

## House Substitute for SENATE BILL No. 104

By Committee on Corrections and Juvenile Justice

3-20

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1 AN ACT concerning driving; creating the crime of refusing to submit to a  
2 test to determine the presence of alcohol or drugs; relating to driver's  
3 licenses; driving under the influence; administrative penalties; crimes,  
4 punishment and criminal procedure; amending K.S.A. 8-241, 8-286, 8-  
5 288, 8-1501, 12-4413 and 22-2910 and K.S.A. 2011 Supp. 8-235, 8-  
6 262, 8-285, 8-287, 8-2,144, 8-1001, 8-1008, 8-1012, 8-1013, 8-1014, 8-  
7 1015, 8-1020, 8-1567, 12-4106, 12-4414, 12-4415, 12-4416, 12-4517,  
8 21-5203, 21-6804, 22-2802, 22-2908, 22-2909, 22-4704, 60-427, 74-  
9 2012 and 75-712h and repealing the existing sections; also repealing  
10 K.S.A. 2011 Supp. 8-1020b and 22-2909c.

11

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

13 New Section 1. On and after July 1, 2012, the amount of \$250 from  
14 each fine imposed for a violation of a city ordinance prohibiting the acts  
15 prohibited by K.S.A. 8-1567 or 8-2,144 or section 2, and amendments  
16 thereto, shall be remitted by the judge or clerk of the municipal court to the  
17 state treasurer in accordance with the provisions of K.S.A. 75-4215, and  
18 amendments thereto. Upon receipt of such remittance, the state treasurer  
19 shall credit the entire amount to the community corrections supervision  
20 fund established by K.S.A. 2011 Supp. 75-52,113, and amendments  
21 thereto.

22 New Sec. 2. (a) Refusing to submit to a test to determine the presence  
23 of alcohol or drugs is refusing to submit to or complete a test or tests  
24 deemed consented to under subsection (a) of K.S.A. 8-1001, and  
25 amendments thereto.

26 (b) (1) Refusing to submit to a test to determine the presence of  
27 alcohol or drugs is:

28 (A) On a first conviction a class B, nonperson misdemeanor. The  
29 person convicted shall be sentenced to not less than 48 consecutive hours  
30 nor more than six months' imprisonment, or in the court's discretion 100  
31 hours of public service, and fined not less than \$750 nor more than \$1,000.  
32 The person convicted shall serve at least 48 consecutive hours'  
33 imprisonment or 100 hours of public service either before or as a condition  
34 of any grant of probation or suspension, reduction of sentence or parole.  
35 The court may place the person convicted under a house arrest program  
36 pursuant to K.S.A. 2011 Supp. 21-6609, and amendments thereto, to serve

1 the remainder of the minimum sentence only after such person has served  
2 48 consecutive hours' imprisonment;

3 (B) on a second conviction a class A, nonperson misdemeanor. The  
4 person convicted shall be sentenced to not less than 90 days nor more than  
5 one year's imprisonment and fined not less than \$1,250 nor more than  
6 \$1,750. The person convicted shall serve at least five consecutive days'  
7 imprisonment before the person is granted probation, suspension or  
8 reduction of sentence or parole or is otherwise released. The five days'  
9 imprisonment mandated by this subsection may be served in a work  
10 release program only after such person has served 48 consecutive hours'  
11 imprisonment, provided such work release program requires such person  
12 to return to confinement at the end of each day in the work release  
13 program. The person convicted, if placed into a work release program,  
14 shall serve a minimum of 120 hours of confinement. Such 120 hours of  
15 confinement shall be a period of at least 48 consecutive hours of  
16 imprisonment followed by confinement hours at the end of and continuing  
17 to the beginning of the offender's work day. The court may place the  
18 person convicted under a house arrest program pursuant to K.S.A. 2011  
19 Supp. 21-6609, and amendments thereto, to serve the remainder of the  
20 minimum sentence only after such person has served 48 consecutive hours'  
21 imprisonment. The person convicted, if placed under house arrest, shall be  
22 monitored by an electronic monitoring device, which verifies the  
23 offender's location. The offender shall serve a minimum of 120 hours of  
24 confinement within the boundaries of the offender's residence. Any  
25 exceptions to remaining within the boundaries of the offender's residence  
26 provided for in the house arrest agreement shall not be counted as part of  
27 the 120 hours;

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

1 K.S.A. 2011 Supp. 21-6609, and amendments thereto, to serve the  
2 remainder of the minimum sentence only after such person has served 48  
3 consecutive hours' imprisonment. The person convicted, if placed under  
4 house arrest, shall be monitored by an electronic monitoring device, which  
5 verifies the offender's location. The offender shall serve a minimum of  
6 2,160 hours of confinement within the boundaries of the offender's  
7 residence. Any exceptions to remaining within the boundaries of the  
8 offender's residence provided for in the house arrest agreement shall not be  
9 counted as part of the 2,160 hours;

10 (D) on a third conviction a nonperson felony if the person has a prior  
11 conviction which occurred within the preceding 10 years, not including  
12 any period of incarceration. The person convicted shall be sentenced to not  
13 less than 90 days nor more than one year's imprisonment and fined not less  
14 than \$1,750 nor more than \$2,500. The person convicted shall not be  
15 eligible for release on probation, suspension or reduction of sentence or  
16 parole until the person has served at least 90 days' imprisonment. The 90  
17 days' imprisonment mandated by this subsection may be served in a work  
18 release program only after such person has served 48 consecutive hours'  
19 imprisonment, provided such work release program requires such person  
20 to return to confinement at the end of each day in the work release  
21 program. The person convicted, if placed into a work release program,  
22 shall serve a minimum of 2,160 hours of confinement. Such 2,160 hours of  
23 confinement shall be a period of at least 48 consecutive hours of  
24 imprisonment followed by confinement hours at the end of and continuing  
25 to the beginning of the offender's work day. The court may place the  
26 person convicted under a house arrest program pursuant to K.S.A. 2011  
27 Supp. 21-6609, and amendments thereto, to serve the remainder of the  
28 minimum sentence only after such person has served 48 consecutive hours'  
29 imprisonment. The person convicted, if placed under house arrest, shall be  
30 monitored by an electronic monitoring device, which verifies the  
31 offender's location. The offender shall serve a minimum of 2,160 hours of  
32 confinement within the boundaries of the offender's residence. Any  
33 exceptions to remaining within the boundaries of the offender's  
34 residence provided for in the house arrest agreement shall not be counted  
35 as part of the 2,160 hours; and

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

1 to return to confinement at the end of each day in the work release  
2 program. The person convicted, if placed into a work release program,  
3 shall serve a minimum of 2,160 hours of confinement. Such 2,160 hours of  
4 confinement shall be a period of at least 72 consecutive hours of  
5 imprisonment followed by confinement hours at the end of and continuing  
6 to the beginning of the offender's work day. The court may place the  
7 person convicted under a house arrest program pursuant to K.S.A. 2011  
8 Supp. 21-6609, and amendments thereto, to serve the remainder of the  
9 minimum sentence only after such person has served 72 consecutive hours'  
10 imprisonment. The person convicted, if placed under house arrest, shall be  
11 monitored by an electronic monitoring device, which verifies the  
12 offender's location. The offender shall serve a minimum of 2,160 hours of  
13 confinement within the boundaries of the offender's residence. Any  
14 exceptions to remaining within the boundaries of the offender's residence  
15 provided for in the house arrest agreement shall not be counted as part of  
16 the 2,160 hours.

17 (2) The court may order that the term of imprisonment imposed  
18 pursuant to subsection (b)(1)(D) or (b)(1)(E) be served in a state facility in  
19 the custody of the secretary of corrections in a facility designated by the  
20 secretary for the provision of substance abuse treatment pursuant to the  
21 provisions of K.S.A. 2011 Supp. 21-6804, and amendments thereto. The  
22 person shall remain imprisoned at the state facility only while participating  
23 in the substance abuse treatment program designated by the secretary and  
24 shall be returned to the custody of the sheriff for execution of the balance  
25 of the term of imprisonment upon completion of or the person's discharge  
26 from the substance abuse treatment program. Custody of the person shall  
27 be returned to the sheriff for execution of the sentence imposed in the  
28 event the secretary of corrections determines: (A) That substance abuse  
29 treatment resources or the capacity of the facility designated by the  
30 secretary for the incarceration and treatment of the person is not available;  
31 (B) the person fails to meaningfully participate in the treatment program of  
32 the designated facility; (C) the person is disruptive to the security or  
33 operation of the designated facility; or (D) the medical or mental health  
34 condition of the person renders the person unsuitable for confinement at  
35 the designated facility. The determination by the secretary that the person  
36 either is not to be admitted into the designated facility or is to be  
37 transferred from the designated facility is not subject to review. The sheriff  
38 shall be responsible for all transportation expenses to and from the state  
39 correctional facility.

40 (3) In addition, for any conviction pursuant to subsection (b)(1)(C),  
41 (b)(1)(D) or (b)(1)(E), at the time of the filing of the judgment form or  
42 journal entry as required by K.S.A. 22-3426 or K.S.A. 2011 Supp. 21-  
43 6711, and amendments thereto, the court shall cause a certified copy to be

1 sent to the officer having the offender in charge. The court shall determine  
2 whether the offender, upon release from imprisonment, shall be supervised  
3 by community correctional services or court services based upon the risk  
4 and needs of the offender. The risk and needs of the offender shall be  
5 determined by use of a risk assessment tool specified by the Kansas  
6 sentencing commission. The law enforcement agency maintaining custody  
7 and control of a defendant for imprisonment shall cause a certified copy of  
8 the judgment form or journal entry to be sent to the supervision office  
9 designated by the court and upon expiration of the term of imprisonment  
10 shall deliver the defendant to a location designated by the supervision  
11 office designated by the court. After the term of imprisonment imposed by  
12 the court, the person shall be placed on supervision to community  
13 correctional services or court services, as determined by the court, for a  
14 mandatory one-year period of supervision, which such period of  
15 supervision shall not be reduced. During such supervision, the person shall  
16 be required to participate in a multidisciplinary model of services for  
17 substance use disorders facilitated by a department of social and  
18 rehabilitation services designated care coordination agency to include  
19 assessment and, if appropriate, referral to a community based substance  
20 use disorder treatment including recovery management and mental health  
21 counseling as needed. The multidisciplinary team shall include the  
22 designated care coordination agency, the supervision officer, the social and  
23 rehabilitation services department designated treatment provider and the  
24 offender. Any violation of the conditions of such supervision may subject  
25 such person to revocation of supervision and imprisonment in jail for the  
26 remainder of the period of imprisonment, the remainder of the supervision  
27 period, or any combination or portion thereof.

28 (4) In addition, prior to sentencing for any conviction, the court shall  
29 order the person to participate in an alcohol and drug evaluation conducted  
30 by a provider in accordance with K.S.A. 8-1008, and amendments thereto.  
31 The person shall be required to follow any recommendation made by the  
32 provider after such evaluation, unless otherwise ordered by the court.

33 (c) Any person convicted of violating this section or an ordinance  
34 which prohibits the acts that this section prohibits who had one or more  
35 children under the age of 14 years in the vehicle at the time of the offense  
36 shall have such person's punishment enhanced by one month of  
37 imprisonment. This imprisonment must be served consecutively to any  
38 other minimum mandatory penalty imposed for a violation of this section  
39 or an ordinance which prohibits the acts that this section prohibits. Any  
40 enhanced penalty imposed shall not exceed the maximum sentence  
41 allowable by law. During the service of the enhanced penalty, the judge  
42 may order the person on house arrest, work release or other conditional  
43 release.

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

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

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

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

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

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

29 (h) 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) "Conviction" includes being convicted of a violation of this  
33 section or entering into a diversion agreement in lieu of further criminal  
34 proceedings on a complaint alleging a violation of this section;

35 (2) "conviction" includes being convicted of a violation of a law of  
36 another state or an ordinance of any city, or resolution of any county,  
37 which prohibits the acts that this section prohibits or entering into a  
38 diversion agreement in lieu of further criminal proceedings in a case  
39 alleging a violation of such law, ordinance or resolution;

40 (3) only convictions occurring on or after July 1, 2001, shall be taken  
41 into account when determining the sentence to be imposed for a first,  
42 second, third, fourth or subsequent offender;

43 (4) it is irrelevant whether an offense occurred before or after

1 conviction for a previous offense; and

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

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

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

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

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

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

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

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

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

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

43 (l) No plea bargaining agreement shall be entered into nor shall any

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

9 (m) As used in this section, "imprisonment" shall include any  
10 restrained environment in which the court and law enforcement agency  
11 intend to retain custody and control of a defendant and such environment  
12 has been approved by the board of county commissioners or the governing  
13 body of a city.

14 (n) On and after July 1, 2012, the amount of \$250 from each fine  
15 imposed pursuant to this section shall be remitted by the clerk of the  
16 district court to the state treasurer in accordance with the provisions of  
17 K.S.A. 75-4215, and amendments thereto. Upon receipt of such  
18 remittance, the state treasurer shall credit the entire amount to the  
19 community corrections supervision fund established by K.S.A. 2011 Supp.  
20 75-52,113, and amendments thereto.

