officer had presented the person with the oral
23 and written notice required by K.S.A. 8-1001, and amendments thereto,
24 and the oral and written notice required by this section;

25 (D) that the person was less than 21 years of age at the time of the
26 test request; and

27 (E) the result of the test showed that the person had an alcohol
28 concentration of .02 or greater in such person's blood or breath.

29 (2) With regard to a breath test, in addition to those matters required
30 to be certified under subsection (d)(1), that:

31 (A) The testing equipment used was certified by the Kansas
32 department of health and environment;

33 (B) the testing procedures used were in accordance with the
34 requirements set out by the Kansas department of health and environment;
35 and

36 (C) the person who operated the testing equipment was certified by
37 the Kansas department of health and environment to operate such
38 equipment.

39 (e) If a hearing is requested as a result of a law enforcement officer's
40 certification under this section, the scope of the hearing shall be limited to
41 whether:

42 (1) A law enforcement officer had reasonable grounds to believe the
43 person was operating a vehicle while under the influence of alcohol or

1 drugs, or both, or to believe that the person had been driving a commercial
2 motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto,
3 while having alcohol or other drugs in such person's system or was under
4 the age of 21 years and was operating or attempting to operate a vehicle
5 while having alcohol or other drugs in such person's system;

6 (2) the person had been placed under arrest, was in custody or was
7 involved in a motor vehicle accident or collision resulting in property
8 damage, personal injury or death;

9 (3) a law enforcement officer had presented the person with the oral
10 and written notice required by K.S.A. 8-1001, and amendments thereto,
11 and the oral and written notice required by this section;

12 (4) the testing equipment used was reliable;

13 (5) the person who operated the testing equipment was qualified;

14 (6) the testing procedures used were reliable;

15 (7) the test result determined that the person had an alcohol
16 concentration of .02 or greater in such person's blood or breath;

17 (8) the person was operating a vehicle; and

18 (9) the person was less than 21 years of age at the time a test was
19 requested.

20 (f) If a person less than 21 years of age submits to a breath or blood
21 alcohol test requested pursuant to K.S.A. 8-1001 or K.S.A. 8-2,142, and
22 amendments thereto, and produces a test result of .02 or greater, but less
23 than .08, on the person's first occurrence, the person's driving privileges
24 shall be suspended for 30 days and then restricted as provided by K.S.A.
25 8-1015, and amendments thereto, for an additional ~~330~~ 180 days, and on
26 the person's second or subsequent occurrence, the person's driving
27 privileges shall be suspended for one year.

28 (g) Except where there is a conflict between this section and K.S.A.
29 8-1001 and 8-1002, and amendments thereto, the provisions of K.S.A. 8-
30 1001 and 8-1002, and amendments thereto, shall be applicable to
31 proceedings under this section.

32 (h) Any determination under this section that a person less than 21
33 years of age had a test result of .02 or greater, but less than .08, and any
34 resulting administrative action upon the person's driving privileges, upon
35 the first occurrence of such test result and administrative action, shall not
36 be considered by any insurance company in determining the rate charged
37 for any automobile liability insurance policy or whether to cancel any such
38 policy under the provisions of ~~subsection (4)(a)~~ of K.S.A. 40-277(4)(a),
39 and amendments thereto.

40 Sec. ~~9~~ 12. K.S.A. ~~2020~~ 2021 Supp. 12-4415 is hereby amended to
41 read as follows: 12-4415. (a) In determining whether diversion of a
42 defendant is in the interests of justice and of benefit to the defendant and
43 the community, the city attorney shall consider at least the following

1 factors among all factors considered:

2 (1) The nature of the crime charged and the circumstances
3 surrounding it;

4 (2) any special characteristics or circumstances of the defendant;

5 (3) whether the defendant is a first-time offender of an alcohol related
6 offense *as defined in K.S.A. 12-4413, and amendments thereto*, and if the
7 defendant has previously participated in diversion, according to the
8 certification of the division of vehicles of the state department of revenue;

9 (4) whether there is a probability that the defendant will cooperate
10 with and benefit from diversion;

11 (5) whether there is a probability that the defendant committed such
12 crime as a result of an injury, including major depressive disorder,
13 polytrauma, post-traumatic stress disorder or traumatic brain injury,
14 connected to service in a combat zone, as defined in section 112 of the
15 federal internal revenue code of 1986, in the armed forces of the United
16 States of America;

17 (6) if subsection (a)(5) applies to the defendant, whether there is a
18 probability that the defendant will cooperate with and benefit from
19 inpatient or outpatient treatment from any treatment facility or program
20 operated by the United States department of defense, the United States
21 department of veterans affairs or the Kansas national guard with the
22 consent of the defendant, as a condition of diversion;

23 (7) whether the available diversion program is appropriate to the
24 needs of the defendant;

25 (8) the impact of the diversion of the defendant upon the community;

26 (9) recommendations, if any, of the involved law enforcement
27 agency;

28 (10) recommendations, if any, of the victim;

29 (11) provisions for restitution; and

30 (12) any mitigating circumstances.

31 (b) A city attorney shall not enter into a diversion agreement in lieu of
32 further criminal proceedings on a complaint alleging an alcohol related
33 offense *as defined in K.S.A. 12-4413, and amendments thereto*, if the
34 defendant:

35 (1) Has previously participated in diversion of an alcohol related
36 offense;

37 (2) has previously been convicted of or pleaded nolo contendere to an
38 alcohol related offense in this state or has previously been convicted of or
39 pleaded nolo contendere to a violation of K.S.A. 8-2,144 or 8-1567, and
40 amendments thereto, or of a law of another state, or of a political
41 subdivision thereof, ~~which~~ *that* prohibits the acts prohibited by those
42 statutes; or

43 (3) during the time of the alleged alcohol related offense was

1 involved in a motor vehicle accident or collision resulting in personal
2 injury to another person or death.

3 (c) *A city attorney shall not enter into a diversion agreement in lieu*
4 *of further criminal proceedings on a complaint or traffic citation alleging*
5 *a violation of an ordinance of any city or resolution of any county that*
6 *prohibits the acts prohibited under chapter 8 of the Kansas Statutes*
7 *Annotated, and amendments thereto, if the defendant was a commercial*
8 *driver's license holder at the time the violation was committed or at any*
9 *subsequent time prior to being considered for diversion.*

10 (d) *As used in this section, "major depressive disorder," "polytrauma,"*
11 *"post-traumatic stress disorder" and "traumatic brain injury" shall mean*
12 *the same as such terms are defined in K.S.A. ~~2020~~ 2021 Supp. 21-6630,*
13 *and amendments thereto.*

14 ~~Sec. 10. K.S.A. 2020 Supp. 21-6604 is hereby amended to read as~~
15 ~~follows: 21-6604. (a) Whenever any person has been found guilty of a~~
16 ~~crime, the court may adjudge any of the following:~~

17 ~~(1) Commit the defendant to the custody of the secretary of~~
18 ~~corrections if the current crime of conviction is a felony and the sentence~~
19 ~~presumes imprisonment, or the sentence imposed is a dispositional~~
20 ~~departure to imprisonment; or, if confinement is for a misdemeanor, to jail~~
21 ~~for the term provided by law;~~

22 ~~(2) impose the fine applicable to the offense and may impose the~~
23 ~~provisions of subsection (q);~~

24 ~~(3) release the defendant on probation if the current crime of~~
25 ~~conviction and criminal history fall within a presumptive nonprison~~
26 ~~category or through a departure for substantial and compelling reasons~~
27 ~~subject to such conditions as the court may deem appropriate. In felony~~
28 ~~cases except for violations of K.S.A. 8-1567 or 8-2,144, and amendments~~
29 ~~thereto, the court may include confinement in a county jail not to exceed~~
30 ~~60 days, which need not be served consecutively, as a condition of an~~
31 ~~original probation sentence;~~

32 ~~(4) assign the defendant to a community correctional services~~
33 ~~program as provided in K.S.A. 75-5291, and amendments thereto, or~~
34 ~~through a departure for substantial and compelling reasons subject to such~~
35 ~~conditions as the court may deem appropriate, including orders requiring~~
36 ~~full or partial restitution;~~

37 ~~(5) assign the defendant to a conservation camp for a period not to~~
38 ~~exceed six months as a condition of probation followed by a six-month~~
39 ~~period of follow-up through adult intensive supervision by a community~~
40 ~~correctional services program, if the offender successfully completes the~~
41 ~~conservation camp program;~~

42 ~~(6) assign the defendant to a house arrest program pursuant to K.S.A.~~
43 ~~2020 Supp. 21-6609, and amendments thereto;~~

1 ~~(7) order the defendant to attend and satisfactorily complete an~~
2 ~~alcohol or drug education or training program as provided by K.S.A. 2020~~
3 ~~Supp. 21-6602(e), and amendments thereto;~~

4 ~~(8) order the defendant to repay the amount of any reward paid by~~
5 ~~any crime stoppers chapter, individual, corporation or public entity that~~
6 ~~materially aided in the apprehension or conviction of the defendant; repay~~
7 ~~the amount of any costs and expenses incurred by any law enforcement~~
8 ~~agency in the apprehension of the defendant, if one of the current crimes~~
9 ~~of conviction of the defendant includes escape from custody or aggravated~~
10 ~~escape from custody, as defined in K.S.A. 2020 Supp. 21-5911, and~~
11 ~~amendments thereto; repay expenses incurred by a fire district, fire~~
12 ~~department or fire company responding to a fire that has been determined~~
13 ~~to be arson or aggravated arson as defined in K.S.A. 2020 Supp. 21-5812,~~
14 ~~and amendments thereto, if the defendant is convicted of such crime; repay~~
15 ~~the amount of any public funds utilized by a law enforcement agency to~~
16 ~~purchase controlled substances from the defendant during the investigation~~
17 ~~that leads to the defendant's conviction; or repay the amount of any~~
18 ~~medical costs and expenses incurred by any law enforcement agency or~~
19 ~~county. Such repayment of the amount of any such costs and expenses~~
20 ~~incurred by a county, law enforcement agency, fire district, fire department~~
21 ~~or fire company or any public funds utilized by a law enforcement agency~~
22 ~~shall be deposited and credited to the same fund from which the public~~
23 ~~funds were credited to prior to use by the county, law enforcement agency,~~
24 ~~fire district, fire department or fire company;~~

25 ~~(9) order the defendant to pay the administrative fee authorized by~~
26 ~~K.S.A. 22-4529, and amendments thereto, unless waived by the court;~~

27 ~~(10) order the defendant to pay a domestic violence special program~~
28 ~~fee authorized by K.S.A. 20-369, and amendments thereto;~~

29 ~~(11) if the defendant is convicted of a misdemeanor or convicted of a~~
30 ~~felony specified in K.S.A. 2020 Supp. 21-6804(i), and amendments~~
31 ~~thereto, assign the defendant to a work release program, other than a~~
32 ~~program at a correctional institution under the control of the secretary of~~
33 ~~corrections as defined in K.S.A. 75-5202, and amendments thereto,~~
34 ~~provided such work release program requires such defendant to return to~~
35 ~~confinement at the end of each day in the work release program. On a~~
36 ~~second or subsequent conviction of K.S.A. 8-1567, and amendments~~
37 ~~thereto, an offender placed into a work release program shall serve the~~
38 ~~total number of hours of confinement mandated by that section;~~

39 ~~(12) order the defendant to pay the full amount of unpaid costs~~
40 ~~associated with the conditions of release of the appearance bond under~~
41 ~~K.S.A. 22-2802, and amendments thereto;~~

42 ~~(13) impose any appropriate combination of (1), (2), (3), (4), (5), (6),~~
43 ~~(7), (8), (9), (10), (11) and *through* (12); or~~