21 Sec. 3. K.S.A. 2011 Supp. 8-235 is hereby amended to read as  
22 follows: 8-235. (a) No person, except those expressly exempted, shall  
23 drive any motor vehicle upon a highway in this state unless such person  
24 has a valid driver's license. No person shall receive a driver's license  
25 unless and until such person surrenders or with the approval of the  
26 division, lists to the division all valid licenses in such person's possession  
27 issued to such person by any other jurisdiction. All surrendered licenses or  
28 the information listed on foreign licenses shall be returned by the division  
29 to the issuing department, together with information that the licensee is  
30 now licensed in a new jurisdiction. No person shall be permitted to have  
31 more than one valid license at any time.

32 (b) Any person licensed under the motor vehicle drivers' license act  
33 may exercise the privilege granted upon all streets and highways in this  
34 state and shall not be required to obtain any other license to exercise such  
35 privilege by any local authority. Nothing herein shall prevent cities from  
36 requiring licenses of persons who drive taxicabs or municipally franchised  
37 transit systems for hire upon city streets, to protect the public from drivers  
38 whose character or habits make them unfit to transport the public. If a  
39 license is denied, the applicant may appeal such decision to the district  
40 court of the county in which such city is located by filing within 14 days  
41 after such denial, a notice of appeal with the clerk of the district court and  
42 by filing a copy of such notice with the city clerk of the involved city. The  
43 city clerk shall certify a copy of such decision of the city governing body



1 to the clerk of the district court and the matter shall be docketed as any  
2 other cause and the applicant shall be granted a trial of such person's  
3 character and habits. The matter shall be heard by the court *de novo* in  
4 accordance with the code of civil procedure. The cost of such appeal shall  
5 be assessed in such manner as the court may direct.

6 (c) Any person operating in this state a motor vehicle, except a  
7 motorcycle, which is registered in this state other than under a temporary  
8 thirty-day permit shall be the holder of a driver's license which is classified  
9 for the operation of such motor vehicle, and any person operating in this  
10 state a motorcycle which is registered in this state shall be the holder of a  
11 class M driver's license, except that any person operating in this state a  
12 motorcycle which is registered under a temporary thirty-day permit shall  
13 be the holder of a driver's license for any class of motor vehicles.

14 (d) No person shall drive any motorized bicycle upon a highway of  
15 this state unless *such person*: (1) ~~Such person~~ Has a valid driver's license  
16 which entitles the licensee to drive a motor vehicle in any class or classes;  
17 (2) ~~such person~~ is at least 15 years of age and has passed the written and  
18 visual examinations required for obtaining a class C driver's license, in  
19 which case the division shall issue to such person a class C license which  
20 clearly indicates such license is valid only for the operation of motorized  
21 bicycles; ~~or~~ (3) ~~such person~~ has had their driving privileges suspended, for  
22 a violation other than a violation of K.S.A. 8-2,144, and amendments  
23 thereto, or a second or subsequent violation of K.S.A. 8-1567 or 8-1567a  
24 or section 2, and amendments thereto, and such person has completed the  
25 mandatory period of suspension as provided in K.S.A. 8-1014, and  
26 amendments thereto, and has made application to the division for the  
27 issuance of a class C license for the operation of motorized bicycles, in  
28 accordance with paragraph (2), in which case the division shall issue to  
29 such person a class C license which clearly indicates such license is valid  
30 only for the operation of motorized bicycles; or (4) has had their driving  
31 privileges revoked under K.S.A. 8-286, and amendments thereto, has not  
32 had a test refusal or test failure or alcohol or drug-related conviction, as  
33 those terms are defined in K.S.A. 8-1013, and amendments thereto, in the  
34 last five years, has not been convicted of a violation of subsection (b) of  
35 K.S.A. 8-1568, and amendments thereto, in the last five years and has  
36 made application to the division for issuance of a class C license for the  
37 operation of motorized bicycles, in accordance with paragraph (2), in  
38 which case the division shall issue such person a class C license which  
39 clearly indicates such license is valid only for the operation of motorized  
40 bicycles.

41 (e) Violation of this section shall constitute a class B misdemeanor.

42 Sec. 4. K.S.A. 8-241 is hereby amended to read as follows: 8-241. (a)  
43 Except as provided in K.S.A. 8-2,125 through 8-2,142, and amendments

1 thereto, any person licensed to operate a motor vehicle in this state shall  
2 submit to an examination whenever: (1) The division of vehicles has good  
3 cause to believe that such person is incompetent or otherwise not qualified  
4 to be licensed; or (2) the division of vehicles has suspended such person's  
5 license pursuant to K.S.A. 8-1014, and amendments thereto, as the result  
6 of a test refusal, test failure or conviction for a violation of K.S.A. 8-1567,  
7 and amendments thereto, or a violation a of city ordinance or county  
8 resolution prohibiting the acts prohibited by K.S.A. 8-1567, and  
9 amendments thereto, except that no person shall have to submit to and  
10 successfully complete an examination more than once as the result of  
11 separate suspensions arising out of the same occurrence.

12 (b) When a person is required to submit to an examination pursuant  
13 to subsection (a)(1), the fee for such examination shall be in the amount  
14 provided by K.S.A 8-240, and amendments thereto. When a person is  
15 required to submit to an examination pursuant to subsection (a)(2), the fee  
16 for such examination shall be \$25. In addition, any person required to  
17 submit to an examination pursuant to subsection (a)(2): (1) As the result of  
18 a test failure, a conviction for a violation of K.S.A. 8-1567, and  
19 amendments thereto, or a violation of a city ordinance or county resolution  
20 prohibiting the acts prohibited by K.S.A. 8-1567, and amendments thereto,  
21 shall be required, at the time of examination, to pay a reinstatement fee of  
22 \$100 after the first occurrence, \$200 after the second occurrence, \$300  
23 after the third occurrence and \$400 after the fourth *or subsequent*  
24 occurrence; and (2) as a result of a test refusal, *a conviction for a violation*  
25 *of section 2, and amendments thereto, or a violation of a city ordinance or*  
26 *county resolution prohibiting the acts prohibited by section 2, and*  
27 *amendments thereto*, shall be required, at the time of examination, to pay a  
28 reinstatement fee of \$400 after the first occurrence, \$600 after the second  
29 occurrence, \$800 after the third occurrence and \$1,000 after the fourth *or*  
30 *subsequent* occurrence. ~~No reinstatement shall be allowed after the fifth or~~  
31 ~~subsequent occurrence under either subsection (b)(1) or (b)(2).~~ All  
32 examination fees collected pursuant to this section shall be remitted to the  
33 state treasurer, in accordance with the provisions of K.S.A. 75-4215, and  
34 amendments thereto, who shall deposit the entire amount in the state  
35 treasury and credit 80% to the state highway fund and 20% shall be  
36 disposed of as provided in K.S.A. 8-267, and amendments thereto. All  
37 reinstatement fees collected pursuant to this section shall be remitted to the  
38 state treasurer, in accordance with the provisions of K.S.A. 75-4215, and  
39 amendments thereto, who shall deposit the entire amount in the state  
40 treasury and credit 50% to the community alcoholism and intoxication  
41 programs fund created pursuant to K.S.A. 41-1126, and amendments  
42 thereto, 20% to the juvenile detention facilities fund created by K.S.A. 79-  
43 4803, and amendments thereto, 20% to the forensic laboratory and

1 materials fee fund cited in K.S.A. 28-176, and amendments thereto, and  
2 10% to the driving under the influence equipment fund created by K.S.A.  
3 75-5660, and amendments thereto. Moneys credited to the forensic  
4 laboratory and materials fee fund as provided herein shall be used to  
5 supplement existing appropriations and shall not be used to supplant  
6 general fund appropriations to the Kansas bureau of investigation.

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

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

20 Sec. 5. K.S.A. 2011 Supp. 8-262 is hereby amended to read as  
21 follows: 8-262. (a) (1) Any person who drives a motor vehicle on any  
22 highway of this state at a time when such person's privilege so to do is  
23 canceled, suspended or revoked or while such person's privilege to obtain  
24 a driver's license is suspended or revoked pursuant to K.S.A. 8-252a, and  
25 amendments thereto, shall be guilty of a class B nonperson misdemeanor  
26 on the first conviction and a class A nonperson misdemeanor on the second  
27 or subsequent conviction.

28 (2) No person shall be convicted under this section if such person was  
29 entitled at the time of arrest under K.S.A. 8-257, and amendments thereto,  
30 to the return of such person's driver's license.

31 (3) Except as otherwise provided by subsection (a)(4) or (c), every  
32 person convicted under this section shall be sentenced to at least five days'  
33 imprisonment and fined at least \$100 and upon a second conviction shall  
34 not be eligible for parole until completion of five days' imprisonment.

35 (4) Except as otherwise provided by subsection (c), if a person: (A) Is  
36 convicted of a violation of this section, committed while the person's  
37 privilege to drive or privilege to obtain a driver's license was suspended or  
38 revoked for a violation of K.S.A. 8-2,144 or 8-1567 *or section 2*, and  
39 amendments thereto, or any ordinance of any city or resolution of any  
40 county or a law of another state, which ordinance or resolution or law  
41 prohibits the acts prohibited by those statutes; and (B) is or has been also  
42 convicted of a violation of K.S.A. 8-2,144 or 8-1567 *or section 2*, and  
43 amendments thereto, or any ordinance of any city or resolution of any

1 county or law of another state, which ordinance or resolution or law  
2 prohibits the acts prohibited by those statutes, committed while the  
3 person's privilege to drive or privilege to obtain a driver's license was so  
4 suspended or revoked, the person shall not be eligible for suspension of  
5 sentence, probation or parole until the person has served at least 90 days'  
6 imprisonment, and any fine imposed on such person shall be in addition to  
7 such a term of imprisonment.

8 (b) The division, upon receiving a record of the conviction of any  
9 person under this section, or any ordinance of any city or resolution of any  
10 county or a law of another state which is in substantial conformity with  
11 this section, upon a charge of driving a vehicle while the license of such  
12 person is revoked or suspended, shall extend the period of such suspension  
13 or revocation for an additional period of 90 days.

14 (c) (1) The person found guilty of a class A nonperson misdemeanor  
15 on a third or subsequent conviction of this section shall be sentenced to not  
16 less than 90 days imprisonment and fined not less than \$1,500 if such  
17 person's privilege to drive a motor vehicle is canceled, suspended or  
18 revoked because such person:

19 (A) Refused to submit and complete any test of blood, breath or urine  
20 requested by law enforcement excluding the preliminary screening test as  
21 set forth in K.S.A. 8-1012, and amendments thereto;

22 (B) was convicted of violating the provisions of K.S.A. 40-3104, and  
23 amendments thereto, relating to motor vehicle liability insurance coverage;

24 (C) was convicted of vehicular homicide, K.S.A. 21-3405, prior to its  
25 repeal, or K.S.A. 2011 Supp. 21-5406, and amendments thereto,  
26 involuntary manslaughter while driving under the influence of alcohol or  
27 drugs, K.S.A. 21-3442, prior to its repeal, or involuntary manslaughter as  
28 defined in subsection (a)(3) of K.S.A. 2011 Supp. 21-5405, and  
29 amendments thereto, or any other murder or manslaughter crime resulting  
30 from the operation of a motor vehicle; or

31 (D) was convicted of being a habitual violator, K.S.A. 8-287, and  
32 amendments thereto.

33 (2) The person convicted shall not be eligible for release on  
34 probation, suspension or reduction of sentence or parole until the person  
35 has served at least 90 days' imprisonment. The 90 days' imprisonment  
36 mandated by this subsection may be served in a work release program only  
37 after such person has served 48 consecutive hours' imprisonment, provided  
38 such work release program requires such person to return to confinement  
39 at the end of each day in the work release program. The court may place  
40 the person convicted under a house arrest program pursuant to K.S.A.  
41 2011 Supp. 21-6609, and amendments thereto, or any municipal ordinance  
42 to serve the remainder of the minimum sentence only after such person has  
43 served 48 consecutive hours' imprisonment.

1 (d) For the purposes of determining whether a conviction is a first,  
2 second, third or subsequent conviction in sentencing under this section,  
3 "conviction" includes a conviction of a violation of any ordinance of any  
4 city or resolution of any county or a law of another state which is in  
5 substantial conformity with this section.