1 ~~(14) suspend imposition of sentence in misdemeanor cases.~~

2 ~~(b) (1) In addition to or in lieu of any of the above, the court shall~~
3 ~~order the defendant to pay restitution, which shall include, but not be~~
4 ~~limited to, damage or loss caused by the defendant's crime. Restitution~~
5 ~~shall be due immediately unless: (A) The court orders that the defendant~~
6 ~~be given a specified time to pay or be allowed to pay in specified~~
7 ~~installments; or (B) the court finds compelling circumstances that would~~
8 ~~render restitution unworkable, either in whole or in part. In regard to a~~
9 ~~violation of K.S.A. 2020 Supp. 21-6107, and amendments thereto, such~~
10 ~~damage or loss shall include, but not be limited to, attorney fees and costs~~
11 ~~incurred to repair the credit history or rating of the person whose personal~~
12 ~~identification documents were obtained and used in violation of such~~
13 ~~section, and to satisfy a debt, lien or other obligation incurred by the~~
14 ~~person whose personal identification documents were obtained and used in~~
15 ~~violation of such section. In regard to a violation of K.S.A. 2020 Supp. 21-~~
16 ~~5801, 21-5807 or 21-5813, and amendments thereto, such damage or loss~~
17 ~~shall include the cost of repair or replacement of the property that was~~
18 ~~damaged, the reasonable cost of any loss of production, crops and~~
19 ~~livestock, reasonable labor costs of any kind, reasonable material costs of~~
20 ~~any kind and any reasonable costs that are attributed to equipment that is~~
21 ~~used to abate or repair the damage to the property. If the court finds~~
22 ~~restitution unworkable, either in whole or in part, the court shall state on~~
23 ~~the record in detail the reasons therefor.~~

24 ~~(2) If the court orders restitution, the restitution shall be a judgment~~
25 ~~against the defendant that may be collected by the court by garnishment or~~
26 ~~other execution as on judgments in civil cases. If, after 60 days from the~~
27 ~~date restitution is ordered by the court, a defendant is found to be in~~
28 ~~noncompliance with the restitution order, and the victim to whom~~
29 ~~restitution is ordered paid has not initiated proceedings in accordance with~~
30 ~~K.S.A. 60-4301 et seq., and amendments thereto, the court shall assign an~~
31 ~~agent procured by the judicial administrator pursuant to K.S.A. 20-169,~~
32 ~~and amendments thereto, to collect the restitution on behalf of the victim.~~
33 ~~The chief judge of each judicial district may assign such cases to an~~
34 ~~appropriate division of the court for the conduct of civil collection~~
35 ~~proceedings.~~

36 ~~(3) If a restitution order entered prior to the effective date of this act~~
37 ~~does not give the defendant a specified time to pay or set payment in~~
38 ~~specified installments, the defendant may file a motion with the court prior~~
39 ~~to December 31, 2020, proposing payment of restitution in specified~~
40 ~~installments. The court may recall the restitution order from the agent~~
41 ~~assigned pursuant to K.S.A. 20-169, and amendments thereto, until the~~
42 ~~court rules on such motion. If the court does not order payment in~~
43 ~~specified installments or if the defendant does not file a motion prior to:~~

1 ~~December 31, 2020, the restitution shall be due immediately.~~

2 ~~(e) In addition to or in lieu of any of the above, the court shall order~~
3 ~~the defendant to submit to and complete an alcohol and drug evaluation,~~
4 ~~and pay a fee therefor, when required by K.S.A. 2020 Supp. 21-6602(d),~~
5 ~~and amendments thereto.~~

6 ~~(d) In addition to any of the above, the court shall order the defendant~~
7 ~~to reimburse the county general fund for all or a part of the expenditures~~
8 ~~by the county to provide counsel and other defense services to the~~
9 ~~defendant. Any such reimbursement to the county shall be paid only after~~
10 ~~any order for restitution has been paid in full. In determining the amount~~
11 ~~and method of payment of such sum, the court shall take account of the~~
12 ~~financial resources of the defendant and the nature of the burden that~~
13 ~~payment of such sum will impose. A defendant who has been required to~~
14 ~~pay such sum and who is not willfully in default in the payment thereof~~
15 ~~may at any time petition the court that sentenced the defendant to waive~~
16 ~~payment of such sum or any unpaid portion thereof. If it appears to the~~
17 ~~satisfaction of the court that payment of the amount due will impose~~
18 ~~manifest hardship on the defendant or the defendant's immediate family,~~
19 ~~the court may waive payment of all or part of the amount due or modify~~
20 ~~the method of payment.~~

21 ~~(e) In releasing a defendant on probation, the court shall direct that~~
22 ~~the defendant be under the supervision of a court services officer. If the~~
23 ~~court commits the defendant to the custody of the secretary of corrections~~
24 ~~or to jail, the court may specify in its order the amount of restitution to be~~
25 ~~paid and the person to whom it shall be paid if restitution is later ordered~~
26 ~~as a condition of parole, conditional release or postrelease supervision.~~

27 ~~(f) (1) When a new felony is committed while the offender is~~
28 ~~incarcerated and serving a sentence for a felony, or while the offender is on~~
29 ~~probation, assignment to a community correctional services program,~~
30 ~~parole, conditional release or postrelease supervision for a felony, a new~~
31 ~~sentence shall be imposed consecutively pursuant to the provisions of~~
32 ~~K.S.A. 2020 Supp. 21-6606, and amendments thereto, and the court may~~
33 ~~sentence the offender to imprisonment for the new conviction, even when~~
34 ~~the new crime of conviction otherwise presumes a nonprison sentence. In~~
35 ~~this event, imposition of a prison sentence for the new crime does not~~
36 ~~constitute a departure.~~

37 ~~(2) When a new felony is committed during a period of time when the~~
38 ~~defendant *offender* would have been on probation, assignment to a~~
39 ~~community correctional services program, parole, conditional release or~~
40 ~~postrelease supervision for a felony had the defendant *offender* not been~~
41 ~~granted release by the court pursuant to K.S.A. 2020 Supp. 21-6608(d),~~
42 ~~and amendments thereto, or the prisoner review board pursuant to K.S.A.~~
43 ~~22-3717, and amendments thereto, the court may sentence the offender to~~

1 ~~imprisonment for the new conviction, even when the new crime of~~
2 ~~conviction otherwise presumes a nonprison sentence. In this event,~~
3 ~~imposition of a prison sentence for the new crime does not constitute a~~
4 ~~departure.~~

5 ~~(3) When a new felony is committed while the offender is~~
6 ~~incarcerated in a juvenile correctional facility pursuant to K.S.A. 38-1671,~~
7 ~~prior to its repeal, or K.S.A. 2020 Supp. 38-2373, and amendments~~
8 ~~thereto, for an offense, which if committed by an adult would constitute~~
9 ~~the commission of a felony, upon conviction, the court shall sentence the~~
10 ~~offender to imprisonment for the new conviction, even when the new~~
11 ~~crime of conviction otherwise presumes a nonprison sentence. In this~~
12 ~~event, imposition of a prison sentence for the new crime does not~~
13 ~~constitute a departure. The conviction shall operate as a full and complete~~
14 ~~discharge from any obligations, except for an order of restitution, imposed~~
15 ~~on the offender arising from the offense for which the offender was~~
16 ~~committed to a juvenile correctional facility.~~

17 ~~(4) When a new felony is committed while the offender is on release~~
18 ~~for a felony pursuant to the provisions of article 28 of chapter 22 of the~~
19 ~~Kansas Statutes Annotated, and amendments thereto, or similar provisions~~
20 ~~of the laws of another jurisdiction, a new sentence may be imposed~~
21 ~~consecutively pursuant to the provisions of K.S.A. 2020 Supp. 21-6606,~~
22 ~~and amendments thereto, and the court may sentence the offender to~~
23 ~~imprisonment for the new conviction, even when the new crime of~~
24 ~~conviction otherwise presumes a nonprison sentence. In this event,~~
25 ~~imposition of a prison sentence for the new crime does not constitute a~~
26 ~~departure.~~

27 ~~(g) Prior to imposing a dispositional departure for a defendant whose~~
28 ~~offense is classified in the presumptive nonprison grid block of either~~
29 ~~sentencing guideline grid, prior to sentencing a defendant to incarceration~~
30 ~~whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing~~
31 ~~guidelines grid for nondrug crimes, in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I~~
32 ~~of the sentencing guidelines grid for drug crimes committed prior to July~~
33 ~~1, 2012, or in grid blocks 4-E, 4-F, 4-G, 4-H or 4-I of the sentencing~~
34 ~~guidelines grid for drug crimes committed on or after July 1, 2012, prior to~~
35 ~~sentencing a defendant to incarceration whose offense is classified in grid~~
36 ~~blocks 4-E or 4-F of the sentencing guidelines grid for drug crimes~~
37 ~~committed prior to July 1, 2012, or in grid blocks 5-C, 5-D, 5-E or 5-F of~~
38 ~~the sentencing guidelines grid for drug crimes committed on or after July~~
39 ~~1, 2012, and whose offense does not meet the requirements of K.S.A. 2020~~
40 ~~Supp. 21-6824, and amendments thereto, prior to revocation of a~~
41 ~~nonprison sanction of a defendant whose offense is classified in grid~~
42 ~~blocks 4-E or 4-F of the sentencing guidelines grid for drug crimes~~
43 ~~committed prior to July 1, 2012, or in grid blocks 5-C, 5-D, 5-E or 5-F of~~

1 ~~the sentencing guidelines grid for drug crimes committed on or after July~~
2 ~~1, 2012, and whose offense does not meet the requirements of K.S.A. 2020~~
3 ~~Supp. 21-6824, and amendments thereto, or prior to revocation of a~~
4 ~~nonprison sanction of a defendant whose offense is classified in the~~
5 ~~presumptive nonprison grid block of either sentencing guideline grid or~~
6 ~~grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug~~
7 ~~crimes, in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing~~
8 ~~guidelines grid for drug crimes committed prior to July 1, 2012, or in grid~~
9 ~~blocks 4-E, 4-F, 4-G, 4-H or 4-I of the sentencing guidelines grid for drug~~
10 ~~crimes committed on or after July 1, 2012, the court shall consider~~
11 ~~placement of the defendant in the Labette correctional conservation camp,~~
12 ~~conservation camps established by the secretary of corrections pursuant to~~
13 ~~K.S.A. 75-52,127, and amendments thereto, or a community intermediate~~
14 ~~sanction center. Pursuant to this subsection the defendant shall not be~~
15 ~~sentenced to imprisonment if space is available in a conservation camp or~~
16 ~~community intermediate sanction center and the defendant meets all of the~~
17 ~~conservation camp's or community intermediate sanction center's~~
18 ~~placement criteria unless the court states on the record the reasons for not~~
19 ~~placing the defendant in a conservation camp or community intermediate~~
20 ~~sanction center.~~

21 ~~(h) In committing a defendant to the custody of the secretary of~~
22 ~~corrections, the court shall fix a term of confinement within the limits~~
23 ~~provided by law. In those cases where the law does not fix a term of~~
24 ~~confinement for the crime for which the defendant was convicted, the~~
25 ~~court shall fix the term of such confinement.~~