6 Sec. 6. K.S.A. 2011 Supp. 8-285 is hereby amended to read as  
7 follows: 8-285. Except as otherwise provided in this section, as used in  
8 this act, the words and phrases defined in K.S.A. 8-234a, and amendments  
9 thereto, shall have the meanings ascribed to them therein. The term  
10 "habitual violator" means any resident or nonresident person who, within  
11 the immediately preceding five years, has been convicted in this or any  
12 other state:

13 (a) Three or more times of:

14 (1) Vehicular homicide, as defined by K.S.A. 21-3405, prior to its  
15 repeal, or K.S.A. 2011 Supp. 21-5406, and amendments thereto, or as  
16 prohibited by any ordinance of any city in this state, any resolution of any  
17 county in this state or any law of another state which is in substantial  
18 conformity with that statute;

19 (2) violating K.S.A. 8-1567, and amendments thereto, or violating an  
20 ordinance of any city in this state, any resolution of any county in this state  
21 or any law of another state, which ordinance, resolution or law declares to  
22 be unlawful the acts prohibited by that statute;

23 (3) driving while the privilege to operate a motor vehicle on the  
24 public highways of this state has been canceled, suspended or revoked, as  
25 prohibited by K.S.A. 8-262, and amendments thereto, or while such  
26 person's privilege to obtain a driver's license is suspended or revoked  
27 pursuant to K.S.A. 8-252a, and amendments thereto, or, as prohibited by  
28 any ordinance of any city in this state, any resolution of any county in this  
29 state or any law of another state which is in substantial conformity with  
30 those statutes;

31 (4) perjury resulting from a violation of K.S.A. 8-261a, and  
32 amendments thereto, or resulting from the violation of a law of another  
33 state which is in substantial conformity with that statute;

34 (5) violating the provisions of the fifth clause of K.S.A. 8-142, and  
35 amendments thereto, relating to fraudulent applications, or violating the  
36 provisions of a law of another state which is in substantial conformity with  
37 that statute;

38 (6) any crime punishable as a felony, if a motor vehicle was used in  
39 the perpetration of the crime;

40 (7) failing to stop at the scene of an accident and perform the duties  
41 required by K.S.A. 8-1602 through 8-1604, and amendments thereto, or  
42 required by any ordinance of any city in this state, any resolution of any  
43 county in this state or a law of another state which is in substantial

1 conformity with those statutes; or

2 (8) violating the provisions of K.S.A. 40-3104, and amendments  
3 thereto, relating to motor vehicle liability insurance coverage, or an  
4 ordinance of any city in this state or a resolution of any county in this state  
5 which is in substantial conformity with such statute; or

6 (9) *violating section 2, and amendments thereto, or violating an*  
7 *ordinance of any city in this state, a resolution of any county in this state*  
8 *or any law of another state which ordinance, resolution or law declares to*  
9 *be unlawful the acts prohibited by that statute.*

10 (b) Three or more times, either singly or in combination, of any of the  
11 offenses enumerated in subsection (a).

12 For the purpose of subsection (a)(2) *and (a)(9)*, in addition to the  
13 definition of "conviction" otherwise provided by law, conviction includes,  
14 but is not limited to, a diversion agreement entered into in lieu of further  
15 criminal proceedings, or a plea of *nolo contendere*, on a complaint,  
16 indictment, information, citation or notice to appear alleging a violation of  
17 K.S.A. 8-1567 *or section 2*, and amendments thereto, or an ordinance of a  
18 city in this state, a resolution of a county in this state or law of another  
19 state, which ordinance or law prohibits the acts prohibited by ~~that statute~~  
20 *those statutes.*

21 Sec. 7. K.S.A. 8-286 is hereby amended to read as follows: 8-286.  
22 Whenever the files and records of the division shall disclose that the  
23 record of convictions of any person is such that the person is an habitual  
24 violator, as prescribed by K.S.A. 8-285, and amendments thereto, the  
25 division promptly shall revoke the person's driving privileges for a period  
26 of three years, *except as allowed under subsection (d)(4) of K.S.A. 8-235,*  
27 *and amendments thereto.*

28 Sec. 8. K.S.A. 2011 Supp. 8-287 is hereby amended to read as  
29 follows: 8-287. *Except as allowed under subsection (d)(4) of K.S.A. 8-235,*  
30 *and amendments thereto*, operation of a motor vehicle in this state while  
31 one's driving privileges are revoked pursuant to K.S.A. 8-286, and  
32 amendments thereto, is a class A nonperson misdemeanor. The person  
33 found guilty of a third or subsequent conviction of this section shall be  
34 sentenced to not less than 90 days imprisonment and fined not less than  
35 \$1,500. The person convicted shall not be eligible for release on probation,  
36 suspension or reduction of sentence or parole until the person has served at  
37 least 90 days' imprisonment. The 90 days' imprisonment mandated by this  
38 subsection may be served in a work release program only after such person  
39 has served 48 consecutive hours' imprisonment, provided such work  
40 release program requires such person to return to confinement at the end of  
41 each day in the work release program. The court may place the person  
42 convicted under a house arrest program pursuant to K.S.A. 2011 Supp. 21-  
43 6609, and amendments thereto, or any municipal ordinance to serve the

1 remainder of the minimum sentence only after such person has served 48  
2 consecutive hours' imprisonment.

3 Sec. 9. K.S.A. 8-288 is hereby amended to read as follows: 8-288.  
4 *Except as allowed under subsection (d)(4) of K.S.A. 8-235, and*  
5 *amendments thereto*, no license to operate a motor vehicle in Kansas shall  
6 be issued to a person for a period of three years from the date of the  
7 division's order revoking such person's driving privileges pursuant to  
8 K.S.A. 8-286, and amendments thereto, and until the person's driving  
9 privileges have been restored.

10 Sec. 10. K.S.A. 2011 Supp. 8-2,144 is hereby amended to read as  
11 follows: 8-2,144. (a) Driving a commercial motor vehicle under the  
12 influence is operating or attempting to operate any commercial motor  
13 vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, within this  
14 state while:

15 (1) The alcohol concentration in the person's blood or breath, as  
16 shown by any competent evidence, including other competent evidence, as  
17 defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and  
18 amendments thereto, is .04 or more;

19 (2) the alcohol concentration in the person's blood or breath, as  
20 measured within three hours of the time of driving a commercial motor  
21 vehicle, is .04 or more; or

22 (3) committing a violation of subsection (a) of K.S.A. 8-1567, and  
23 amendments thereto, or the ordinance of a city or resolution of a county  
24 which prohibits any of the acts prohibited thereunder.

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

26 (A) On a first conviction a class B, nonperson misdemeanor. The  
27 person convicted shall be sentenced to not less than 48 consecutive hours  
28 nor more than six months' imprisonment, or in the court's discretion, 100  
29 hours of public service, and fined not less than \$750 nor more than \$1,000.  
30 The person convicted shall serve at least 48 consecutive hours'  
31 imprisonment or 100 hours of public service either before or as a condition  
32 of any grant of probation, suspension or reduction of sentence or parole or  
33 other release;

34 (B) on a second conviction a class A, nonperson misdemeanor. The  
35 person convicted shall be sentenced to not less than 90 days nor more than  
36 one year's imprisonment and fined not less than \$1,250 nor more than  
37 \$1,750. The person convicted shall serve at least five consecutive days'  
38 imprisonment before the person is granted probation, suspension or  
39 reduction of sentence or parole or is otherwise released. The five days'  
40 imprisonment mandated by this subsection may be served in a work  
41 release program only after such person has served 48 consecutive hours'  
42 imprisonment, provided such work release program requires such person  
43 to return to confinement at the end of each day in the work release

1 program. The person convicted, if placed into a work release program,  
2 shall serve a minimum of 120 hours of confinement. Such 120 hours of  
3 confinement shall be a period of at least 48 consecutive hours of  
4 imprisonment followed by confinement hours at the end of and continuing  
5 to the beginning of the offender's work day. The court may place the  
6 person convicted under a house arrest program pursuant to K.S.A. 2011  
7 Supp. 21-6609, and amendments thereto, to serve the remainder of the  
8 minimum sentence only after such person has served 48 consecutive hours'  
9 imprisonment. The person convicted, if placed under house arrest, shall be  
10 monitored by an electronic monitoring device, which verifies the  
11 offender's location. The offender shall serve a minimum of 120 hours of  
12 confinement within the boundaries of the offender's residence. Any  
13 exceptions to remaining within the boundaries of the offender's residence  
14 provided for in the house arrest agreement shall not be counted as part of  
15 the 120 hours; and

16 (C) on a third or subsequent conviction a nonperson felony. The  
17 person convicted shall be sentenced to not less than 90 days nor more than  
18 one year's imprisonment and fined not less than \$1,750 nor more than  
19 \$2,500. The person convicted shall not be eligible for release on probation,  
20 suspension or reduction of sentence or parole until the person has served at  
21 least 90 days' imprisonment. The 90 days' imprisonment mandated by this  
22 subsection may be served in a work release program only after such person  
23 has served 48 consecutive hours' imprisonment, provided such work  
24 release program requires such person to return to confinement at the end of  
25 each day in the work release program. The person convicted, if placed into  
26 a work release program, shall serve a minimum of ~~240~~ 2,160 hours of  
27 confinement. Such ~~240~~ 2,160 hours of confinement shall be a period of at  
28 least 48 consecutive hours of imprisonment followed by confinement  
29 hours at the end of and continuing to the beginning of the offender's work  
30 day. The court may place the person convicted under a house arrest  
31 program pursuant to K.S.A. 2011 Supp. 21-6609, and amendments thereto,  
32 to serve the remainder of the minimum sentence only after such person has  
33 served 48 consecutive hours' imprisonment. The person convicted, if  
34 placed under house arrest, shall be monitored by an electronic monitoring  
35 device, which verifies the offender's location. The offender shall serve a  
36 minimum of ~~240~~ 2,160 hours of confinement within the boundaries of the  
37 offender's residence. Any exceptions to remaining within the boundaries of  
38 the offender's residence provided for in the house arrest agreement shall  
39 not be counted as part of the ~~240~~ 2,160 hours.

40 (2) In addition, prior to sentencing for any conviction, the court shall  
41 order the person to participate in an alcohol and drug evaluation conducted  
42 by a provider in accordance with K.S.A. 8-1008, and amendments thereto.  
43 The person shall be required to follow any recommendation made by the



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

2 (c) Any person convicted of a violation of this section, or a violation  
3 of a city ordinance or county resolution prohibiting the acts prohibited by  
4 this section, who had one or more children under the age of 14 years in the  
5 vehicle at the time of the offense shall have such person's punishment  
6 enhanced by one month of imprisonment. This imprisonment shall be  
7 served consecutively to any other minimum mandatory penalty imposed  
8 for a violation of this section, or a violation of a city ordinance or county  
9 resolution prohibiting the acts prohibited by this section. Any enhanced  
10 penalty imposed shall not exceed the maximum sentence allowable by law.  
11 During the service of the enhanced penalty, the judge may order the person  
12 on house arrest, work release or other conditional release.

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

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

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

31 (g) Prior to filing a complaint alleging a violation of this section, a  
32 prosecutor shall request and shall receive from the: (1) Division a record  
33 of all prior convictions obtained against such person for any violations of  
34 any of the motor vehicle laws of this state; and (2) Kansas bureau of  
35 investigation central repository all criminal history record information  
36 concerning such person.

37 (h) The court shall electronically report every conviction of a  
38 violation of this section and every diversion agreement entered into in lieu  
39 of further criminal proceedings on a complaint alleging a violation of this  
40 section to the division. Prior to sentencing under the provisions of this  
41 section, the court shall request and shall receive from the: (1) Division a  
42 record of all prior convictions obtained against such person for any  
43 violation of any of the motor vehicle laws of this state; and (2) Kansas

1 bureau of investigation central repository all criminal history record  
2 information concerning such person.

3 (i) Upon conviction of a person of a violation of this section or a  
4 violation of a city ordinance or county resolution prohibiting the acts  
5 prohibited by this section, the division, upon receiving a report of  
6 conviction, shall: (1) Disqualify the person from driving a commercial  
7 motor vehicle under K.S.A. 8-2,142, and amendments thereto; and (2)  
8 suspend, restrict or suspend and restrict the person's driving privileges as  
9 provided by K.S.A. 8-1014, and amendments thereto.

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

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

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

23 (k) (1) Upon the filing of a complaint, citation or notice to appear  
24 alleging a person has violated a city ordinance prohibiting the acts  
25 prohibited by this section, and prior to conviction thereof, a city attorney  
26 shall request and shall receive from the: (A) Division of vehicles a record  
27 of all prior convictions obtained against such person for any violations of  
28 any of the motor vehicle laws of this state; and (B) Kansas bureau of  
29 investigation central repository all criminal history record information  
30 concerning such person.

31 (2) If the elements of such ordinance violation are the same as the  
32 elements of a violation of this section that would constitute, and be  
33 punished as, a felony, the city attorney shall refer the violation to the  
34 appropriate county or district attorney for prosecution. The county or  
35 district attorney shall accept such referral and pursue a disposition of such  
36 violation, and shall not refer any such violation back to the city attorney.

37 (l) No plea bargaining agreement shall be entered into nor shall any  
38 judge approve a plea bargaining agreement entered into for the purpose of  
39 permitting a person charged with a violation of this section, or a violation  
40 of any ordinance of a city or resolution of any county in this state which  
41 prohibits the acts prohibited by this section, to avoid the mandatory  
42 penalties established by this section or by the ordinance or resolution.

43 (m) The alternatives set out in subsections (a)(1), (a)(2) and (a)(3)

1 may be pleaded in the alternative, and the state, city or county may, but  
2 shall not be required to, elect one or two of the three prior to submission of  
3 the case to the fact finder.

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

6 (1) "Conviction" includes being convicted of a violation of a law of  
7 another state or an ordinance of any city, or resolution of any county,  
8 which prohibits the acts that this section prohibits;

9 (2) any convictions occurring during a person's lifetime shall be taken  
10 into account when determining the sentence to be imposed for a first,  
11 second, third or subsequent offender; and

12 (3) it is irrelevant whether an offense occurred before or after  
13 conviction for a previous offense.

14 (o) For the purpose of this section:

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

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

21 (3) "drug" includes toxic vapors as such term is defined in K.S.A.  
22 2011 Supp. 21-5712, and amendments thereto.

23 (p) On and after July 1, 2011, the amount of \$250 from each fine  
24 imposed pursuant to this section shall be remitted by the clerk of the  
25 district court to the state treasurer in accordance with the provisions of  
26 K.S.A. 75-4215, and amendments thereto. Upon receipt of such  
27 remittance, the state treasurer shall credit the entire amount to the  
28 community corrections supervision fund established by K.S.A. 2011 Supp.  
29 75-52,113, and amendments thereto.

30 Sec. 11. K.S.A. 2011 Supp. 8-1001 is hereby amended to read as  
31 follows: 8-1001. (a) Any person who operates or attempts to operate a  
32 vehicle within this state is deemed to have given consent, subject to the  
33 provisions of this act, to submit to one or more tests of the person's blood,  
34 breath, urine or other bodily substance to determine the presence of  
35 alcohol or drugs. The testing deemed consented to herein shall include all  
36 quantitative and qualitative tests for alcohol and drugs. A person who is  
37 dead or unconscious shall be deemed not to have withdrawn the person's  
38 consent to such test or tests, which shall be administered in the manner  
39 provided by this section.

40 (b) A law enforcement officer shall request a person to submit to a  
41 test or tests deemed consented to under subsection (a): (1) If the officer has  
42 reasonable grounds to believe the person was operating or attempting to  
43 operate a vehicle while under the influence of alcohol or drugs, or both, or

1 to believe that the person was driving a commercial motor vehicle, as  
2 defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol  
3 or other drugs in such person's system, or was under the age of 21 years  
4 while having alcohol or other drugs in such person's system; and one of the  
5 following conditions exists: (A) The person has been arrested or otherwise  
6 taken into custody for any offense involving operation or attempted  
7 operation of a vehicle while under the influence of alcohol or drugs, or  
8 both, or for a violation of K.S.A. 8-1567a, and amendments thereto, or  
9 involving driving a commercial motor vehicle, as defined in K.S.A. 8-  
10 2,128, and amendments thereto, while having alcohol or other drugs in  
11 such person's system, in violation of a state statute or a city ordinance; or  
12 (B) the person has been involved in a vehicle accident or collision  
13 resulting in property damage or personal injury other than serious injury;  
14 or (2) if the person was operating or attempting to operate a vehicle and  
15 such vehicle has been involved in an accident or collision resulting in  
16 serious injury or death of any person and the operator could be cited for  
17 any traffic offense, as defined in K.S.A. 8-2117, and amendments thereto.  
18 The traffic offense violation shall constitute probable cause for purposes of  
19 paragraph (2). The test or tests under paragraph (2) shall not be required if  
20 a law enforcement officer has reasonable grounds to believe the actions of  
21 the operator did not contribute to the accident or collision. The law  
22 enforcement officer directing administration of the test or tests may act on  
23 personal knowledge or on the basis of the collective information available  
24 to law enforcement officers involved in the accident investigation or arrest.

25 (c) If a law enforcement officer requests a person to submit to a test  
26 of blood under this section, the withdrawal of blood at the direction of the  
27 officer may be performed only by: (1) A person licensed to practice  
28 medicine and surgery, licensed as a physician's assistant, or a person acting  
29 under the direction of any such licensed person; (2) a registered nurse or a  
30 licensed practical nurse; (3) any qualified medical technician, including,  
31 but not limited to, an emergency medical technician-intermediate, mobile  
32 intensive care technician, an emergency medical technician-intermediate  
33 defibrillator, an advanced emergency medical technician or a paramedic,  
34 as those terms are defined in K.S.A. 65-6112, and amendments thereto,  
35 authorized by medical protocol or (4) a phlebotomist.

36 (d) A law enforcement officer may direct a medical professional  
37 described in this section to draw a sample of blood from a person:

38 (1) If the person has given consent and meets the requirements of  
39 subsection (b);

40 (2) if medically unable to consent, if the person meets the  
41 requirements of paragraph (2) of subsection (b); or

42 (3) if the person refuses to submit to and complete a test, if the person  
43 meets the requirements of paragraph (2) of subsection (b).

1 (e) When so directed by a law enforcement officer through a written  
2 statement, the medical professional shall withdraw the sample as soon as  
3 practical and shall deliver the sample to the law enforcement officer or  
4 another law enforcement officer as directed by the requesting law  
5 enforcement officer as soon as practical, provided the collection of the  
6 sample does not jeopardize the person's life, cause serious injury to the  
7 person or seriously impede the person's medical assessment, care or  
8 treatment. The medical professional authorized herein to withdraw the  
9 blood and the medical care facility where the blood is drawn may act on  
10 good faith that the requirements have been met for directing the  
11 withdrawing of blood once presented with the written statement provided  
12 for under this subsection. The medical professional shall not require the  
13 person to sign any additional consent or waiver form. In such a case, the  
14 person authorized to withdraw blood and the medical care facility shall not  
15 be liable in any action alleging lack of consent or lack of informed  
16 consent.

17 (f) Such sample or samples shall be an independent sample and not  
18 be a portion of a sample collected for medical purposes. The person  
19 collecting the blood sample shall complete the collection portion of a  
20 document provided by law enforcement.

21 (g) If a person must be restrained to collect the sample pursuant to  
22 this section, law enforcement shall be responsible for applying any such  
23 restraint utilizing acceptable law enforcement restraint practices. The  
24 restraint shall be effective in controlling the person in a manner not to  
25 jeopardize the person's safety or that of the medical professional or  
26 attending medical or health care staff during the drawing of the sample and  
27 without interfering with medical treatment.

28 (h) A law enforcement officer may request a urine sample upon  
29 meeting the requirements of paragraph (1) of subsection (b) and shall  
30 request a urine sample upon meeting the requirements of paragraph (2) of  
31 subsection (b).

32 (i) If a law enforcement officer requests a person to submit to a test of  
33 urine under this section, the collection of the urine sample shall be  
34 supervised by: (1) A person licensed to practice medicine and surgery,  
35 licensed as a physician's assistant, or a person acting under the direction of  
36 any such licensed person; (2) a registered nurse or a licensed practical  
37 nurse; or (3) a law enforcement officer of the same sex as the person being  
38 tested. The collection of the urine sample shall be conducted out of the  
39 view of any person other than the persons supervising the collection of the  
40 sample and the person being tested, unless the right to privacy is waived  
41 by the person being tested. When possible, the supervising person shall be  
42 a law enforcement officer. The results of qualitative testing for drug  
43 presence shall be admissible in evidence and questions of accuracy or

1 reliability shall go to the weight rather than the admissibility of the  
2 evidence. If the person is medically unable to provide a urine sample in  
3 such manner due to the injuries or treatment of the injuries, the same  
4 authorization and procedure as used for the collection of blood in  
5 subsections (d) and (e) shall apply to the collection of a urine sample.

6 (j) No law enforcement officer who is acting in accordance with this  
7 section shall be liable in any civil or criminal proceeding involving the  
8 action.

9 (k) Before a test or tests are administered under this section, the  
10 person shall be given oral and written notice that: (1) Kansas law requires  
11 the person to submit to and complete one or more tests of breath, blood or  
12 urine to determine if the person is under the influence of alcohol or drugs,  
13 or both;

14 (2) the opportunity to consent to or refuse a test is not a constitutional  
15 right;

16 (3) there is no constitutional right to consult with an attorney  
17 regarding whether to submit to testing;

18 (4) *if the person refuses to submit to and complete any test of breath,*  
19 *blood or urine hereafter requested by a law enforcement officer, the person*  
20 *may be charged with a separate crime of refusing to submit to a test to*  
21 *determine the presence of alcohol or drugs, which carries criminal*  
22 *penalties that are equal to the criminal penalties for the crime of driving*  
23 *under the influence;*

24 ~~(4)~~ (5) if the person refuses to submit to and complete any test of  
25 breath, blood or urine hereafter requested by a law enforcement officer, the  
26 person's driving privileges will be suspended for one year for the first or  
27 subsequent occurrence;

28 ~~(5)~~ (6) if the person submits to and completes the test or tests and the  
29 test results show:

30 (A) An alcohol concentration of .08 or greater, the person's driving  
31 privileges will be suspended for 30 days for the first occurrence and one  
32 year for the second or subsequent occurrence; or

33 (B) an alcohol concentration of .15 or greater, the person's driving  
34 privileges will be suspended for one year for the first or subsequent  
35 occurrence;

36 ~~(6)~~ (7) if the person is less than 21 years of age at the time of the test  
37 request and submits to and completes the tests and the test results show an  
38 alcohol concentration of .08 or greater, the person's driving privileges will  
39 be suspended for one year;

40 ~~(7)~~ (8) refusal to submit to testing may be used against the person at  
41 any trial on a charge arising out of the operation or attempted operation of  
42 a vehicle while under the influence of alcohol or drugs, or both;

43 ~~(8)~~ (9) the results of the testing may be used against the person at any

1 trial on a charge arising out of the operation or attempted operation of a  
2 vehicle while under the influence of alcohol or drugs, or both; and

3 ~~(9)~~ (10) after the completion of the testing, the person has the right to  
4 consult with an attorney and may secure additional testing, which, if  
5 desired, should be done as soon as possible and is customarily available  
6 from medical care facilities willing to conduct such testing.

7 (l) If a law enforcement officer has reasonable grounds to believe that  
8 the person has been driving a commercial motor vehicle, as defined in  
9 K.S.A. 8-2,128, and amendments thereto, while having alcohol or other  
10 drugs in such person's system, the person shall also be provided the oral  
11 and written notice pursuant to K.S.A. 8-2,145, and amendments thereto.  
12 Any failure to give the notices required by K.S.A. 8-2,145, and  
13 amendments thereto, shall not invalidate any action taken as a result of the  
14 requirements of this section. If a law enforcement officer has reasonable  
15 grounds to believe that the person has been driving or attempting to drive a  
16 vehicle while having alcohol or other drugs in such person's system and  
17 such person was under 21 years of age, the person also shall be given the  
18 notices required by K.S.A. 8-1567a, and amendments thereto. Any failure  
19 to give the notices required by K.S.A. 8-1567a, and amendments thereto,  
20 shall not invalidate any action taken as a result of the requirements of this  
21 section.

22 (m) After giving the foregoing information, a law enforcement officer  
23 shall request the person to submit to testing. The selection of the test or  
24 tests shall be made by the officer. If the test results show a blood or breath  
25 alcohol concentration of .08 or greater, the person's driving privileges shall  
26 be subject to suspension, or suspension and restriction, as provided in  
27 K.S.A. 8-1002 and 8-1014, and amendments thereto.

28 (n) The person's refusal shall be admissible in evidence against the  
29 person at any trial on a charge arising out of the alleged operation or  
30 attempted operation of a vehicle while under the influence of alcohol or  
31 drugs, or both. *The person's refusal shall be admissible in evidence*  
32 *against the person at any trial on a charge arising out of the alleged*  
33 *violation of section 2, and amendments thereto.*

34 (o) If a law enforcement officer had reasonable grounds to believe the  
35 person had been driving a commercial motor vehicle, as defined in K.S.A.  
36 8-2,128, and amendments thereto, and the test results show a blood or  
37 breath alcohol concentration of .04 or greater, the person shall be  
38 disqualified from driving a commercial motor vehicle, pursuant to K.S.A.  
39 8-2,142, and amendments thereto. If a law enforcement officer had  
40 reasonable grounds to believe the person had been driving a commercial  
41 motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, and  
42 the test results show a blood or breath alcohol concentration of .08 or  
43 greater, or the person refuses a test, the person's driving privileges shall be

1 subject to suspension, or suspension and restriction, pursuant to this  
2 section, in addition to being disqualified from driving a commercial motor  
3 vehicle pursuant to K.S.A. 8-2,142, and amendments thereto.

4 (p) An officer shall have probable cause to believe that the person  
5 operated a vehicle while under the influence of alcohol or drugs, or both, if  
6 the vehicle was operated by such person in such a manner as to have  
7 caused the death of or serious injury to a person. In such event, such test or  
8 tests may be made pursuant to a search warrant issued under the authority  
9 of K.S.A. 22-2502, and amendments thereto, or without a search warrant  
10 under the authority of K.S.A. 22-2501, and amendments thereto.