26 ~~(i) In addition to any of the above, the court shall order the defendant~~
27 ~~to reimburse the state general fund for all or part of the expenditures by the~~
28 ~~state board of indigents' defense services to provide counsel and other~~
29 ~~defense services to the defendant. In determining the amount and method~~
30 ~~of payment of such sum, the court shall take account of the financial~~
31 ~~resources of the defendant and the nature of the burden that payment of~~
32 ~~such sum will impose. A defendant who has been required to pay such sum~~
33 ~~and who is not willfully in default in the payment thereof may at any time~~
34 ~~petition the court that sentenced the defendant to waive payment of such~~
35 ~~sum or any unpaid portion thereof. If it appears to the satisfaction of the~~
36 ~~court that payment of the amount due will impose manifest hardship on the~~
37 ~~defendant or the defendant's immediate family, the court may waive~~
38 ~~payment of all or part of the amount due or modify the method of~~
39 ~~payment. The amount of attorney fees to be included in the court order for~~
40 ~~reimbursement shall be the amount claimed by appointed counsel on the~~
41 ~~payment voucher for indigents' defense services or the amount prescribed~~
42 ~~by the board of indigents' defense services reimbursement tables as~~
43 ~~provided in K.S.A. 22-4522, and amendments thereto, whichever is less.~~

1 ~~(j) This section shall not deprive the court of any authority conferred~~
2 ~~by any other Kansas statute to decree a forfeiture of property, suspend or~~
3 ~~cancel a license, remove a person from office or impose any other civil~~
4 ~~penalty as a result of conviction of crime.~~

5 ~~(k) An application for or acceptance of probation or assignment to a~~
6 ~~community correctional services program shall not constitute an~~
7 ~~acquiescence in the judgment for purpose of appeal, and any convicted~~
8 ~~person may appeal from such conviction, as provided by law, without~~
9 ~~regard to whether such person has applied for probation, suspended~~
10 ~~sentence or assignment to a community correctional services program.~~

11 ~~(l) The secretary of corrections is authorized to make direct~~
12 ~~placement to the Labette correctional conservation camp or a conservation~~
13 ~~camp established by the secretary pursuant to K.S.A. 75-52,127, and~~
14 ~~amendments thereto, of an inmate sentenced to the secretary's custody if~~
15 ~~the inmate:~~

16 ~~(1) Has been sentenced to the secretary for a probation revocation, as~~
17 ~~a departure from the presumptive nonimprisonment grid block of either~~
18 ~~sentencing grid, for an offense that is classified in grid blocks 5-H, 5-I or~~
19 ~~6-G of the sentencing guidelines grid for nondrug crimes, in grid blocks 3-~~
20 ~~E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes~~
21 ~~committed prior to July 1, 2012, in grid blocks 4-E, 4-F, 4-G, 4-H or 4-I of~~
22 ~~the sentencing guidelines grid for drug crimes committed on or after July~~
23 ~~1, 2012, or for an offense that is classified in grid blocks 4-E or 4-F of the~~
24 ~~sentencing guidelines grid for drug crimes committed prior to July 1, 2012,~~
25 ~~or in grid blocks 5-C, 5-D, 5-E or 5-F of the sentencing guidelines grid for~~
26 ~~drug crimes committed on or after July 1, 2012, and such offense does not~~
27 ~~meet the requirements of K.S.A. 2020 Supp. 21-6824, and amendments~~
28 ~~thereto; and~~

29 ~~(2) otherwise meets admission criteria of the camp.~~

30 ~~If the inmate successfully completes a conservation camp program, the~~
31 ~~secretary of corrections shall report such completion to the sentencing~~
32 ~~court and the county or district attorney. The inmate shall then be assigned~~
33 ~~by the court to six months of follow-up supervision conducted by the~~
34 ~~appropriate community corrections services program. The court may also~~
35 ~~order that supervision continue thereafter for the length of time authorized~~
36 ~~by K.S.A. 2020 Supp. 21-6608, and amendments thereto.~~

37 ~~(m) When it is provided by law that a person shall be sentenced~~
38 ~~pursuant to K.S.A. 1993 Supp. 21-4628, prior to its repeal, the provisions~~
39 ~~of this section shall not apply.~~

40 ~~(n) (1) Except as provided by K.S.A. 2020 Supp. 21-6630 and 21-~~
41 ~~6805(f), and amendments thereto, in addition to any of the above, for~~
42 ~~felony violations of K.S.A. 2020 Supp. 21-5706, and amendments thereto,~~
43 ~~the court shall require the defendant who meets the requirements~~

1 ~~established in K.S.A. 2020 Supp. 21-6824, and amendments thereto, to~~
2 ~~participate in a certified drug abuse treatment program, as provided in~~
3 ~~K.S.A. 75-52,144, and amendments thereto, including, but not limited to,~~
4 ~~an approved after-care plan. The amount of time spent participating in~~
5 ~~such program shall not be credited as service on the underlying prison~~
6 ~~sentence.~~

7 ~~(2) If the defendant fails to participate in or has a pattern of~~
8 ~~intentional conduct that demonstrates the defendant's refusal to comply~~
9 ~~with or participate in the treatment program, as established by judicial~~
10 ~~finding, the defendant shall be subject to sanction or revocation pursuant~~
11 ~~to the provisions of K.S.A. 22-3716, and amendments thereto. If the~~
12 ~~defendant's probation is revoked, the defendant shall serve the underlying~~
13 ~~prison sentence as established in K.S.A. 2020 Supp. 21-6805, and~~
14 ~~amendments thereto.~~

15 ~~(A) Except as provided in subsection (n)(2)(B), for those offenders~~
16 ~~who are convicted on or after July 1, 2003, but prior to July 1, 2013, upon~~
17 ~~completion of the underlying prison sentence, the offender shall not be~~
18 ~~subject to a period of postrelease supervision.~~

19 ~~(B) Offenders whose crime of conviction was committed on or after~~
20 ~~July 1, 2013, and whose probation is revoked pursuant to K.S.A. 22-~~
21 ~~3716(e), and amendments thereto, or whose underlying prison term expires~~
22 ~~while serving a sanction pursuant to K.S.A. 22-3716(e)(1), and~~
23 ~~amendments thereto, shall serve a period of postrelease supervision upon~~
24 ~~the completion of the underlying prison term.~~

25 ~~(c) (1) Except as provided in paragraph (3), in addition to any other~~
26 ~~penalty or disposition imposed by law, upon a conviction for unlawful~~
27 ~~possession of a controlled substance or controlled substance analog in~~
28 ~~violation of K.S.A. 2020 Supp. 21-5706, and amendments thereto, in~~
29 ~~which the trier of fact makes a finding that the unlawful possession~~
30 ~~occurred while transporting the controlled substance or controlled~~
31 ~~substance analog in any vehicle upon a highway or street, the offender's~~
32 ~~driver's license or privilege to operate a motor vehicle on the streets and~~
33 ~~highways of this state shall be suspended for one year.~~

34 ~~(2) Upon suspension of a license pursuant to this subsection, the court~~
35 ~~shall require the person to surrender the license to the court, which shall~~
36 ~~transmit the license to the division of motor vehicles of the department of~~
37 ~~revenue, to be retained until the period of suspension expires. At that time,~~
38 ~~the licensee may apply to the division for return of the license. If the~~
39 ~~license has expired, the person may apply for a new license, which shall be~~
40 ~~issued promptly upon payment of the proper fee and satisfaction of other~~
41 ~~conditions established by law for obtaining a license unless another~~
42 ~~suspension or revocation of the person's privilege to operate a motor~~
43 ~~vehicle is in effect.~~

1 ~~(3) (A) In lieu of suspending the driver's license or privilege to~~
2 ~~operate a motor vehicle on the highways of this state of any person as~~
3 ~~provided in paragraph (1), the judge of the court in which such person was~~
4 ~~convicted may enter an order that places conditions on such person's~~
5 ~~privilege of operating a motor vehicle on the highways of this state, a~~
6 ~~certified copy of which such person shall be required to carry any time~~
7 ~~such person is operating a motor vehicle on the highways of this state. Any~~
8 ~~such order shall prescribe the duration of the conditions imposed, which in~~
9 ~~no event shall be for a period of more than one year.~~

10 ~~(B) Upon entering an order restricting a person's license hereunder,~~
11 ~~the judge shall require such person to surrender such person's driver's~~
12 ~~license to the judge who shall cause it to be transmitted to the division of~~
13 ~~vehicles, together with a copy of the order. Upon receipt thereof, the~~
14 ~~division of vehicles shall issue without charge a driver's license, which~~
15 ~~shall indicate on its face that conditions have been imposed on such~~
16 ~~person's privilege of operating a motor vehicle and that a certified copy of~~
17 ~~the order imposing such conditions is required to be carried by the person~~
18 ~~for whom the license was issued any time such person is operating a motor~~
19 ~~vehicle on the highways of this state. If the person convicted is a~~
20 ~~nonresident, the judge shall cause a copy of the order to be transmitted to~~
21 ~~the division and the division shall forward a copy of it to the motor vehicle~~
22 ~~administrator of such person's state of residence. Such judge shall furnish~~
23 ~~to any person whose driver's license has had conditions imposed on it~~
24 ~~under this paragraph a copy of the order, which shall be recognized as a~~
25 ~~valid Kansas driver's license until such time as the division shall issue the~~
26 ~~restricted license provided for in this paragraph.~~

27 ~~(C) Upon expiration of the period of time for which conditions are~~
28 ~~imposed pursuant to this subsection, the licensee may apply to the division~~
29 ~~for the return of the license previously surrendered by such licensee. In the~~
30 ~~event such license has expired, such person may apply to the division for a~~
31 ~~new license, which shall be issued immediately by the division upon~~
32 ~~payment of the proper fee and satisfaction of the other conditions~~
33 ~~established by law, unless such person's privilege to operate a motor~~
34 ~~vehicle on the highways of this state has been suspended or revoked prior~~
35 ~~thereto. If any person shall violate any of the conditions imposed under~~
36 ~~this paragraph, such person's driver's license or privilege to operate a~~
37 ~~motor vehicle on the highways of this state shall be revoked for a period of~~
38 ~~not less than 60 days nor more than one year by the judge of the court in~~
39 ~~which such person is convicted of violating such conditions.~~

40 ~~(4) As used in this subsection, "highway" and "street" mean the same~~
41 ~~as in K.S.A. 8-1424 and 8-1473, and amendments thereto.~~

42 ~~(p) In addition to any of the above, for any criminal offense that~~
43 ~~includes the domestic violence designation pursuant to K.S.A. 2020 Supp.~~

1 ~~22-4616, and amendments thereto, the court shall require the defendant to:~~
2 ~~(1) Undergo a domestic violence offender assessment conducted by a~~
3 ~~certified batterer intervention program; and (2) follow all~~
4 ~~recommendations made by such program, unless otherwise ordered by the~~
5 ~~court or the department of corrections. The court may order a domestic~~
6 ~~violence offender assessment and any other evaluation prior to sentencing~~
7 ~~if the assessment or evaluation would assist the court in determining an~~
8 ~~appropriate sentence. The entity completing the assessment or evaluation~~
9 ~~shall provide the assessment or evaluation and recommendations to the~~
10 ~~court and the court shall provide the domestic violence offender~~
11 ~~assessment to any entity responsible for supervising such defendant. A~~
12 ~~defendant ordered to undergo a domestic violence offender assessment~~
13 ~~shall be required to pay for the assessment and, unless otherwise ordered~~
14 ~~by the court or the department of corrections, for completion of all~~
15 ~~recommendations.~~

16 ~~(q) In imposing a fine, the court may authorize the payment thereof in~~
17 ~~installments. In lieu of payment of any fine imposed, the court may order~~
18 ~~that the person perform community service specified by the court. The~~
19 ~~person shall receive a credit on the fine imposed in an amount equal to \$5~~
20 ~~for each full hour spent by the person in the specified community service.~~
21 ~~The community service ordered by the court shall be required to be~~
22 ~~performed by the later of one year after the fine is imposed or one year~~
23 ~~after release from imprisonment or jail, or by an earlier date specified by~~
24 ~~the court. If by the required date the person performs an insufficient~~
25 ~~amount of community service to reduce to zero the portion of the fine~~
26 ~~required to be paid by the person, the remaining balance shall become due~~
27 ~~on that date. If conditional reduction of any fine is rescinded by the court~~
28 ~~for any reason, then pursuant to the court's order the person may be~~
29 ~~ordered to perform community service by one year after the date of such~~
30 ~~rescission or by an earlier date specified by the court. If by the required~~
31 ~~date the person performs an insufficient amount of community service to~~
32 ~~reduce to zero the portion of the fine required to be paid by the person, the~~
33 ~~remaining balance of the fine shall become due on that date. All credits for~~
34 ~~community service shall be subject to review and approval by the court.~~