11 (q) Failure of a person to provide an adequate breath sample or  
12 samples as directed shall constitute a refusal unless the person shows that  
13 the failure was due to physical inability caused by a medical condition  
14 unrelated to any ingested alcohol or drugs.

15 (r) It shall not be a defense that the person did not understand the  
16 written or oral notice required by this section.

17 (s) No test results shall be suppressed because of technical  
18 irregularities in the consent or notice required pursuant to this act.

19 (t) Nothing in this section shall be construed to limit the admissibility  
20 at any trial of alcohol or drug concentration testing results obtained  
21 pursuant to a search warrant.

22 (u) Upon the request of any person submitting to testing under this  
23 section, a report of the results of the testing shall be made available to such  
24 person.

25 (v) This act is remedial law and shall be liberally construed to  
26 promote public health, safety and welfare.

27 (w) As used in this section, "serious injury" means a physical injury  
28 to a person, as determined by law enforcement, which has the effect of,  
29 prior to the request for testing:

30 (1) Disabling a person from the physical capacity to remove  
31 themselves from the scene;

32 (2) renders a person unconscious;

33 (3) the immediate loss of or absence of the normal use of at least one  
34 limb;

35 (4) an injury determined by a physician to require surgery; or

36 (5) otherwise indicates the person may die or be permanently disabled  
37 by the injury.

38 Sec. 12. K.S.A. 2011 Supp. 8-1008 is hereby amended to read as  
39 follows: 8-1008. (a) As used in this section, "provider" means: (1) A  
40 professional licensed by the behavioral sciences regulatory board to  
41 diagnose and treat mental or substance use disorders at the independent  
42 level who is compliant with the requirements set forth by the secretary of  
43 social and rehabilitation services as described in subsection (f); or (2) a



1 professional licensed by the behavioral sciences regulatory board who is  
2 working in an alcohol and drug treatment facility licensed by the secretary  
3 of social and rehabilitation services as meeting the requirements described  
4 in subsection (f).

5 (b) A provider shall provide:

6 (1) Alcohol and drug evaluations, prior to sentencing, of any person  
7 who is convicted of a violation of K.S.A. 8-2,144 or 8-1567 *or section 2*,  
8 and amendments thereto, or the ordinance of a city or resolution of a  
9 county in this state which prohibits the acts prohibited by those statutes;  
10 and

11 (2) alcohol and drug evaluations of persons whom the prosecutor  
12 considers for eligibility or finds eligible to enter a diversion agreement in  
13 lieu of further criminal proceedings on a complaint alleging a violation of  
14 K.S.A. 8-1567 *or section 2*, and amendments thereto, or the ordinance of a  
15 city or resolution of a county in this state which prohibits the acts  
16 prohibited by that statute.

17 (c) A provider shall be capable of providing, within the judicial  
18 district: (1) The evaluations required under subsection (b); (2) the alcohol  
19 and drug evaluation report required under subsection (d) or (e); (3) the  
20 follow-up duties specified under subsection (d) or (e) for persons who  
21 prepare the alcohol and drug evaluation report; and (4) any other functions  
22 and duties specified by law. The secretary of social and rehabilitation  
23 services shall provide each judicial district with an electronic list of  
24 providers, and such list shall be used when selecting a provider to be used  
25 as described in subsections (d) and (e). The secretary of social and  
26 rehabilitation services shall also make all such lists of providers publicly  
27 available on the official website of the department of social and  
28 rehabilitation services. Any provider performing services in any judicial  
29 district under this section prior to July 1, 2011, may continue to perform  
30 those services until July 1, 2012.

31 (d) Prior to sentencing, an alcohol and drug evaluation shall be  
32 conducted on any person who is convicted of a violation of K.S.A. 8-2,144  
33 or 8-1567 *or section 2*, and amendments thereto, or the ordinance of a city  
34 or resolution of a county in this state which prohibits the acts prohibited by  
35 those statutes. The alcohol and drug evaluation report shall be made  
36 available to and shall be considered by the court prior to sentencing.  
37 *Except as provided further,* the court shall order that *the* cost of any  
38 alcohol and drug evaluation for any person shall be paid by such person to  
39 the provider at the time of service, ~~and shall not exceed \$150.~~ *If the court*  
40 *finds that such person is indigent, the provider shall agree to accept*  
41 *payment as part of the court costs, and the court shall order that the cost*  
42 *of any alcohol and drug evaluation for such person shall be paid by such*  
43 *person to the provider as part of the court costs. The cost of any such*

1 *evaluation shall be not less than \$150.*

2 (e) An alcohol and drug evaluation shall be conducted on any person  
3 whom the prosecutor considers for eligibility or finds eligible to enter a  
4 diversion agreement in lieu of further criminal proceedings on a complaint  
5 alleging a violation of K.S.A. 8-1567 *or section 2*, and amendments  
6 thereto, or the ordinance of a city or resolution of a county in this state  
7 which prohibits the acts prohibited by that statute. The alcohol and drug  
8 evaluation report shall be made available to the prosecuting attorney and  
9 shall be considered by the prosecuting attorney. The cost of any alcohol  
10 and drug evaluation for any person shall be paid by such person to the  
11 provider at the time of service, and shall ~~not exceed~~ *be not less than* \$150.

12 (f) All alcohol and drug evaluations conducted pursuant to this  
13 section shall utilize a standardized substance use evaluation approved by  
14 the secretary of social and rehabilitation services and be submitted in a  
15 format approved by the secretary of social and rehabilitation services. On  
16 or before July 1, 2012, the secretary of social and rehabilitation services  
17 shall promulgate rules and regulations to implement this section.

18 Sec. 13. K.S.A. 2011 Supp. 8-1012 is hereby amended to read as  
19 follows: 8-1012. (a) Any person who operates or attempts to operate a  
20 vehicle within this state is deemed to have given consent to submit to a  
21 preliminary screening test of the person's breath or saliva, or both, subject  
22 to the provisions set out in subsection (b).

23 (b) A law enforcement officer may request a person who is operating  
24 or attempting to operate a vehicle within this state to submit to a  
25 preliminary screening test of the person's breath or saliva, or both, if the  
26 officer has reasonable suspicion to believe the person has been operating  
27 or attempting to operate a vehicle while under the influence of alcohol or  
28 drugs or both alcohol and drugs.

29 (c) At the time the test is requested, the person shall be given oral  
30 notice that: (1) There is no right to consult with an attorney regarding  
31 whether to submit to testing; (2) refusal to submit to testing is a traffic  
32 infraction; and (3) further testing may be required after the preliminary  
33 screening test. Failure to provide the notice shall not be an issue or defense  
34 in any action. The law enforcement officer then shall request the person to  
35 submit to the test.

36 (d) Refusal to take and complete the test as requested is a traffic  
37 infraction. If the person submits to the test, the results shall be used for the  
38 purpose of assisting law enforcement officers in determining whether an  
39 arrest should be made and whether to request the tests authorized by  
40 K.S.A. 8-1001, and amendments thereto. A law enforcement officer may  
41 arrest a person based in whole or in part upon the results of a preliminary  
42 screening test. Such results shall not be admissible in any civil or criminal  
43 action concerning the operation of or attempted operation of a vehicle

1 except to aid the court or hearing officer in determining a challenge to the  
2 validity of the arrest or the validity of the request to submit to a test  
3 pursuant to K.S.A. 8-1001, and amendments thereto. Following the  
4 preliminary screening test, additional tests may be requested pursuant to  
5 K.S.A. 8-1001, and amendments thereto.

6 (e) Any preliminary screening of a person's breath shall be conducted  
7 with a device approved pursuant to K.S.A. 65-1,107, and amendments  
8 thereto. ~~Any preliminary screening of a person's saliva shall be conducted  
9 with a device approved pursuant to K.S.A. 2011 Supp. 75-712h, and  
10 amendments thereto.~~

11 Sec. 14. K.S.A. 2011 Supp. 8-1013 is hereby amended to read as  
12 follows: 8-1013. As used in K.S.A. 8-1001 through 8-1010, 8-1011, 8-  
13 1012, 8-1014, 8-1015, 8-1016, 8-1017 and 8-1018, and amendments  
14 thereto, and this section:

15 (a) "Alcohol concentration" means the number of grams of alcohol  
16 per 100 milliliters of blood or per 210 liters of breath.

17 (b) (1) "Alcohol or drug-related conviction" means any of the  
18 following: (A) Conviction of vehicular battery or aggravated vehicular  
19 homicide, if the crime is committed while committing a violation of  
20 K.S.A. 8-1567, and amendments thereto, or the ordinance of a city or  
21 resolution of a county in this state which prohibits any acts prohibited by  
22 that statute, or conviction of a violation of K.S.A. 8-2,144 or 8-1567 *or*  
23 *section 2*, and amendments thereto; (B) conviction of a violation of a law  
24 of another state which would constitute a crime described in subsection (b)  
25 (1)(A) if committed in this state; (C) conviction of a violation of an  
26 ordinance of a city in this state or a resolution of a county in this state  
27 which would constitute a crime described in subsection (b)(1)(A), whether  
28 or not such conviction is in a court of record; or (D) conviction of an act  
29 which was committed on a military reservation and which would  
30 constitute a violation of K.S.A. 8-2,144 or 8-1567 *or section 2*, and  
31 amendments thereto, or would constitute a crime described in subsection  
32 (b)(1)(A) if committed off a military reservation in this state.

33 (2) For the purpose of determining whether an occurrence is a first,  
34 second or subsequent occurrence: (A) "Alcohol or drug-related conviction"  
35 also includes entering into a diversion agreement in lieu of further criminal  
36 proceedings on a complaint alleging commission of a crime described in  
37 subsection (b)(1), including a diversion agreement entered into prior to the  
38 effective date of this act; and (B) it is irrelevant whether an offense  
39 occurred before or after conviction or diversion for a previous offense.

40 (c) "Division" means the division of vehicles of the department of  
41 revenue.

42 (d) "Ignition interlock device" means a device which uses a breath  
43 analysis mechanism to prevent a person from operating a motor vehicle if

1 such person has consumed an alcoholic beverage.

2 (e) "Occurrence" means a test refusal, test failure or alcohol or drug-  
3 related conviction, or any combination thereof arising from one arrest,  
4 including an arrest which occurred prior to the effective day of this act.

5 (f) "Other competent evidence" includes: (1) Alcohol concentration  
6 tests obtained from samples taken three hours or more after the operation  
7 or attempted operation of a vehicle; and (2) readings obtained from a  
8 partial alcohol concentration test on a breath testing machine.

9 (g) "Samples" includes breath supplied directly for testing, which  
10 breath is not preserved.

11 (h) "Test failure" or "fails a test" refers to a person's having results of  
12 a test administered pursuant to this act, other than a preliminary screening  
13 test, which show an alcohol concentration of .08 or greater in the person's  
14 blood or breath, and includes failure of any such test on a military  
15 reservation.

16 (i) "Test refusal" or "refuses a test" refers to a person's failure to  
17 submit to or complete any test of the person's blood, breath, urine or other  
18 bodily substance, other than a preliminary screening test, in accordance  
19 with this act, and includes refusal of any such test on a military  
20 reservation.

21 (j) "Law enforcement officer" has the meaning provided by K.S.A.  
22 2011 Supp. 21-5111, and amendments thereto, and includes any person  
23 authorized by law to make an arrest on a military reservation for an act  
24 which would constitute a violation of K.S.A. 8-1567 *or section 2*, and  
25 amendments thereto, if committed off a military reservation in this state.

26 Sec. 15. K.S.A. 2011 Supp. 8-1014 is hereby amended to read as  
27 follows: 8-1014. (a) Except as provided by subsection (e) and K.S.A. 8-  
28 2,142, and amendments thereto, if a person refuses a test, the division,  
29 pursuant to K.S.A. 8-1002, and amendments thereto, shall:

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

34 (2) on the person's second occurrence, suspend the person's driving  
35 privileges for one year and at the end of the suspension, restrict the  
36 person's driving privileges for ~~two~~ *three* years to driving only a motor  
37 vehicle equipped with an ignition interlock device;

38 (3) on the person's third occurrence, suspend the person's driving  
39 privileges for one year and at the end of the suspension, restrict the  
40 person's driving privileges for ~~three~~ *four* years to driving only a motor  
41 vehicle equipped with an ignition interlock device;

42 (4) on the person's fourth occurrence, suspend the person's driving  
43 privileges for one year and at the end of the suspension, restrict the

1 person's driving privileges for ~~four~~ five years to driving only a motor  
2 vehicle equipped with an ignition interlock device; and

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

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

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

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

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

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

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

30 (2) Except as provided by subsection (e) and K.S.A. 8-2,142, and  
31 amendments thereto, if a person fails a test or has an alcohol or drug-  
32 related conviction in this state and the person's blood or breath alcohol  
33 concentration is .15 or greater, the division shall:

34 (A) On the person's first occurrence, suspend the person's driving  
35 privileges for one year and at the end of the suspension, restrict the  
36 person's driving privileges for one year to driving only a motor vehicle  
37 equipped with an ignition interlock device;

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

42 (C) on the person's third occurrence, suspend the person's driving  
43 privileges for one year and at the end of the suspension restrict the person's

1 driving privileges for three years to driving only a motor vehicle equipped  
2 with an ignition interlock device;

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

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

11 (3) Whenever a person's driving privileges have been restricted to  
12 driving only a motor vehicle equipped with an ignition interlock device for  
13 10 years under this section, such person may petition any district court for  
14 relief from such restriction after five years of such restriction have been  
15 served. The court shall consider, but not be limited to, whether: (A) Such  
16 person's driving privileges have been restricted, suspended, revoked or  
17 disqualified pursuant to another action by the division or a court; and (B)  
18 such person proves installation, maintenance and use of an ignition  
19 interlock device approved by the division throughout the five-year period.  
20 If the court finds that the person's driving privileges should be restored,  
21 then the court shall electronically report such order to the division. The  
22 division, upon receiving such order, shall restore such person's driving  
23 privileges, unless such person's driving privileges have been restricted,  
24 suspended, revoked or disqualified pursuant to another action by the  
25 division or a court.

26 (c) Except as provided by subsection (e) and K.S.A. 8-2,142, and  
27 amendments thereto, if a person who is less than 21 years of age fails a test  
28 or has an alcohol or drug-related conviction in this state, ~~the division shall:~~

29 ~~(1) On the person's first occurrence, suspend the person's driving~~  
30 ~~privileges for one year. If the person's blood or breath alcohol~~  
31 ~~concentration is .15 or greater, the division shall at the end of the~~  
32 ~~suspension, restrict the person's driving privileges for one year to driving~~  
33 ~~only a motor vehicle equipped with an ignition interlock device;~~

34 ~~(2) on the person's second and subsequent occurrences, penalties shall~~  
35 ~~be imposed pursuant to subsection (b).~~

36 (d) Whenever the division is notified by ~~an alcohol and drug safety~~  
37 ~~action program that a person has failed to complete any alcohol and drug~~  
38 ~~safety action education or treatment program ordered a provider, as~~  
39 ~~defined in K.S.A. 8-1008, and amendments thereto, or a court that the~~  
40 ~~person has failed to follow any recommendation made by the provider or~~  
41 ~~otherwise ordered by a court for a conviction of a violation of K.S.A. 8-~~  
42 ~~1567 or section 2, and amendments thereto, the division shall suspend the~~  
43 ~~person's driving privileges until the division receives notice of the person's~~

1 completion of such ~~program~~ *recommendation*.

2 (e) Except as provided in K.S.A. 8-2,142, and amendments thereto, if  
3 a person's driving privileges are subject to suspension pursuant to this  
4 section for a test refusal, test failure or alcohol or drug-related conviction  
5 arising from the same arrest, the period of such suspension shall not  
6 exceed the longest applicable period authorized by subsection (a), (b) or  
7 (c), and such suspension periods shall not be added together or otherwise  
8 imposed consecutively. In addition, in determining the period of such  
9 suspension as authorized by subsection (a), (b) or (c), such person shall  
10 receive credit for any period of time for which such person's driving  
11 privileges were suspended while awaiting any hearing or final order  
12 authorized by this act.

13 If a person's driving privileges are subject to restriction pursuant to this  
14 section for a test failure or alcohol or drug-related conviction arising from  
15 the same arrest, the restriction periods shall not be added together or  
16 otherwise imposed consecutively. In addition, in determining the period of  
17 restriction, the person shall receive credit for any period of suspension  
18 imposed for a test refusal arising from the same arrest.

19 (f) If the division has taken action under subsection (a) for a test  
20 refusal or under subsection (b) or (c) for a test failure and such action is  
21 stayed pursuant to K.S.A. 8-259, and amendments thereto, or if temporary  
22 driving privileges are issued pursuant to K.S.A. 8-1020, and amendments  
23 thereto, the stay or temporary driving privileges shall not prevent the  
24 division from taking the action required by subsection (b) or (c) for an  
25 alcohol or drug-related conviction.

26 (g) The provisions of subsections (a), (b) and (c), as amended by ~~this~~  
27 ~~act~~ *section 14 of chapter 105 of the 2011 Session Laws of Kansas*, may be  
28 applied retroactively only if requested by a person who has had such  
29 person's driving privileges suspended or restricted pursuant to subsection  
30 (a), (b) or (c) prior to such amendment. Such person may apply to the  
31 division to have the penalties applied retroactively, as provided under  
32 subsection ~~(f)~~ (g) of K.S.A. 8-1015, and amendments thereto.

33 (h) *When modifying penalties pursuant to subsection (g), the division*  
34 *shall credit any suspension or revocation time in excess of one year which*  
35 *was imposed and served prior to retroactive application of the provisions*  
36 *of subsections (a), (b) and (c), as amended by section 14 of chapter 105 of*  
37 *the 2011 Session Laws of Kansas, toward the required ignition interlock*  
38 *restriction period imposed pursuant to the retroactive application of such*  
39 *provisions if: (1) The person's driving record indicates no driving by the*  
40 *person during the applicable suspension or revocation period; and (2) the*  
41 *person completes a form prescribed by the division indicating that the*  
42 *person did not drive during the applicable suspension or revocation*  
43 *period.*

1       ~~(h)~~ (i) As used in this section, "suspension" includes any period of  
2 suspension and any period of restriction as provided in subsection (a) of  
3 K.S.A. 8-1015, and amendments thereto.

4       Sec. 16. K.S.A. 2011 Supp. 8-1015 is hereby amended to read as  
5 follows: 8-1015.

6       (a) (1) *Except as provided in subsection (a)(2), whenever a person's*  
7 *driving privileges have been suspended for one year as provided in*  
8 *subsection (a) of K.S.A. 8-1014, and amendments thereto, after 90 days of*  
9 *such suspension, such person may apply to the division for such person's*  
10 *driving privileges to be restricted for the remainder of the one-year*  
11 *suspension period to driving only a motor vehicle equipped with an*  
12 *ignition interlock device and only for the purposes of getting to and from:*  
13 *Work, school or an alcohol treatment program; and the ignition interlock*  
14 *provider for maintenance and downloading of data from the device.*

15       (2) *Whenever a person's driving privileges have been suspended for*  
16 *one year as provided in subsection (a)(1) of K.S.A. 8-1014, and*  
17 *amendments thereto, after 90 days of such suspension, such person may*  
18 *apply to the division for such person's driving privileges to be restricted*  
19 *for the remainder of the one-year suspension period to driving only a*  
20 *motor vehicle equipped with an ignition interlock device and only under*  
21 *the circumstances provided by subsections (a)(1), (2), (3) and (4) of K.S.A.*  
22 *8-292, and amendments thereto.*

23       (3) *Except as provided in subsection (a)(4), whenever a person's*  
24 *driving privileges have been suspended for one year as provided in*  
25 *subsection ~~(a)~~; (b) or (c) of K.S.A. 8-1014, and amendments thereto, after*  
26 *45 days of such suspension, such person may apply to the division for such*  
27 *person's driving privileges to be restricted for the remainder of the one-*  
28 *year suspension period to driving only a motor vehicle equipped with an*  
29 *ignition interlock device and only for the purposes of getting to and from:*  
30 *Work, school or an alcohol treatment program; and the ignition interlock*  
31 *provider for maintenance and downloading of data from the device.*

32       (4) *Whenever a person's driving privileges have been suspended for*  
33 *one year as provided in subsection (b)(2)(A) or (c)(1) of K.S.A. 8-1014,*  
34 *and amendments thereto, after 45 days of such suspension, such person*  
35 *may apply to the division for such person's driving privileges to be*  
36 *restricted for the remainder of the one-year suspension period to driving*  
37 *only a motor vehicle equipped with an ignition interlock device and only*  
38 *under the circumstances provided by subsections (a)(1), (2), (3) and (4) of*  
39 *K.S.A. 8-292, and amendments thereto.*

40       (5) *The division shall assess an application fee of \$100 for a person*  
41 *to apply to modify the suspension to restricted ignition interlock status.*

42       ~~(2)~~ (6) *The division shall approve the request for such restricted*  
43 *license unless such person's driving privileges have been restricted,*



1 suspended, revoked or disqualified pursuant to another action by the  
2 division or a court. If the request is approved, upon receipt of proof of the  
3 installation of such device, the division shall issue a copy of the order  
4 imposing such restrictions on the person's driving privileges and such  
5 order shall be carried by the person at any time the person is operating a  
6 motor vehicle on the highways of this state. Except as provided in K.S.A.  
7 8-1017, and amendments thereto, if such person is convicted of a violation  
8 of the restrictions, such person's driving privileges shall be suspended for  
9 an additional year, in addition to any term of suspension or restriction as  
10 provided in subsection (a), (b) or (c) of K.S.A. 8-1014, and amendments  
11 thereto.

12 (b) (1) On and after July 1, 2011, through June 30, 2015:

13 (A) Except as provided in subsection (b)(1)(B), when a person has  
14 completed the suspension pursuant to subsection (b)(1)(A) of K.S.A. 8-  
15 1014, and amendments thereto, the division shall restrict the person's  
16 driving privileges for 180 days to driving only a motor vehicle equipped  
17 with an ignition interlock device.

18 (B) When a person has completed the suspension pursuant to  
19 subsection (b)(1)(A) of K.S.A. 8-1014, and amendments thereto, the  
20 division shall restrict the person's driving privileges for one year to driving  
21 only a motor vehicle equipped with an ignition interlock device if the  
22 records maintained by the division indicate that such person has  
23 previously: (A) Been convicted of a violation of K.S.A. 8-1599, and  
24 amendments thereto; (B) been convicted of a violation of K.S.A. 41-727,  
25 and amendments thereto; (C) been convicted of any violations listed in  
26 subsection (a) of K.S.A. 8-285, and amendments thereto; (D) been  
27 convicted of three or more moving traffic violations committed on separate  
28 occasions within a 12-month period; or (E) had such person's driving  
29 privileges revoked, suspended, canceled or withdrawn.

30 (2) On and after July 1, 2015:

31 (A) Except as provided in subsection (b)(2)(B), when a person has  
32 completed the suspension pursuant to subsection (b)(1)(A) of K.S.A. 8-  
33 1014, and amendments thereto, the division shall restrict the person's  
34 driving privileges to driving only under the circumstances provided by  
35 subsections (a)(1), (2), (3) and (4) of K.S.A. 8-292, and amendments  
36 thereto.

37 (B) In lieu of the restrictions set out in subsection (b)(2)(A), the  
38 division, upon request of the person whose driving privileges are to be  
39 restricted, may restrict the person's driving privileges to driving only a  
40 motor vehicle equipped with an ignition interlock device.

41 (c) Except as provided in subsection (b), when a person has  
42 completed the suspension pursuant to subsection (a), (b) or (c) of K.S.A.  
43 8-1014, and amendments thereto, the division shall restrict the person's

1 driving privileges pursuant to subsection (a), (b) or (c) of K.S.A. 8-1014,  
2 and amendments thereto, to driving only a motor vehicle equipped with an  
3 ignition interlock device. Upon restricting a person's driving privileges  
4 pursuant to this subsection, the division shall issue a copy of the order  
5 imposing the restrictions which is required to be carried by the person at  
6 any time the person is operating a motor vehicle on the highways of this  
7 state.

8 (d) Whenever an ignition interlock device is required by law, such  
9 ignition interlock device shall be approved by the division and maintained  
10 at the person's expense. Proof of the installation of such ignition interlock  
11 device, for the entire period required by the applicable law, shall be  
12 provided to the division before the person's driving privileges are fully  
13 reinstated.

14 (e) Except as provided further, any person whose license is restricted  
15 to operating only a motor vehicle with an ignition interlock device  
16 installed may operate an employer's vehicle without an ignition interlock  
17 device installed during normal business activities, provided that the person  
18 does not partly or entirely own or control the employer's vehicle or  
19 business. The provisions of this subsection shall not apply to any person  
20 whose driving privileges have been restricted for the remainder of the one-  
21 year suspension period as provided in subsection (a).

22 (f) Upon expiration of the period of time for which restrictions are  
23 imposed pursuant to this section, the licensee may apply to the division for  
24 the return of any license previously surrendered by the licensee. If the  
25 license has expired, the person may apply to the division for a new license,  
26 which shall be issued by the division upon payment of the proper fee and  
27 satisfaction of the other conditions established by law, unless the person's  
28 driving privileges have been suspended or revoked prior to expiration.