35 ~~(r) In addition to any other penalty or disposition imposed by law, for~~
36 ~~any defendant sentenced to imprisonment pursuant to K.S.A. 21-4643,~~
37 ~~prior to its repeal, or K.S.A. 2020 Supp. 21-6627, and amendments~~
38 ~~thereto, for crimes committed on or after July 1, 2006, the court shall order~~
39 ~~that the defendant be electronically monitored upon release from~~
40 ~~imprisonment for the duration of the defendant's natural life and that the~~
41 ~~defendant shall reimburse the state for all or part of the cost of such~~
42 ~~monitoring as determined by the prisoner review board.~~

43 ~~(s) Whenever the court has released the defendant on probation~~

~~1 pursuant to subsection (a)(3), the defendant's supervising court services
2 officer, with the concurrence of the chief court services officer, may
3 impose the violation sanctions as provided in K.S.A. 22-3716(e)(1)(B),
4 and amendments thereto, without further order of the court, unless the
5 defendant, after being apprised of the right to a revocation hearing before
6 the court pursuant to K.S.A. 22-3716(b), and amendments thereto, refuses
7 to waive such right.~~

~~8 (t) Whenever the court has assigned the defendant to a community
9 correctional services program pursuant to subsection (a)(4), the defendant's
10 community corrections officer, with the concurrence of the community
11 corrections director, may impose the violation sanctions as provided in
12 K.S.A. 22-3716(e)(1)(B), and amendments thereto, without further order
13 of the court unless the defendant, after being apprised of the right to a
14 revocation hearing before the court pursuant to K.S.A. 22-3716(b), and
15 amendments thereto, refuses to waive such right.~~

~~16 (u) In addition to any of the above, the court shall authorize an
17 additional 18 days of confinement in a county jail to be reserved for
18 sanctions as set forth in K.S.A. 22-3716(b)(3)(B), (b)(4) or (c)(1)(B), and
19 amendments thereto.~~

~~20 (v) The amendments made to this section by this act section 1 of
21 chapter 9 of the 2020 Session Laws of Kansas are procedural in nature and
22 shall be construed and applied retroactively.~~

Sec. 13. K.S.A. 2021 Supp. 21-6604 is hereby amended to read as follows: 21-6604. (a) Whenever any person has been found guilty of a crime, the court may adjudge any of the following:

(1) Commit the defendant to the custody of the secretary of corrections if the current crime of conviction is a felony and the sentence presumes imprisonment, or the sentence imposed is a dispositional departure to imprisonment; or, if confinement is for a misdemeanor, to jail for the term provided by law;

(2) impose the fine applicable to the offense and may impose the provisions of subsection (q);

(3) release the defendant on probation if the current crime of conviction and criminal history fall within a presumptive nonprison category or through a departure for substantial and compelling reasons subject to such conditions as the court may deem appropriate. In felony cases—except for violations of K.S.A. 8-1567 or 8-2,144, and amendments thereto, the court may include confinement in a county jail not to exceed 60 days, which need not be served consecutively, as a condition of an original probation sentence;

(4) assign the defendant to a community correctional services program as provided in K.S.A. 75-5291, and amendments thereto, or through a departure for substantial and compelling reasons subject to

1 *such conditions as the court may deem appropriate, including orders*
2 *requiring full or partial restitution;*

3 (5) *assign the defendant to a conservation camp for a period not to*
4 *exceed six months as a condition of probation followed by a six-month*
5 *period of follow-up through adult intensive supervision by a community*
6 *correctional services program, if the offender successfully completes the*
7 *conservation camp program;*

8 (6) *assign the defendant to a house arrest program pursuant to*
9 *K.S.A. 2021 Supp. 21-6609, and amendments thereto;*

10 (7) *order the defendant to attend and satisfactorily complete an*
11 *alcohol or drug education or training program as provided by K.S.A.*
12 *2021 Supp. 21-6602(c), and amendments thereto;*

13 (8) *order the defendant to repay the amount of any reward paid by*
14 *any crime stoppers chapter, individual, corporation or public entity that*
15 *materially aided in the apprehension or conviction of the defendant;*
16 *repay the amount of any costs and expenses incurred by any law*
17 *enforcement agency in the apprehension of the defendant, if one of the*
18 *current crimes of conviction of the defendant includes escape from*
19 *custody or aggravated escape from custody, as defined in K.S.A. 2021*
20 *Supp. 21-5911, and amendments thereto; repay expenses incurred by a*
21 *fire district, fire department or fire company responding to a fire that*
22 *has been determined to be arson or aggravated arson as defined in*
23 *K.S.A. 2021 Supp. 21-5812, and amendments thereto, if the defendant is*
24 *convicted of such crime; repay the amount of any public funds utilized*
25 *by a law enforcement agency to purchase controlled substances from the*
26 *defendant during the investigation that leads to the defendant's*
27 *conviction; or repay the amount of any medical costs and expenses*
28 *incurred by any law enforcement agency or county. Such repayment of*
29 *the amount of any such costs and expenses incurred by a county, law*
30 *enforcement agency, fire district, fire department or fire company or any*
31 *public funds utilized by a law enforcement agency shall be deposited and*
32 *credited to the same fund from which the public funds were credited to*
33 *prior to use by the county, law enforcement agency, fire district, fire*
34 *department or fire company;*

35 (9) *order the defendant to pay the administrative fee authorized by*
36 *K.S.A. 22-4529, and amendments thereto, unless waived by the court;*

37 (10) *order the defendant to pay a domestic violence special program*
38 *fee authorized by K.S.A. 20-369, and amendments thereto;*

39 (11) *if the defendant is convicted of a misdemeanor or convicted of*
40 *a felony specified in K.S.A. 2021 Supp. 21-6804(i), and amendments*
41 *thereto, assign the defendant to a work release program, other than a*
42 *program at a correctional institution under the control of the secretary*
43 *of corrections as defined in K.S.A. 75-5202, and amendments thereto,*

1 *provided such work release program requires such defendant to return*
2 *to confinement at the end of each day in the work release program. On a*
3 *second or subsequent conviction of K.S.A. 8-1567, and amendments*
4 *thereto, an offender placed into a work release program shall serve the*
5 *total number of hours of confinement mandated by that section;*

6 *(12) order the defendant to pay the full amount of unpaid costs*
7 *associated with the conditions of release of the appearance bond under*
8 *K.S.A. 22-2802, and amendments thereto;*

9 *(13) impose any appropriate combination of paragraphs (1), (2), (3),*
10 *(4), (5), (6), (7), (8), (9), (10), (11) and through (12); or*

11 *(14) suspend imposition of sentence in misdemeanor cases.*

12 *(b) (1) In addition to or in lieu of any of the above, the court shall*
13 *order the defendant to pay restitution, which shall include, but not be*
14 *limited to, damage or loss caused by the defendant's crime. Restitution*
15 *shall be due immediately unless: (A) The court orders that the defendant*
16 *be given a specified time to pay or be allowed to pay in specified*
17 *installments; or (B) the court finds compelling circumstances that would*
18 *render restitution unworkable, either in whole or in part. In regard to a*
19 *violation of K.S.A. 2021 Supp. 21-6107, and amendments thereto, such*
20 *damage or loss shall include, but not be limited to, attorney fees and*
21 *costs incurred to repair the credit history or rating of the person whose*
22 *personal identification documents were obtained and used in violation of*
23 *such section, and to satisfy a debt, lien or other obligation incurred by*
24 *the person whose personal identification documents were obtained and*
25 *used in violation of such section. In regard to a violation of K.S.A. 2021*
26 *Supp. 21-5801, 21-5807, 21-5813 or 21-5818, and amendments thereto,*
27 *such damage or loss shall include the cost of repair or replacement of*
28 *the property that was damaged, the reasonable cost of any loss of*
29 *production, crops and livestock, reasonable labor costs of any kind,*
30 *reasonable material costs of any kind and any reasonable costs that are*
31 *attributed to equipment that is used to abate or repair the damage to the*
32 *property. If the court finds restitution unworkable, either in whole or in*
33 *part, the court shall state on the record in detail the reasons therefor.*

34 *(2) If the court orders restitution, the restitution shall be a*
35 *judgment against the defendant that may be collected by the court by*
36 *garnishment or other execution as on judgments in civil cases. If, after*
37 *60 days from the date restitution is ordered by the court, a defendant is*
38 *found to be in noncompliance with the restitution order, and the victim*
39 *to whom restitution is ordered paid has not initiated proceedings in*
40 *accordance with K.S.A. 60-4301 et seq., and amendments thereto, the*
41 *court shall assign an agent procured by the judicial administrator*
42 *pursuant to K.S.A. 20-169, and amendments thereto, to collect the*
43 *restitution on behalf of the victim. The chief judge of each judicial*

1 *district may assign such cases to an appropriate division of the court for*
2 *the conduct of civil collection proceedings.*

3 *(3) If a restitution order entered prior to the effective date of this act*
4 *does not give the defendant a specified time to pay or set payment in*
5 *specified installments, the defendant may file a motion with the court*
6 *prior to December 31, 2020, proposing payment of restitution in*
7 *specified installments. The court may recall the restitution order from*
8 *the agent assigned pursuant to K.S.A. 20-169, and amendments thereto,*
9 *until the court rules on such motion. If the court does not order payment*
10 *in specified installments or if the defendant does not file a motion prior*
11 *to December 31, 2020, the restitution shall be due immediately.*

12 *(c) In addition to or in lieu of any of the above, the court shall*
13 *order the defendant to submit to and complete an alcohol and drug*
14 *evaluation, and pay a fee therefor, when required by K.S.A. 2021 Supp.*
15 *21-6602(d), and amendments thereto.*

16 *(d) In addition to any of the above, the court shall order the*
17 *defendant to reimburse the county general fund for all or a part of the*
18 *expenditures by the county to provide counsel and other defense services*
19 *to the defendant. Any such reimbursement to the county shall be paid*
20 *only after any order for restitution has been paid in full. In determining*
21 *the amount and method of payment of such sum, the court shall take*
22 *account of the financial resources of the defendant and the nature of the*
23 *burden that payment of such sum will impose. A defendant who has been*
24 *required to pay such sum and who is not willfully in default in the*
25 *payment thereof may at any time petition the court that sentenced the*
26 *defendant to waive payment of such sum or any unpaid portion thereof.*
27 *If it appears to the satisfaction of the court that payment of the amount*
28 *due will impose manifest hardship on the defendant or the defendant's*
29 *immediate family, the court may waive payment of all or part of the*
30 *amount due or modify the method of payment.*

31 *(e) In releasing a defendant on probation, the court shall direct that*
32 *the defendant be under the supervision of a court services officer. If the*
33 *court commits the defendant to the custody of the secretary of*
34 *corrections or to jail, the court may specify in its order the amount of*
35 *restitution to be paid and the person to whom it shall be paid if*
36 *restitution is later ordered as a condition of parole, conditional release*
37 *or postrelease supervision.*

38 *(f) (1) When a new felony is committed while the offender is*
39 *incarcerated and serving a sentence for a felony, or while the offender is*
40 *on probation, assignment to a community correctional services program,*
41 *parole, conditional release or postrelease supervision for a felony, a new*
42 *sentence shall be imposed consecutively pursuant to the provisions of*
43 *K.S.A. 2021 Supp. 21-6606, and amendments thereto, and the court may*

1 *sentence the offender to imprisonment for the new conviction, even*
2 *when the new crime of conviction otherwise presumes a nonprison*
3 *sentence. In this event, imposition of a prison sentence for the new crime*
4 *does not constitute a departure.*

5 (2) *When a new felony is committed during a period of time when*
6 *the ~~defendant~~ offender would have been on probation, assignment to a*
7 *community correctional services program, parole, conditional release or*
8 *postrelease supervision for a felony had the ~~defendant~~ offender not been*
9 *granted release by the court pursuant to K.S.A. 2021 Supp. 21-6608(d),*
10 *and amendments thereto, or the prisoner review board pursuant to*
11 *K.S.A. 22-3717, and amendments thereto, the court may sentence the*
12 *offender to imprisonment for the new conviction, even when the new*
13 *crime of conviction otherwise presumes a nonprison sentence. In this*
14 *event, imposition of a prison sentence for the new crime does not*
15 *constitute a departure.*

16 (3) *When a new felony is committed while the offender is*
17 *incarcerated in a juvenile correctional facility pursuant to K.S.A. 38-*
18 *1671, prior to its repeal, or K.S.A. 38-2373, and amendments thereto, for*
19 *an offense, which if committed by an adult would constitute the*
20 *commission of a felony, upon conviction, the court shall sentence the*
21 *offender to imprisonment for the new conviction, even when the new*
22 *crime of conviction otherwise presumes a nonprison sentence. In this*
23 *event, imposition of a prison sentence for the new crime does not*
24 *constitute a departure. The conviction shall operate as a full and*
25 *complete discharge from any obligations, except for an order of*
26 *restitution, imposed on the offender arising from the offense for which*
27 *the offender was committed to a juvenile correctional facility.*

28 (4) *When a new felony is committed while the offender is on release*
29 *for a felony pursuant to the provisions of article 28 of chapter 22 of the*
30 *Kansas Statutes Annotated, and amendments thereto, or similar*
31 *provisions of the laws of another jurisdiction, a new sentence may be*
32 *imposed consecutively pursuant to the provisions of K.S.A. 2021 Supp.*
33 *21-6606, and amendments thereto, and the court may sentence the*
34 *offender to imprisonment for the new conviction, even when the new*
35 *crime of conviction otherwise presumes a nonprison sentence. In this*
36 *event, imposition of a prison sentence for the new crime does not*
37 *constitute a departure.*

38 (g) *Prior to imposing a dispositional departure for a defendant*
39 *whose offense is classified in the presumptive nonprison grid block of*
40 *either sentencing guideline grid, prior to sentencing a defendant to*
41 *incarceration whose offense is classified in grid blocks 5-H, 5-I or 6-G*
42 *of the sentencing guidelines grid for nondrug crimes, in grid blocks 3-E,*
43 *3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes*

1 committed prior to July 1, 2012, or in grid blocks 4-E, 4-F, 4-G, 4-H or
2 4-I of the sentencing guidelines grid for drug crimes committed on or
3 after July 1, 2012, prior to sentencing a defendant to incarceration
4 whose offense is classified in grid blocks 4-E or 4-F of the sentencing
5 guidelines grid for drug crimes committed prior to July 1, 2012, or in
6 grid blocks 5-C, 5-D, 5-E or 5-F of the sentencing guidelines grid for
7 drug crimes committed on or after July 1, 2012, and whose offense does
8 not meet the requirements of K.S.A. 2021 Supp. 21-6824, and
9 amendments thereto, prior to revocation of a nonprison sanction of a
10 defendant whose offense is classified in grid blocks 4-E or 4-F of the
11 sentencing guidelines grid for drug crimes committed prior to July 1,
12 2012, or in grid blocks 5-C, 5-D, 5-E or 5-F of the sentencing guidelines
13 grid for drug crimes committed on or after July 1, 2012, and whose
14 offense does not meet the requirements of K.S.A. 2021 Supp. 21-6824,
15 and amendments thereto, or prior to revocation of a nonprison sanction
16 of a defendant whose offense is classified in the presumptive nonprison
17 grid block of either sentencing guideline grid or grid blocks 5-H, 5-I or
18 6-G of the sentencing guidelines grid for nondrug crimes, in grid blocks
19 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug
20 crimes committed prior to July 1, 2012, or in grid blocks 4-E, 4-F, 4-G,
21 4-H or 4-I of the sentencing guidelines grid for drug crimes committed
22 on or after July 1, 2012, the court shall consider placement of the
23 defendant in the Labette correctional conservation camp, conservation
24 camps established by the secretary of corrections pursuant to K.S.A. 75-
25 52,127, and amendments thereto, or a community intermediate sanction
26 center. Pursuant to this subsection the defendant shall not be sentenced
27 to imprisonment if space is available in a conservation camp or
28 community intermediate sanction center and the defendant meets all of
29 the conservation camp's or community intermediate sanction center's
30 placement criteria unless the court states on the record the reasons for
31 not placing the defendant in a conservation camp or community
32 intermediate sanction center.

33 (h) In committing a defendant to the custody of the secretary of
34 corrections, the court shall fix a term of confinement within the limits
35 provided by law. In those cases where the law does not fix a term of
36 confinement for the crime for which the defendant was convicted, the
37 court shall fix the term of such confinement.

38 (i) In addition to any of the above, the court shall order the
39 defendant to reimburse the state general fund for all or part of the
40 expenditures by the state board of indigents' defense services to provide
41 counsel and other defense services to the defendant. In determining the
42 amount and method of payment of such sum, the court shall take
43 account of the financial resources of the defendant and the nature of the

1 *burden that payment of such sum will impose. A defendant who has been*
2 *required to pay such sum and who is not willfully in default in the*
3 *payment thereof may at any time petition the court that sentenced the*
4 *defendant to waive payment of such sum or any unpaid portion thereof.*
5 *If it appears to the satisfaction of the court that payment of the amount*
6 *due will impose manifest hardship on the defendant or the defendant's*
7 *immediate family, the court may waive payment of all or part of the*
8 *amount due or modify the method of payment. The amount of attorney*
9 *fees to be included in the court order for reimbursement shall be the*
10 *amount claimed by appointed counsel on the payment voucher for*
11 *indigents' defense services or the amount prescribed by the board of*
12 *indigents' defense services reimbursement tables as provided in K.S.A.*
13 *22-4522, and amendments thereto, whichever is less.*

14 *(j) This section shall not deprive the court of any authority*
15 *conferred by any other Kansas statute to decree a forfeiture of property,*
16 *suspend or cancel a license, remove a person from office or impose any*
17 *other civil penalty as a result of conviction of crime.*

18 *(k) An application for or acceptance of probation or assignment to*
19 *a community correctional services program shall not constitute an*
20 *acquiescence in the judgment for purpose of appeal, and any convicted*
21 *person may appeal from such conviction, as provided by law, without*
22 *regard to whether such person has applied for probation, suspended*
23 *sentence or assignment to a community correctional services program.*

24 *(l) The secretary of corrections is authorized to make direct*
25 *placement to the Labette correctional conservation camp or a*
26 *conservation camp established by the secretary pursuant to K.S.A. 75-*
27 *52,127, and amendments thereto, of an inmate sentenced to the*
28 *secretary's custody if the inmate:*

29 *(1) Has been sentenced to the secretary for a probation revocation,*
30 *as a departure from the presumptive nonimprisonment grid block of*
31 *either sentencing grid, for an offense that is classified in grid blocks 5-*
32 *H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes, in*
33 *grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid*
34 *for drug crimes committed prior to July 1, 2012, in grid blocks 4-E, 4-F,*
35 *4-G, 4-H or 4-I of the sentencing guidelines grid for drug crimes*
36 *committed on or after July 1, 2012, or for an offense that is classified in*
37 *grid blocks 4-E or 4-F of the sentencing guidelines grid for drug crimes*
38 *committed prior to July 1, 2012, or in grid blocks 5-C, 5-D, 5-E or 5-F of*
39 *the sentencing guidelines grid for drug crimes committed on or after*
40 *July 1, 2012, and such offense does not meet the requirements of K.S.A.*
41 *2021 Supp. 21-6824, and amendments thereto; and*

42 *(2) otherwise meets admission criteria of the camp.*

43 *If the inmate successfully completes a conservation camp program,*

1 *the secretary of corrections shall report such completion to the*
2 *sentencing court and the county or district attorney. The inmate shall*
3 *then be assigned by the court to six months of follow-up supervision*
4 *conducted by the appropriate community corrections services program.*
5 *The court may also order that supervision continue thereafter for the*
6 *length of time authorized by K.S.A. 2021 Supp. 21-6608, and*
7 *amendments thereto.*

8 *(m) When it is provided by law that a person shall be sentenced*
9 *pursuant to K.S.A. 1993 Supp. 21-4628, prior to its repeal, the provisions*
10 *of this section shall not apply.*

11 *(n) (1) Except as provided by K.S.A. 2021 Supp. 21-6630 and 21-*
12 *6805(f), and amendments thereto, in addition to any of the above, for*
13 *felony violations of K.S.A. 2021 Supp. 21-5706, and amendments*
14 *thereto, the court shall require the defendant who meets the*
15 *requirements established in K.S.A. 2021 Supp. 21-6824, and*
16 *amendments thereto, to participate in a certified drug abuse treatment*
17 *program, as provided in K.S.A. 75-52,144, and amendments thereto,*
18 *including, but not limited to, an approved after-care plan. The amount*
19 *of time spent participating in such program shall not be credited as*
20 *service on the underlying prison sentence.*

21 *(2) If the defendant fails to participate in or has a pattern of*
22 *intentional conduct that demonstrates the defendant's refusal to comply*
23 *with or participate in the treatment program, as established by judicial*
24 *finding, the defendant shall be subject to sanction or revocation*
25 *pursuant to the provisions of K.S.A. 22-3716, and amendments thereto.*
26 *If the defendant's probation is revoked, the defendant shall serve the*
27 *underlying prison sentence as established in K.S.A. 2021 Supp. 21-6805,*
28 *and amendments thereto.*

29 *(A) Except as provided in subsection (n)(2)(B), for those offenders*
30 *who are convicted on or after July 1, 2003, but prior to July 1, 2013,*
31 *upon completion of the underlying prison sentence, the offender shall*
32 *not be subject to a period of postrelease supervision.*

33 *(B) Offenders whose crime of conviction was committed on or after*
34 *July 1, 2013, and whose probation is revoked pursuant to K.S.A. 22-*
35 *3716(c), and amendments thereto, or whose underlying prison term*
36 *expires while serving a sanction pursuant to K.S.A. 22-3716(c)(1), and*
37 *amendments thereto, shall serve a period of postrelease supervision*
38 *upon the completion of the underlying prison term.*

39 *(o) (1) Except as provided in paragraph (3), in addition to any other*
40 *penalty or disposition imposed by law, upon a conviction for unlawful*
41 *possession of a controlled substance or controlled substance analog in*
42 *violation of K.S.A. 2021 Supp. 21-5706, and amendments thereto, in*
43 *which the trier of fact makes a finding that the unlawful possession*

1 *occurred while transporting the controlled substance or controlled*
2 *substance analog in any vehicle upon a highway or street, the offender's*
3 *driver's license or privilege to operate a motor vehicle on the streets and*
4 *highways of this state shall be suspended for one year.*