29 (g) Any person who has had the person's driving privileges suspended  
30 ~~or~~, restricted *or revoked* pursuant to subsection (a), (b) or (c) of K.S.A. 8-  
31 1014, prior to the amendments by ~~this act~~ *section 14 of chapter 105 of the*  
32 *2011 Session Laws of Kansas*, may apply to the division to have the  
33 suspension ~~and~~, restriction *or revocation* penalties modified in conformity  
34 with the provisions of subsection (a), (b) or (c) of K.S.A. 8-1014, and  
35 amendments thereto. The division shall assess an application fee of \$100  
36 for a person to apply to modify the suspension ~~and~~, restriction *or*  
37 *revocation* penalties previously issued. *The division shall modify the*  
38 *suspension, restriction or revocation penalties, unless such person's*  
39 *driving privileges have been restricted, suspended, revoked or disqualified*  
40 *pursuant to another action by the division or a court.*

41 (h) The division shall remit all application fees *collected pursuant to*  
42 *subsections (a) and (g)* to the state treasurer in accordance with the  
43 provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of

1 such remittance, the state treasurer shall deposit the entire amount in the  
2 state treasury and shall credit such moneys to the division of vehicles  
3 operating fund until an aggregate amount of \$100,000 is credited to the  
4 division of vehicles operating fund *each fiscal year*. On and after an  
5 aggregate amount of \$100,000 is credited to such fund *each fiscal year*, the  
6 entire amount of such remittance shall be credited to the community  
7 corrections supervision fund created by K.S.A. 2011 Supp. 75-52,113, and  
8 amendments thereto. The application fee established in this section shall  
9 be the only fee collected or moneys in the nature of a fee collected for such  
10 application. Such fee shall only be established by an act of the legislature  
11 and no other authority is established by law or otherwise to collect a fee.  
12 ~~The division shall modify the suspension and restriction penalties, unless~~  
13 ~~such person's driving privileges have been restricted, suspended, revoked~~  
14 ~~or disqualified pursuant to another action by the division or a court.~~

15 Sec. 17. K.S.A. 2011 Supp. 8-1020 is hereby amended to read as  
16 follows: 8-1020. (a) Any licensee served with an officer's certification and  
17 notice of suspension pursuant to K.S.A. 8-1002, and amendments thereto,  
18 may request an administrative hearing. Such request may be made either  
19 by:

20 (1) Mailing a written request which is postmarked 14 days after  
21 service of notice; or

22 (2) transmitting a written request by electronic facsimile which is  
23 received by the division within 14 days after service of notice.

24 (b) If the licensee makes a timely request for an administrative  
25 hearing *and makes a timely payment of the required hearing fee*, any  
26 temporary license issued pursuant to K.S.A. 8-1002, and amendments  
27 thereto, shall remain in effect until the 30<sup>th</sup> day after the effective date of  
28 the decision made by the division.

29 (c) If the licensee fails to make a timely request for an administrative  
30 hearing *together with the required hearing fee*, the licensee's driving  
31 privileges shall be suspended or suspended and then restricted in  
32 accordance with the notice of suspension served pursuant to K.S.A. 8-  
33 1002, and amendments thereto.

34 (d) (1) Upon receipt of a timely request for a hearing *together with*  
35 *the required hearing fee*, the division shall forthwith set the matter for  
36 hearing before a representative of the director and provide notice of the  
37 extension of temporary driving privileges. The hearing shall be held by  
38 telephone conference call unless the hearing request includes a request that  
39 the hearing be held in person before a representative of the director. The  
40 officer's certification and notice of suspension shall inform the licensee of  
41 the availability of a hearing before a representative of the director. Except  
42 for a hearing conducted by telephone conference call, the hearing shall be  
43 conducted in the county where the arrest occurred or a county adjacent

1 thereto.

2 (2) The division shall charge a fee of \$50 for a hearing, *to be paid*  
3 *within the time period for making a timely request for a hearing*, whether  
4 held by telephone or in person, to be applied by the division for  
5 administrative costs to conduct the hearing. The division shall remit all  
6 hearing fees to the state treasurer in accordance with the provisions of  
7 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such  
8 remittance, the state treasurer shall deposit the entire amount in the state  
9 treasury to the credit of the division of vehicles operating fund. The  
10 hearing fee established in this section shall be the only fee collected or  
11 moneys in the nature of a fee collected for such hearing. Such fee shall  
12 only be established by an act of the legislature and no other authority is  
13 established by law or otherwise to collect a fee.

14 (e) Except as provided in subsection (f), prehearing discovery shall be  
15 limited to the following documents, which shall be provided to the  
16 licensee or the licensee's attorney no later than seven days prior to the date  
17 of hearing:

18 (1) The officer's certification and notice of suspension;

19 (2) in the case of a breath or blood test failure, copies of documents  
20 indicating the result of any evidentiary breath or blood test administered at  
21 the request of a law enforcement officer;

22 (3) in the case of a breath test failure, a copy of the affidavit showing  
23 certification of the officer and the instrument; and

24 (4) in the case of a breath test failure, a copy of the Kansas  
25 department of health and environment testing protocol checklist.

26 (f) At or prior to the time the notice of hearing is sent, the division  
27 shall issue an order allowing the licensee or the licensee's attorney to  
28 review any video or audio tape record made of the events upon which the  
29 administrative action is based. Such review shall take place at a reasonable  
30 time designated by the law enforcement agency and shall be made at the  
31 location where the video or audio tape is kept. The licensee may obtain a  
32 copy of any such video or audio tape upon request and upon payment of a  
33 reasonable fee to the law enforcement agency, not to exceed \$25 per tape.

34 (g) Witnesses at the hearing shall be limited to the licensee, to any  
35 law enforcement officer who signed the certification form and to one other  
36 witness who was present at the time of the issuance of the certification and  
37 called by the licensee. The presence of the certifying officer or officers  
38 shall not be required, unless requested by the licensee at the time of  
39 making the request for the hearing. The examination of a law enforcement  
40 officer shall be restricted to the factual circumstances relied upon in the  
41 officer's certification.

42 (h) (1) If the officer certifies that the person refused the test, the scope  
43 of the hearing shall be limited to whether:

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

6 (B) the person was in custody or arrested for an alcohol or drug  
7 related offense or was involved in a vehicle accident or collision resulting  
8 in property damage, personal injury or death;

9 (C) 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

12 (D) the person refused to submit to and complete a test as requested  
13 by a law enforcement officer.

14 (2) If the officer certifies that the person failed a breath test, the scope  
15 of the hearing shall be limited to whether:

16 (A) A law enforcement officer had reasonable grounds to believe the  
17 person was operating a vehicle while under the influence of alcohol or  
18 drugs, or both, or had been driving a commercial motor vehicle, as defined  
19 in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other  
20 drugs in such person's system;

21 (B) the person was in custody or arrested for an alcohol or drug  
22 related offense or was involved in a vehicle accident or collision resulting  
23 in property damage, personal injury or death;

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

26 (D) the testing equipment used was certified by the Kansas  
27 department of health and environment;

28 (E) the person who operated the testing equipment was certified by  
29 the Kansas department of health and environment;

30 (F) the testing procedures used substantially complied with the  
31 procedures set out by the Kansas department of health and environment;

32 (G) the test result determined that the person had an alcohol  
33 concentration of .08 or greater in such person's breath; and

34 (H) the person was operating or attempting to operate a vehicle.

35 (3) If the officer certifies that the person failed a blood test, the scope  
36 of the hearing shall be limited to whether:

37 (A) A law enforcement officer had reasonable grounds to believe the  
38 person was operating a vehicle while under the influence of alcohol or  
39 drugs, or both, or had been driving a commercial motor vehicle, as defined  
40 in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other  
41 drugs in such person's system;

42 (B) the person was in custody or arrested for an alcohol or drug  
43 related offense or was involved in a vehicle accident or collision resulting

- 1 in property damage, personal injury or death;
- 2 (C) a law enforcement officer had presented the person with the oral
- 3 and written notice required by K.S.A. 8-1001, and amendments thereto;
- 4 (D) the testing equipment used was reliable;
- 5 (E) the person who operated the testing equipment was qualified;
- 6 (F) the testing procedures used were reliable;
- 7 (G) the test result determined that the person had an alcohol
- 8 concentration of .08 or greater in such person's blood; and
- 9 (H) the person was operating or attempting to operate a vehicle.
- 10 (i) At a hearing pursuant to this section, or upon court review of an
- 11 order entered at such a hearing, an affidavit of the custodian of records at
- 12 the Kansas department of health and environment stating that the breath
- 13 testing device was certified and the operator of such device was certified
- 14 on the date of the test shall be admissible into evidence in the same
- 15 manner and with the same force and effect as if the certifying officer or
- 16 employee of the Kansas department of health and environment had
- 17 testified in person. A certified operator of a breath testing device shall be
- 18 competent to testify regarding the proper procedures to be used in
- 19 conducting the test.
- 20 (j) At a hearing pursuant to this section, or upon court review of an
- 21 order entered at such a hearing, in which the report of blood test results
- 22 have been prepared by the Kansas bureau of investigation or other forensic
- 23 laboratory of a state or local law enforcement agency are to be introduced
- 24 as evidence, the report, or a copy of the report, of the findings of the
- 25 forensic examiner shall be admissible into evidence in the same manner
- 26 and with the same force and effect as if the forensic examiner who
- 27 performed such examination, analysis, comparison or identification and
- 28 prepared the report thereon had testified in person.
- 29 (k) At the hearing, the licensee has the burden of proof by a
- 30 preponderance of the evidence to show that the facts set out in the officer's
- 31 certification are false or insufficient and that the order suspending or
- 32 suspending and restricting the licensee's driving privileges should be
- 33 dismissed.
- 34 (l) Evidence at the hearing shall be limited to the following:
- 35 (1) The documents set out in subsection (e);
- 36 (2) the testimony of the licensee;
- 37 (3) the testimony of any certifying officer;
- 38 (4) the testimony of any witness present at the time of the issuance of
- 39 the certification and called by the licensee;
- 40 (5) any affidavits submitted from other witnesses;
- 41 (6) any documents submitted by the licensee to show the existence of
- 42 a medical condition, as described in K.S.A. 8-1001, and amendments
- 43 thereto; and

1 (7) any video or audio tape record of the events upon which the  
2 administrative action is based.

3 (m) After the hearing, the representative of the director shall enter an  
4 order affirming the order of suspension or suspension and restriction of  
5 driving privileges or for good cause appearing therefor, dismiss the  
6 administrative action. If the representative of the director enters an order  
7 affirming the order of suspension or suspension and restriction of driving  
8 privileges, the suspension or suspension and restriction shall begin on the  
9 30<sup>th</sup> day after the effective date of the order of suspension or suspension  
10 and restriction. If the person whose privileges are suspended is a  
11 nonresident licensee, the license of the person shall be forwarded to the  
12 appropriate licensing authority in the person's state of residence if the  
13 result at the hearing is adverse to such person or if no timely request for a  
14 hearing is received.

15 (n) The representative of the director may issue an order at the close  
16 of the hearing or may take the matter under advisement and issue a hearing  
17 order at a later date. If the order is made at the close of the hearing, the  
18 licensee or the licensee's attorney shall be served with a copy of the order  
19 by the representative of the director. If the matter is taken under  
20 advisement or if the hearing was by telephone conference call, the licensee  
21 and any attorney who appeared at the administrative hearing upon behalf  
22 of the licensee each shall be served with a copy of the hearing order by  
23 mail. Any law enforcement officer who appeared at the hearing also may  
24 be mailed a copy of the hearing order. The effective date of the hearing  
25 order shall be the date upon which the hearing order is served, whether  
26 served in person or by mail.

27 (o) The licensee may file a petition for review of the hearing order  
28 pursuant to K.S.A. 8-259, and amendments thereto. Upon filing a petition  
29 for review, the licensee shall serve the secretary of revenue with a copy of  
30 the petition and summons. Upon receipt of a copy of the petition for  
31 review by the secretary, the temporary license issued pursuant to  
32 subsection (b) shall be extended until the decision on the petition for  
33 review is final.

34 (p) Such review shall be in accordance with this section and the  
35 Kansas judicial review act. To the extent that this section and any other  
36 provision of law conflicts, this section shall prevail. The petition for  
37 review shall be filed within 14 days after the effective date of the order.  
38 Venue of the action for review is the county where the person was arrested  
39 or the accident occurred, or, if the hearing was not conducted by telephone  
40 conference call, the county where the administrative proceeding was held.  
41 The action for review shall be by trial de novo to the court and the  
42 evidentiary restrictions of subsection (l) shall not apply to the trial de  
43 novo. The court shall take testimony, examine the facts of the case and

1 determine whether the petitioner is entitled to driving privileges or  
2 whether the petitioner's driving privileges are subject to suspension or  
3 suspension and restriction under the provisions of this act. If the court  
4 finds that the grounds for action by the agency have been met, the court  
5 shall affirm the agency action.

6 (q) Upon review, the licensee shall have the burden to show that the  
7 decision of the agency should be set aside.

8 (r) Notwithstanding the requirement to issue a temporary license in  
9 K.S.A. 8-1002, and amendments thereto, and the requirements to extend  
10 the temporary license in this section, any such temporary driving  
11 privileges are subject to restriction, suspension, revocation or cancellation  
12 as provided in K.S.A. 8-1014, and amendments thereto, or for other cause.