5 *(2) Upon suspension of a license pursuant to this subsection, the*
6 *court shall require the person to surrender the license to the court,*
7 *which shall transmit the license to the division of motor vehicles of the*
8 *department of revenue, to be retained until the period of suspension*
9 *expires. At that time, the licensee may apply to the division for return of*
10 *the license. If the license has expired, the person may apply for a new*
11 *license, which shall be issued promptly upon payment of the proper fee*
12 *and satisfaction of other conditions established by law for obtaining a*
13 *license unless another suspension or revocation of the person's privilege*
14 *to operate a motor vehicle is in effect.*

15 *(3) (A) In lieu of suspending the driver's license or privilege to*
16 *operate a motor vehicle on the highways of this state of any person as*
17 *provided in paragraph (1), the judge of the court in which such person*
18 *was convicted may enter an order that places conditions on such*
19 *person's privilege of operating a motor vehicle on the highways of this*
20 *state, a certified copy of which such person shall be required to carry*
21 *any time such person is operating a motor vehicle on the highways of*
22 *this state. Any such order shall prescribe the duration of the conditions*
23 *imposed, which in no event shall be for a period of more than one year.*

24 *(B) Upon entering an order restricting a person's license*
25 *hereunder, the judge shall require such person to surrender such*
26 *person's driver's license to the judge who shall cause it to be transmitted*
27 *to the division of vehicles, together with a copy of the order. Upon*
28 *receipt thereof, the division of vehicles shall issue without charge a*
29 *driver's license, which shall indicate on its face that conditions have*
30 *been imposed on such person's privilege of operating a motor vehicle*
31 *and that a certified copy of the order imposing such conditions is*
32 *required to be carried by the person for whom the license was issued any*
33 *time such person is operating a motor vehicle on the highways of this*
34 *state. If the person convicted is a nonresident, the judge shall cause a*
35 *copy of the order to be transmitted to the division and the division shall*
36 *forward a copy of it to the motor vehicle administrator of such person's*
37 *state of residence. Such judge shall furnish to any person whose driver's*
38 *license has had conditions imposed on it under this paragraph a copy of*
39 *the order, which shall be recognized as a valid Kansas driver's license*
40 *until such time as the division shall issue the restricted license provided*
41 *for in this paragraph.*

42 *(C) Upon expiration of the period of time for which conditions are*
43 *imposed pursuant to this subsection, the licensee may apply to the*

1 *division for the return of the license previously surrendered by such*
2 *licensee. In the event such license has expired, such person may apply to*
3 *the division for a new license, which shall be issued immediately by the*
4 *division upon payment of the proper fee and satisfaction of the other*
5 *conditions established by law, unless such person's privilege to operate a*
6 *motor vehicle on the highways of this state has been suspended or*
7 *revoked prior thereto. If any person shall violate any of the conditions*
8 *imposed under this paragraph, such person's driver's license or privilege*
9 *to operate a motor vehicle on the highways of this state shall be revoked*
10 *for a period of not less than 60 days nor more than one year by the judge*
11 *of the court in which such person is convicted of violating such*
12 *conditions.*

13 *(4) As used in this subsection, "highway" and "street" mean the*
14 *same as in K.S.A. 8-1424 and 8-1473, and amendments thereto.*

15 *(p) In addition to any of the above, for any criminal offense that*
16 *includes the domestic violence designation pursuant to K.S.A. 2021*
17 *Supp. 22-4616, and amendments thereto, the court shall require the*
18 *defendant to: (1) Undergo a domestic violence offender assessment*
19 *conducted by a certified batterer intervention program; and (2) follow all*
20 *recommendations made by such program, unless otherwise ordered by*
21 *the court or the department of corrections. The court may order a*
22 *domestic violence offender assessment and any other evaluation prior to*
23 *sentencing if the assessment or evaluation would assist the court in*
24 *determining an appropriate sentence. The entity completing the*
25 *assessment or evaluation shall provide the assessment or evaluation and*
26 *recommendations to the court and the court shall provide the domestic*
27 *violence offender assessment to any entity responsible for supervising*
28 *such defendant. A defendant ordered to undergo a domestic violence*
29 *offender assessment shall be required to pay for the assessment and,*
30 *unless otherwise ordered by the court or the department of corrections,*
31 *for completion of all recommendations.*

32 *(q) In imposing a fine, the court may authorize the payment thereof*
33 *in installments. In lieu of payment of any fine imposed, the court may*
34 *order that the person perform community service specified by the court.*
35 *The person shall receive a credit on the fine imposed in an amount*
36 *equal to \$5 for each full hour spent by the person in the specified*
37 *community service. The community service ordered by the court shall be*
38 *required to be performed by the later of one year after the fine is*
39 *imposed or one year after release from imprisonment or jail, or by an*
40 *earlier date specified by the court. If by the required date the person*
41 *performs an insufficient amount of community service to reduce to zero*
42 *the portion of the fine required to be paid by the person, the remaining*
43 *balance shall become due on that date. If conditional reduction of any*

1 *fine is rescinded by the court for any reason, then pursuant to the*
2 *court's order the person may be ordered to perform community service*
3 *by one year after the date of such rescission or by an earlier date*
4 *specified by the court. If by the required date the person performs an*
5 *insufficient amount of community service to reduce to zero the portion*
6 *of the fine required to be paid by the person, the remaining balance of*
7 *the fine shall become due on that date. All credits for community service*
8 *shall be subject to review and approval by the court.*

9 *(r) In addition to any other penalty or disposition imposed by law,*
10 *for any defendant sentenced to imprisonment pursuant to K.S.A. 21-*
11 *4643, prior to its repeal, or K.S.A. 2021 Supp. 21-6627, and amendments*
12 *thereto, for crimes committed on or after July 1, 2006, the court shall*
13 *order that the defendant be electronically monitored upon release from*
14 *imprisonment for the duration of the defendant's natural life and that*
15 *the defendant shall reimburse the state for all or part of the cost of such*
16 *monitoring as determined by the prisoner review board.*

17 *(s) Whenever the court has released the defendant on probation*
18 *pursuant to subsection (a)(3), the defendant's supervising court services*
19 *officer, with the concurrence of the chief court services officer, may*
20 *impose the violation sanctions as provided in K.S.A. 22-3716(c)(1)(B),*
21 *and amendments thereto, without further order of the court, unless the*
22 *defendant, after being apprised of the right to a revocation hearing*
23 *before the court pursuant to K.S.A. 22-3716(b), and amendments*
24 *thereto, refuses to waive such right.*

25 *(t) Whenever the court has assigned the defendant to a community*
26 *correctional services program pursuant to subsection (a)(4), the*
27 *defendant's community corrections officer, with the concurrence of the*
28 *community corrections director, may impose the violation sanctions as*
29 *provided in K.S.A. 22-3716(c)(1)(B), and amendments thereto, without*
30 *further order of the court unless the defendant, after being apprised of*
31 *the right to a revocation hearing before the court pursuant to K.S.A. 22-*
32 *3716(b), and amendments thereto, refuses to waive such right.*

33 *(u) In addition to any of the above, the court shall authorize an*
34 *additional 18 days of confinement in a county jail to be reserved for*
35 *sanctions as set forth in K.S.A. 22-3716(b)(3)(B), (b)(4) or (c)(1)(B), and*
36 *amendments thereto.*

37 *(v) The amendments made to this section by ~~this act~~ section 1 of*
38 *chapter 9 of the 2020 Session Laws of Kansas are procedural in nature*
39 *and shall be construed and applied retroactively.*

40 *Sec. ~~11~~ 14. K.S.A. ~~2020~~ 2021 Supp. 21-6804 is hereby amended to*
41 *read as follows: 21-6804. (a) The provisions of this section shall be*
42 *applicable to the sentencing guidelines grid for nondrug crimes. The*
43 *following sentencing guidelines grid shall be applicable to nondrug*

1 *felony crimes:*

1

SENTENCING RANGE - NONDRUG OFFENSES

Category	A	B	C	D	E	F	G	H	I
Severity Level	3+ Person Felonies	2 Person Felonies	1 Person & 1 Misdemeanor Felonies	1 Person Felony	3+ Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2+ Misdemeanors	1 Misdemeanor No Record
I	653 620 592	618 586 554	285 272 258	267 253 240	246 234 221	226 214 203	203 195 184	186 176 166	165 155 147
II	493 467 442	460 438 416	216 205 194	200 190 181	184 174 165	168 160 152	154 146 138	138 131 123	123 117 109
III	247 233 221	228 216 206	107 102 96	100 94 89	92 88 82	83 79 74	77 72 68	71 66 61	61 59 55
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 34 31	34 32 31
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 22	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	16 15 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	7 6 5

LEGEND
Presumptive Probation
Presumptive No Probation
Presumptive Imprisonment

1 ***(b) Sentences expressed in the sentencing guidelines grid for***
2 ***nondrug crimes represent months of imprisonment.***

3 ***(c) The sentencing guidelines grid is a two-dimensional crime***
4 ***severity and criminal history classification tool. The grid's vertical axis***
5 ***is the crime severity scale which classifies current crimes of conviction.***
6 ***The grid's horizontal axis is the criminal history scale which classifies***
7 ***criminal histories.***

8 ***(d) The sentencing guidelines grid for nondrug crimes as provided***
9 ***in this section defines presumptive punishments for felony convictions,***
10 ***subject to the sentencing court's discretion to enter a departure sentence.***
11 ***The appropriate punishment for a felony conviction should depend on***
12 ***the severity of the crime of conviction when compared to all other crimes***
13 ***and the offender's criminal history.***

14 ***(e) (1) The sentencing court has discretion to sentence at any place***
15 ***within the sentencing range. In the usual case it is recommended that***
16 ***the sentencing judge select the center of the range and reserve the upper***
17 ***and lower limits for aggravating and mitigating factors insufficient to***
18 ***warrant a departure.***

19 ***(2) In presumptive imprisonment cases, the sentencing court shall***
20 ***pronounce the complete sentence which shall include the:***

21 ***(A) Prison sentence;***

22 ***(B) maximum potential reduction to such sentence as a result of***
23 ***good time; and***

24 ***(C) period of postrelease supervision at the sentencing hearing.***
25 ***Failure to pronounce the period of postrelease supervision shall not***
26 ***negate the existence of such period of postrelease supervision.***

27 ***(3) In presumptive nonprison cases, the sentencing court shall***
28 ***pronounce the:***

29 ***(A) Prison sentence; and***

30 ***(B) duration of the nonprison sanction at the sentencing hearing.***

31 ***(f) Each grid block states the presumptive sentencing range for an***
32 ***offender whose crime of conviction and criminal history place such***
33 ***offender in that grid block. If an offense is classified in a grid block***
34 ***below the dispositional line, the presumptive disposition shall be***
35 ***nonimprisonment. If an offense is classified in a grid block above the***
36 ***dispositional line, the presumptive disposition shall be imprisonment. If***
37 ***an offense is classified in grid blocks 5-H, 5-I or 6-G, the court may***
38 ***impose an optional nonprison sentence as provided in subsection (q).***

39 ***(g) The sentence for a violation of K.S.A. 21-3415, prior to its***
40 ***repeal, aggravated battery against a law enforcement officer committed***
41 ***prior to July 1, 2006, or a violation of K.S.A. ~~2020~~ 2021 Supp. 21-***
42 ***5412(d), and amendments thereto, aggravated assault against a law***
43 ***enforcement officer, which places the defendant's sentence in grid block***

1 *6-H or 6-I shall be presumed imprisonment. The court may impose an*
2 *optional nonprison sentence as provided in subsection (q).*

3 *(h) When a firearm is used to commit any person felony, the*
4 *offender's sentence shall be presumed imprisonment. The court may*
5 *impose an optional nonprison sentence as provided in subsection (q).*

6 *(i) (1) The sentence for the violation of the felony provision of*
7 *K.S.A. 8-2,144 and 8-1567 and K.S.A. ~~2020~~ 2021 Supp. 21-5414(b)(3),*
8 *21-5823(b)(3) and (b)(4), 21-6412 and 21-6416, and amendments*
9 *thereto, shall be as provided by the specific mandatory sentencing*
10 *requirements of that section and shall not be subject to the provisions of*
11 *this section or K.S.A. ~~2020~~ 2021 Supp. 21-6807, and amendments*
12 *thereto.*

13 *(2) If because of the offender's criminal history classification the*
14 *offender is subject to presumptive imprisonment or if the judge departs*
15 *from a presumptive probation sentence and the offender is subject to*
16 *imprisonment, the provisions of this section and K.S.A. ~~2020~~ 2021 Supp.*
17 *21-6807, and amendments thereto, shall apply and the offender shall not*
18 *be subject to the mandatory sentence as provided in K.S.A. ~~2020~~ 2021*
19 *Supp. 21-5823, and amendments thereto.*

20 *(3) Notwithstanding the provisions of any other section, the term of*
21 *imprisonment imposed for the violation of the felony provision of K.S.A.*
22 *8-2,144, and 8-1567 and K.S.A. ~~2020~~ 2021 Supp. 21-5414(b)(3), 21-*
23 *5823(b)(3) and (b)(4), 21-6412 and 21-6416, and amendments thereto,*
24 *shall not be served in a state facility in the custody of the secretary of*
25 *corrections; except that the term of imprisonment for felony violations of*
26 *K.S.A. 8-2,144 or 8-1567, and amendments thereto, may be served in a*
27 *state correctional facility designated by the secretary of corrections if the*
28 *secretary determines that substance abuse treatment resources and facility*
29 *capacity is available. The secretary's determination regarding the*
30 *availability of treatment resources and facility capacity shall not be subject*
31 *to review. Prior to imposing any sentence pursuant to this subsection,*
32 *the court may consider assigning the defendant to a house arrest*
33 *program pursuant to K.S.A. ~~2020~~ 2021 Supp. 21-6609, and amendments*
34 *thereto.*

35 *(j) (1) The sentence for any persistent sex offender whose current*
36 *convicted crime carries a presumptive term of imprisonment shall be*
37 *double the maximum duration of the presumptive imprisonment term.*
38 *The sentence for any persistent sex offender whose current conviction*
39 *carries a presumptive nonprison term shall be presumed imprisonment*
40 *and shall be double the maximum duration of the presumptive*
41 *imprisonment term.*

42 *(2) Except as otherwise provided in this subsection, as used in this*
43 *subsection, "persistent sex offender" means a person who:*

1 (A) (i) *Has been convicted in this state of a sexually violent crime,*
2 *as defined in K.S.A. 22-3717, and amendments thereto; and*

3 (ii) *at the time of the conviction under subsection (j)(2)(A)(i) has at*
4 *least one conviction for a sexually violent crime, as defined in K.S.A. 22-*
5 *3717, and amendments thereto, in this state or comparable felony under*
6 *the laws of another state, the federal government or a foreign*
7 *government; or*

8 (B) (i) *has been convicted of rape, as defined in K.S.A. 21-3502,*
9 *prior to its repeal, or K.S.A. ~~2020~~ 2021 Supp. 21-5503, and amendments*
10 *thereto; and*

11 (ii) *at the time of the conviction under subsection (j)(2)(B)(i) has at*
12 *least one conviction for rape in this state or comparable felony under the*
13 *laws of another state, the federal government or a foreign government.*

14 (3) *Except as provided in subsection (j)(2)(B), the provisions of this*
15 *subsection shall not apply to any person whose current convicted crime*
16 *is a severity level 1 or 2 felony.*

17 (k) (1) *If it is shown at sentencing that the offender committed any*
18 *felony violation for the benefit of, at the direction of, or in association*
19 *with any criminal street gang, with the specific intent to promote, further*
20 *or assist in any criminal conduct by gang members, the offender's*
21 *sentence shall be presumed imprisonment. The court may impose an*
22 *optional nonprison sentence as provided in subsection (q).*

23 (2) *As used in this subsection, "criminal street gang" means any*
24 *organization, association or group of three or more persons, whether*
25 *formal or informal, having as one of its primary activities:*

26 (A) *The commission of one or more person felonies; or*

27 (B) *the commission of felony violations of article 57 of chapter 21*
28 *of the Kansas Statutes Annotated, and amendments thereto, K.S.A. 2010*
29 *Supp. 21-36a01 through 21-36a17, prior to their transfer, or any felony*
30 *violation of any provision of the uniform controlled substances act prior*
31 *to July 1, 2009; and*

32 (C) *its members have a common name or common identifying sign*
33 *or symbol; and*

34 (D) *its members, individually or collectively, engage in or have*
35 *engaged in the commission, attempted commission, conspiracy to*
36 *commit or solicitation of two or more person felonies or felony violations*
37 *of article 57 of chapter 21 of the Kansas Statutes Annotated, and*
38 *amendments thereto, K.S.A. 2010 Supp. 21-36a01 through 21-36a17,*
39 *prior to their transfer, any felony violation of any provision of the*
40 *uniform controlled substances act prior to July 1, 2009, or any*
41 *substantially similar offense from another jurisdiction.*

42 (l) *Except as provided in subsection (o), the sentence for a violation*
43 *of K.S.A. ~~2020~~ 2021 Supp. 21-5807(a)(1), and amendments thereto, or*

1 *any attempt or conspiracy, as defined in K.S.A. ~~2020~~ 2021 Supp. 21-5301*
2 *and 21-5302, and amendments thereto, to commit such offense, when*
3 *such person being sentenced has a prior conviction for a violation of*
4 *K.S.A. 21-3715(a) or (b), prior to its repeal, 21-3716, prior to its repeal,*
5 *K.S.A. ~~2020~~ 2021 Supp. 21-5807(a)(1) or (a)(2) or 21-5807(b), and*
6 *amendments thereto, or any attempt or conspiracy to commit such*
7 *offense, shall be presumptive imprisonment.*

8 *(m) The sentence for a violation of K.S.A. 22-4903 or K.S.A. ~~2020~~*
9 *2021 Supp. 21-5913(a)(2), and amendments thereto, shall be*
10 *presumptive imprisonment. If an offense under such sections is*
11 *classified in grid blocks 5-E, 5-F, 5-G, 5-H or 5-I, the court may impose*
12 *an optional nonprison sentence as provided in subsection (q).*

13 *(n) The sentence for a violation of criminal deprivation of property,*
14 *as defined in K.S.A. ~~2020~~ 2021 Supp. 21-5803, and amendments thereto,*
15 *when such property is a motor vehicle, and when such person being*
16 *sentenced has any combination of two or more prior convictions of*
17 *K.S.A. 21-3705(b), prior to its repeal, or of criminal deprivation of*
18 *property, as defined in K.S.A. ~~2020~~ 2021 Supp. 21-5803, and*
19 *amendments thereto, when such property is a motor vehicle, shall be*
20 *presumptive imprisonment. Such sentence shall not be considered a*
21 *departure and shall not be subject to appeal.*

22 *(o) The sentence for a felony violation of theft of property as*
23 *defined in K.S.A. ~~2020~~ 2021 Supp. 21-5801, and amendments thereto, or*
24 *burglary as defined in K.S.A. ~~2020~~ 2021 Supp. 21-5807(a), and*
25 *amendments thereto, when such person being sentenced has no prior*
26 *convictions for a violation of K.S.A. 21-3701 or 21-3715, prior to their*
27 *repeal, or theft of property as defined in K.S.A. ~~2020~~ 2021 Supp. 21-*
28 *5801, and amendments thereto, or burglary as defined in K.S.A. ~~2020~~*
29 *2021 Supp. 21-5807(a), and amendments thereto; or the sentence for a*
30 *felony violation of theft of property as defined in K.S.A. ~~2020~~ 2021 Supp.*
31 *21-5801, and amendments thereto, when such person being sentenced*
32 *has one or two prior felony convictions for a violation of K.S.A. 21-3701,*
33 *21-3715 or 21-3716, prior to their repeal, or theft of property as defined*
34 *in K.S.A. ~~2020~~ 2021 Supp. 21-5801, and amendments thereto, or*
35 *burglary or aggravated burglary as defined in K.S.A. ~~2020~~ 2021 Supp.*
36 *21-5807, and amendments thereto; or the sentence for a felony violation*
37 *of burglary as defined in K.S.A. ~~2020~~ 2021 Supp. 21-5807(a), and*
38 *amendments thereto, when such person being sentenced has one prior*
39 *felony conviction for a violation of K.S.A. 21-3701, 21-3715 or 21-3716,*
40 *prior to their repeal, or theft of property as defined in K.S.A. ~~2020~~ 2021*
41 *Supp. 21-5801, and amendments thereto, or burglary or aggravated*
42 *burglary as defined in K.S.A. ~~2020~~ 2021 Supp. 21-5807, and*
43 *amendments thereto, shall be the sentence as provided by this section,*

1 *except that the court may order an optional nonprison sentence for a*
2 *defendant to participate in a drug treatment program, including, but not*
3 *limited to, an approved—after-care aftercare plan, if the court makes the*
4 *following findings on the record:*

5 *(1) Substance abuse was an underlying factor in the commission of*
6 *the crime;*

7 *(2) substance abuse treatment in the community is likely to be more*
8 *effective than a prison term in reducing the risk of offender recidivism;*
9 *and*

10 *(3) participation in an intensive substance abuse treatment program*
11 *will serve community safety interests.*

12 *A defendant sentenced to an optional nonprison sentence under this*
13 *subsection shall be supervised by community correctional services. The*
14 *provisions of K.S.A.—2020 2021 Supp. 21-6824(f)(1), and amendments*
15 *thereto, shall apply to a defendant sentenced under this subsection. The*
16 *sentence under this subsection shall not be considered a departure and*
17 *shall not be subject to appeal.*

18 *(p) The sentence for a felony violation of theft of property as*
19 *defined in K.S.A.—2020 2021 Supp. 21-5801, and amendments thereto,*
20 *when such person being sentenced has any combination of three or*
21 *more prior felony convictions for violations of K.S.A. 21-3701, 21-3715*
22 *or 21-3716, prior to their repeal, or theft of property as defined in K.S.A.*
23 *2020 2021 Supp. 21-5801, and amendments thereto, or burglary or*
24 *aggravated burglary as defined in K.S.A.—2020 2021 Supp. 21-5807, and*
25 *amendments thereto; or the sentence for a violation of burglary as*
26 *defined in K.S.A.—2020 2021 Supp. 21-5807(a), and amendments thereto,*
27 *when such person being sentenced has any combination of two or more*
28 *prior convictions for violations of K.S.A. 21-3701, 21-3715 and 21-3716,*
29 *prior to their repeal, or theft of property as defined in K.S.A.—2020 2021*
30 *Supp. 21-5801, and amendments thereto, or burglary or aggravated*
31 *burglary as defined in K.S.A.—2020 2021 Supp. 21-5807, and*
32 *amendments thereto, shall be presumed imprisonment and the defendant*
33 *shall be sentenced to prison as provided by this section, except that the*
34 *court may recommend that an offender be placed in the custody of the*
35 *secretary of corrections, in a facility designated by the secretary to*
36 *participate in an intensive substance abuse treatment program, upon*
37 *making the following findings on the record:*

38 *(1) Substance abuse was an underlying factor in the commission of*
39 *the crime;*

40 *(2) substance abuse treatment with a possibility of an early release*
41 *from imprisonment is likely to be more effective than a prison term in*
42 *reducing the risk of offender recidivism; and*

43 *(3) participation in an intensive substance abuse treatment program*

1 *with the possibility of an early release from imprisonment will serve*
2 *community safety interests by promoting offender reformation.*

3 *The intensive substance abuse treatment program shall be*
4 *determined by the secretary of corrections, but shall be for a period of at*
5 *least four months. Upon the successful completion of such intensive*
6 *treatment program, the offender shall be returned to the court and the*
7 *court may modify the sentence by directing that a less severe penalty be*
8 *imposed in lieu of that originally adjudged within statutory limits. If the*
9 *offender's term of imprisonment expires, the offender shall be placed*
10 *under the applicable period of postrelease supervision. The sentence*
11 *under this subsection shall not be considered a departure and shall not*
12 *be subject to appeal.*

13 *(g) As used in this section, an "optional nonprison sentence" is a*
14 *sentence which the court may impose, in lieu of the presumptive*
15 *sentence, upon making the following findings on the record:*

16 *(1) An appropriate treatment program exists which is likely to be*
17 *more effective than the presumptive prison term in reducing the risk of*
18 *offender recidivism; and*

19 *(2) the recommended treatment program is available and the*
20 *offender can be admitted to such program within a reasonable period of*
21 *time; or*

22 *(3) the nonprison sanction will serve community safety interests by*
23 *promoting offender reformation.*

24 *Any decision made by the court regarding the imposition of an*
25 *optional nonprison sentence shall not be considered a departure and*
26 *shall not be subject to appeal.*

27 *(r) The sentence for a violation of K.S.A. ~~2020~~ 2021 Supp. 21-*
28 *5413(c)(2), and amendments thereto, shall be presumptive imprisonment*
29 *and shall be served consecutively to any other term or terms of*
30 *imprisonment imposed. Such sentence shall not be considered a*
31 *departure and shall not be subject to appeal.*

32 *(s) The sentence for a violation of K.S.A. ~~2020~~ 2021 Supp. 21-5512,*
33 *and amendments thereto, shall be presumptive imprisonment. Such*
34 *sentence shall not be considered a departure and shall not be subject to*
35 *appeal.*

36 *(t) (1) If the trier of fact makes a finding beyond a reasonable doubt*
37 *that an offender wore or used ballistic resistant material in the*
38 *commission of, or attempt to commit, or flight from any felony, in*
39 *addition to the sentence imposed pursuant to the Kansas sentencing*
40 *guidelines act, the offender shall be sentenced to an additional 30*
41 *months' imprisonment.*

42 *(2) The sentence imposed pursuant to subsection (t)(1) shall be*
43 *presumptive imprisonment and shall be served consecutively to any*

1 *other term or terms of imprisonment imposed. Such sentence shall not*
2 *be considered a departure and shall not be subject to appeal.*

3 (3) *As used in this subsection, "ballistic resistant material" means:*
4 *(A) Any commercially produced material designed with the purpose of*
5 *providing ballistic and trauma protection, including, but not limited to,*
6 *bulletproof vests and kevlar vests; and (B) any homemade or fabricated*
7 *substance or item designed with the purpose of providing ballistic and*
8 *trauma protection.*

9 (u) *The sentence for a violation of K.S.A. ~~2020~~ 2021 Supp. 21-6107,*
10 *and amendments thereto, or any attempt or conspiracy, as defined in*
11 *K.S.A. ~~2020~~ 2021 Supp. 21-5301 and 21-5302, and amendments thereto,*
12 *to commit such offense, when such person being sentenced has a prior*
13 *conviction for a violation of K.S.A. 21-4018, prior to its repeal, or K.S.A.*
14 *~~2020~~ 2021 Supp. 21-6107, and amendments thereto, or any attempt or*
15 *conspiracy to commit such offense, shall be presumptive imprisonment.*
16 *Such sentence shall not be considered a departure and shall not be*
17 *subject to appeal.*

18 (v) *The sentence for a third or subsequent violation of K.S.A. 8-*
19 *1568, and amendments thereto, shall be presumptive imprisonment and*
20 *shall be served consecutively to any other term or terms of imprisonment*
21 *imposed. Such sentence shall not be considered a departure and shall*
22 *not be subject to appeal.*

23 (w) *The sentence for aggravated criminal damage to property as*
24 *defined in K.S.A. ~~2020~~ 2021 Supp. 21-5813(b), and amendments thereto,*
25 *when such person being sentenced has a prior conviction for any*
26 *nonperson felony shall be presumptive imprisonment. Such sentence*
27 *shall not be considered a departure and shall not be subject to appeal.*

28 (x) *The sentence for a violation of K.S.A. ~~2020~~ 2021 Supp. 21-*
29 *5807(a)(1), and amendments thereto, shall be presumptive imprisonment*
30 *if the offense under such paragraph is classified in grid blocks 7-C, 7-D*
31 *or 7-E. Such sentence shall not be considered a departure and shall not*
32 *be subject to appeal.*

33 (y) (1) *Except as provided in subsection (y)(3), if the trier of fact*
34 *makes a finding beyond a reasonable doubt that an offender committed*
35 *a nondrug felony offense, or any attempt or conspiracy, as defined in*
36 *K.S.A. ~~2020~~ 2021 Supp. 21-5301 and 21-5302, and amendments thereto,*
37 *to commit a nondrug felony offense, against a law enforcement officer,*
38 *as defined in K.S.A. ~~2020~~ 2021 Supp. 21-5111(p)(1) and (3), and*
39 *amendments thereto, while such officer was engaged in the performance*
40 *of such officer's duty, or in whole or in any part because of such*
41 *officer's status as a law enforcement officer, the sentence for such*
42 *offense shall be:*

43 (A) *If such offense is classified in severity level 2 through 10, one*

1 *severity level above the appropriate level for such offense; and*

2 *(B) (i) if such offense is classified in severity level 1, except as*
3 *otherwise provided in subsection (y)(1)(B)(ii), imprisonment for life, and*
4 *such offender shall not be eligible for probation or suspension,*
5 *modification or reduction of sentence. In addition, such offender shall*
6 *not be eligible for parole prior to serving 25 years' imprisonment, and*
7 *such 25 years' imprisonment shall not be reduced by the application of*
8 *good time credits. No other sentence shall be permitted.*

9 *(ii) The provisions of subsection (y)(1)(B)(i) requiring the court to*
10 *impose a mandatory minimum term of imprisonment of 25 years shall*
11 *not apply if the court finds the offender, because of the offender's*
12 *criminal history classification, is subject to presumptive imprisonment*
13 *and the sentencing range exceeds 300 months. In such case, the*
14 *offender is required to serve a mandatory minimum term equal to the*
15 *sentence established pursuant to the sentencing range.*

16 *(2) The sentence imposed pursuant to subsection (y)(1) shall not be*
17 *considered a departure and shall not be subject to appeal.*

18 *(3) The provisions of this subsection shall not apply to an offense*
19 *described in subsection (y)(1) if the factual aspect concerning a law*
20 *enforcement officer is a statutory element of such offense.*

21 ~~Sec. 10-12. 15.~~ K.S.A. ~~2020~~ 2021 Supp. 22-2908 is hereby amended
22 to read as follows: 22-2908. (a) In determining whether diversion of a
23 defendant is in the interests of justice and of benefit to the defendant and
24 the community, the county or district attorney shall consider at least the
25 following factors among all factors considered:

26 (1) The nature of the crime charged and the circumstances
27 surrounding it;

28 (2) any special characteristics or circumstances of the defendant;

29 (3) whether the defendant is a first-time offender and if the defendant
30 has previously participated in diversion, according to the certification of
31 the Kansas bureau of investigation or the division of vehicles of the
32 department of revenue;

33 (4) whether there is a probability that the defendant will cooperate
34 with and benefit from diversion;

35 (5) whether the available diversion program is appropriate to the
36 needs of the defendant;

37 (6) whether there is a probability that the defendant committed such
38 crime as a result of an injury, including major depressive disorder,
39 polytrauma, post-traumatic stress disorder or traumatic brain injury,
40 connected to service in a combat zone, as defined in section 112 of the
41 federal internal revenue code of 1986, in the armed forces of the United
42 States of America;

43 (7) if subsection (a)(6) applies to the defendant, whether there is a

1 probability that the defendant will cooperate with and benefit from
2 inpatient or outpatient treatment from any treatment facility or program
3 operated by the United States department of defense, the United States
4 department of veterans affairs or the Kansas national guard with the
5 consent of the defendant, as a condition of diversion;

6 (8) the impact of the diversion of the defendant upon the community;

7 (9) recommendations, if any, of the involved law enforcement
8 agency;

9 (10) recommendations, if any, of the victim;

10 (11) provisions for restitution; and

11 (12) any mitigating circumstances.

12 (b) A county or district attorney shall not enter into a diversion
13 agreement in lieu of further criminal proceedings on a complaint if *the*
14 *complaint alleges that the defendant committed a*:

15 (1) ~~The complaint alleges a~~ Violation of K.S.A. 8-1567, and
16 amendments thereto, and the defendant:

17 (A) Has previously participated in diversion upon a complaint
18 alleging a violation of that statute or an ordinance of a city in this state
19 which prohibits the acts prohibited by that statute;

20 (B) has previously been convicted of or pleaded nolo contendere to a
21 violation of that statute or a violation of a law of another state or of a
22 political subdivision of this or any other state, which law prohibits the acts
23 prohibited by that statute; or

24 (C) during the time of the alleged violation was involved in a motor
25 vehicle accident or collision resulting in personal injury *to another person*
26 or death;

27 (2) ~~the complaint alleges that the defendant committed a violation~~
28 ~~under chapter 8 of the Kansas Statutes Annotated, and amendments~~
29 ~~thereto, and the defendant was a commercial driver's license holder at the~~
30 ~~time the violation was committed or at any subsequent time prior to being~~
31 ~~considered for diversion;~~

32 (3) class A or B felony or for crimes committed on or after July 1,
33 1993, an off-grid crime, a severity level 1, 2 or 3 felony for nondrug
34 crimes, a drug severity level 1 or 2 felony for drug crimes committed on or
35 after July 1, 1993, but prior to July 1, 2012, or a drug severity level 1, 2 or
36 3 felony committed on or after July 1, 2012; or

37 (3)(4) ~~the complaint alleges a~~ domestic violence offense, as defined
38 in K.S.A. ~~2020~~ 2021 Supp. 21-5111, and amendments thereto, and the
39 defendant has participated in two or more diversions in the previous five
40 year period upon complaints alleging a domestic violence offense.

41 (c) A county or district attorney may enter into a diversion agreement
42 in lieu of further criminal proceedings on a complaint for violations of
43 article 10 of chapter 32 of the Kansas Statutes Annotated, and amendments

1 thereto, if such diversion carries the same penalties as the conviction for
2 the corresponding violations. If the defendant has previously participated
3 in one or more diversions for violations of article 10 of chapter 32 of the
4 Kansas Statutes Annotated, and amendments thereto, then each subsequent
5 diversion shall carry the same penalties as the conviction for the
6 corresponding violations.

7 (d) As used in this section, "major depressive disorder,"
8 "polytrauma," "post-traumatic stress disorder" and "traumatic brain injury"
9 shall mean the same as ~~such terms are defined~~ in K.S.A. ~~2020~~ **2021** Supp.
10 21-6630, and amendments thereto.

11 Sec. ~~11-13~~ **16**. K.S.A. 8-1016 and K.S.A. ~~2020~~ **2021** Supp. 8-235, **8-**
12 **241**, 8-2,142, 8-2,144, **8-2,150**, **8-1014**, 8-1015, 8-1567, 8-1567a, 12-
13 4415, **21-6604**, **21-6804** and 22-2908 are hereby repealed.

14 Sec. ~~12-14~~ **17**. This act shall take effect and be in force from and
15 after its publication in the statute book.