13 (s) Upon motion by a party, or on the court's own motion, the court  
14 may enter an order restricting the driving privileges allowed by the  
15 temporary license provided for in K.S.A. 8-1002, and amendments thereto,  
16 and in this section. The temporary license also shall be subject to  
17 restriction, suspension, revocation or cancellation, as set out in K.S.A. 8-  
18 1014, and amendments thereto, or for other cause.

19 (t) The facts found by the hearing officer or by the district court upon  
20 a petition for review shall be independent of the determination of the same  
21 or similar facts in the adjudication of any criminal charges arising out of  
22 the same occurrence. The disposition of those criminal charges shall not  
23 affect the suspension or suspension and restriction to be imposed under  
24 this section.

25 (u) All notices affirming or canceling a suspension under this section,  
26 all notices of a hearing held under this section and all issuances of  
27 temporary driving privileges pursuant to this section shall be sent by first-  
28 class mail and a United States post office certificate of mailing shall be  
29 obtained therefor. All notices so mailed shall be deemed received three  
30 days after mailing, except that this provision shall not apply to any  
31 licensee where such application would result in a manifest injustice.

32 (v) The provisions of K.S.A. 60-206, and amendments thereto,  
33 regarding the computation of time shall be applicable in determining the  
34 time for requesting an administrative hearing as set out in subsection (a)  
35 and to the time for filing a petition for review pursuant to subsection (o)  
36 and K.S.A. 8-259, and amendments thereto.

37 Sec. 18. K.S.A. 8-1501 is hereby amended to read as follows: 8-1501.  
38 The provisions of this article relating to the operation of vehicles refer  
39 exclusively to the operation of vehicles upon highways except:

40 (a) Where a different place is specifically referred to in a given  
41 section; and

42 (b) The provisions of K.S.A. 8-1566 to 8-1568, inclusive, *section 2*  
43 and the provisions of article 10 of chapter 8 of the Kansas Statutes



1 Annotated, and any acts amendatory thereof, shall apply upon highways  
2 and elsewhere throughout the state.

3 Sec. 19. K.S.A. 2011 Supp. 8-1567 is hereby amended to read as  
4 follows: 8-1567. (a) Driving under the influence is operating or attempting  
5 to operate any vehicle within this state while:

6 (1) The alcohol concentration in the person's blood or breath as  
7 shown by any competent evidence, including other competent evidence, as  
8 defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and  
9 amendments thereto, is .08 or more;

10 (2) the alcohol concentration in the person's blood or breath, as  
11 measured within three hours of the time of operating or attempting to  
12 operate a vehicle, is .08 or more;

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

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

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

20 ~~(6) The person is a habitual user of any narcotic, hypnotic,~~  
21 ~~somnifacient or stimulating drug.~~

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

23 (A) On a first conviction a class B, nonperson misdemeanor. The  
24 person convicted shall be sentenced to not less than 48 consecutive hours  
25 nor more than six months' imprisonment, or in the court's discretion 100  
26 hours of public service, and fined not less than \$750 nor more than \$1,000.  
27 The person convicted shall serve at least 48 consecutive hours'  
28 imprisonment or 100 hours of public service either before or as a condition  
29 of any grant of probation or suspension, reduction of sentence or parole.  
30 The court may place the person convicted under a house arrest program  
31 pursuant to K.S.A. 2011 Supp. 21-6609, and amendments thereto, to serve  
32 the remainder of the minimum sentence only after such person has served  
33 48 consecutive hours' imprisonment;

34 (B) on a second conviction a class A, nonperson misdemeanor. The  
35 person convicted shall be sentenced to not less than 90 days nor more than  
36 one year's imprisonment and fined not less than \$1,250 nor more than  
37 \$1,750. The person convicted shall serve at least five consecutive days'  
38 imprisonment before the person is granted probation, suspension or  
39 reduction of sentence or parole or is otherwise released. The five days'  
40 imprisonment mandated by this subsection may be served in a work  
41 release program only after such person has served 48 consecutive hours'  
42 imprisonment, provided such work release program requires such person  
43 to return to confinement at the end of each day in the work release

1 program. The person convicted, if placed into a work release program,  
2 shall serve a minimum of 120 hours of confinement. Such 120 hours of  
3 confinement shall be a period of at least 48 consecutive hours of  
4 imprisonment followed by confinement hours at the end of and continuing  
5 to the beginning of the offender's work day. The court may place the  
6 person convicted under a house arrest program pursuant to K.S.A. 2011  
7 Supp. 21-6609, and amendments thereto, to serve the remainder of the  
8 minimum sentence only after such person has served 48 consecutive hours'  
9 imprisonment. The person convicted, if placed under house arrest, shall be  
10 monitored by an electronic monitoring device, which verifies the  
11 offender's location. The offender shall serve a minimum of 120 hours of  
12 confinement within the boundaries of the offender's residence. Any  
13 exceptions to remaining within the boundaries of the offender's residence  
14 provided for in the house arrest agreement shall not be counted as part of  
15 the 120 hours;

16 (C) on a third conviction a class A, nonperson misdemeanor, except  
17 as provided in subsection (b)(1)(D). The person convicted shall be  
18 sentenced to not less than 90 days nor more than one year's imprisonment  
19 and fined not less than \$1,750 nor more than \$2,500. The person convicted  
20 shall not be eligible for release on probation, suspension or reduction of  
21 sentence or parole until the person has served at least 90 days'  
22 imprisonment. The 90 days' imprisonment mandated by this subsection  
23 may be served in a work release program only after such person has served  
24 48 consecutive hours' imprisonment, provided such work release program  
25 requires such person to return to confinement at the end of each day in the  
26 work release program. The person convicted, if placed into a work release  
27 program, shall serve a minimum of ~~240~~ 2,160 hours of confinement. Such  
28 ~~240~~ 2,160 hours of confinement shall be a period of at least 48 consecutive  
29 hours of imprisonment followed by confinement hours at the end of and  
30 continuing to the beginning of the offender's work day. The court may  
31 place the person convicted under a house arrest program pursuant to  
32 K.S.A. 2011 Supp. 21-6609, and amendments thereto, to serve the  
33 remainder of the minimum sentence only after such person has served 48  
34 consecutive hours' imprisonment. The person convicted, if placed under  
35 house arrest, shall be monitored by an electronic monitoring device, which  
36 verifies the offender's location. The offender shall serve a minimum of ~~240~~  
37 2,160 hours of confinement within the boundaries of the offender's  
38 residence. Any exceptions to remaining within the boundaries of the  
39 offender's residence provided for in the house arrest agreement shall not be  
40 counted as part of the ~~240~~ 2,160 hours;

41 (D) on a third conviction a nonperson felony if the person has a prior  
42 conviction which occurred within the preceding 10 years, not including  
43 any period of incarceration. The person convicted shall be sentenced to not

1 less than 90 days nor more than one year's imprisonment and fined not less  
2 than \$1,750 nor more than \$2,500. The person convicted shall not be  
3 eligible for release on probation, suspension or reduction of sentence or  
4 parole until the person has served at least 90 days' imprisonment. The 90  
5 days' imprisonment mandated by this subsection may be served in a work  
6 release program only after such person has served 48 consecutive hours'  
7 imprisonment, provided such work release program requires such person  
8 to return to confinement at the end of each day in the work release  
9 program. The person convicted, if placed into a work release program,  
10 shall serve a minimum of ~~240~~ 2,160 hours of confinement. Such ~~240~~ 2,160  
11 hours of confinement shall be a period of at least 48 consecutive hours of  
12 imprisonment followed by confinement hours at the end of and continuing  
13 to the beginning of the offender's work day. The court may place the  
14 person convicted under a house arrest program pursuant to K.S.A. 2011  
15 Supp. 21-6609, and amendments thereto, to serve the remainder of the  
16 minimum sentence only after such person has served 48 consecutive hours'  
17 imprisonment. The person convicted, if placed under house arrest, shall be  
18 monitored by an electronic monitoring device, which verifies the  
19 offender's location. The offender shall serve a minimum of ~~240~~ 2,160  
20 hours of confinement within the boundaries of the offender's residence.  
21 Any exceptions to remaining within the boundaries of the offender's  
22 residence provided for in the house arrest agreement shall not be counted  
23 as part of the ~~240~~ 2,160 hours; and

24 (E) on a fourth or subsequent conviction a nonperson felon. The  
25 person convicted shall be sentenced to not less than 90 days nor more than  
26 one year's imprisonment and fined \$2,500. The person convicted shall not  
27 be eligible for release on probation, suspension or reduction of sentence or  
28 parole until the person has served at least 90 days' imprisonment. The 90  
29 days' imprisonment mandated by this paragraph may be served in a work  
30 release program only after such person has served 72 consecutive hours'  
31 imprisonment, provided such work release program requires such person  
32 to return to confinement at the end of each day in the work release  
33 program. The person convicted, if placed into a work release program,  
34 shall serve a minimum of ~~240~~ 2,160 hours of confinement. Such ~~240~~ 2,160  
35 hours of confinement shall be a period of at least 72 consecutive hours of  
36 imprisonment followed by confinement hours at the end of and continuing  
37 to the beginning of the offender's work day. The court may place the  
38 person convicted under a house arrest program pursuant to K.S.A. 2011  
39 Supp. 21-6609, and amendments thereto, to serve the remainder of the  
40 minimum sentence only after such person has served 72 consecutive hours'  
41 imprisonment. The person convicted, if placed under house arrest, shall be  
42 monitored by an electronic monitoring device, which verifies the  
43 offender's location. The offender shall serve a minimum of ~~240~~ 2,160

1 hours of confinement within the boundaries of the offender's residence.  
2 Any exceptions to remaining within the boundaries of the offender's  
3 residence provided for in the house arrest agreement shall not be counted  
4 as part of the ~~240~~ 2,160 hours.

5 (2) The court may order that the term of imprisonment imposed  
6 pursuant to subsection (b)(1)(D) or (b)(1)(E) be served in a state facility in  
7 the custody of the secretary of corrections in a facility designated by the  
8 secretary for the provision of substance abuse treatment pursuant to the  
9 provisions of K.S.A. 2011 Supp. 21-6804, and amendments thereto. The  
10 person shall remain imprisoned at the state facility only while participating  
11 in the substance abuse treatment program designated by the secretary and  
12 shall be returned to the custody of the sheriff for execution of the balance  
13 of the term of imprisonment upon completion of or the person's discharge  
14 from the substance abuse treatment program. Custody of the person shall  
15 be returned to the sheriff for execution of the sentence imposed in the  
16 event the secretary of corrections determines: (A) That substance abuse  
17 treatment resources or the capacity of the facility designated by the  
18 secretary for the incarceration and treatment of the person is not available;  
19 (B) the person fails to meaningfully participate in the treatment program of  
20 the designated facility; (C) the person is disruptive to the security or  
21 operation of the designated facility; or (D) the medical or mental health  
22 condition of the person renders the person unsuitable for confinement at  
23 the designated facility. The determination by the secretary that the person  
24 either is not to be admitted into the designated facility or is to be  
25 transferred from the designated facility is not subject to review. The sheriff  
26 shall be responsible for all transportation expenses to and from the state  
27 correctional facility.

28 (3) In addition, for any conviction pursuant to subsection (b)(1)(C),  
29 (b)(1)(D) or (b)(1)(E), at the time of the filing of the judgment form or  
30 journal entry as required by K.S.A. 22-3426 or K.S.A. 2011 Supp. 21-  
31 6711, and amendments thereto, the court shall cause a certified copy to be  
32 sent to the officer having the offender in charge. The court shall determine  
33 whether the offender, upon release from imprisonment, shall be supervised  
34 by community correctional services or court services based upon the risk  
35 and needs of the offender. The risk and needs of the offender shall be  
36 determined by use of a risk assessment tool specified by the Kansas  
37 sentencing commission. The law enforcement agency maintaining custody  
38 and control of a defendant for imprisonment shall cause a certified copy of  
39 the judgment form or journal entry to be sent to the supervision office  
40 designated by the court and upon expiration of the term of imprisonment  
41 shall deliver the defendant to a location designated by the supervision  
42 office designated by the court. After the term of imprisonment imposed by  
43 the court, the person shall be placed on supervision to community

1 correctional services or court services, as determined by the court, for a  
2 mandatory one-year period of supervision, which such period of  
3 supervision shall not be reduced. During such supervision, the person shall  
4 be required to participate in a multidisciplinary model of services for  
5 substance use disorders facilitated by a department of social and  
6 rehabilitation services designated care coordination agency to include  
7 assessment and, if appropriate, referral to a community based substance  
8 use disorder treatment including recovery management and mental health  
9 counseling as needed. The multidisciplinary team shall include the  
10 designated care coordination agency, the supervision officer, the social and  
11 rehabilitation services department designated treatment provider and the  
12 offender. Any violation of the conditions of such supervision may subject  
13 such person to revocation of supervision and imprisonment in jail for the  
14 remainder of the period of imprisonment, the remainder of the supervision  
15 period, or any combination or portion thereof.

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

21 (c) Any person convicted of violating this section or an ordinance  
22 which prohibits the acts that this section prohibits who had one or more  
23 children under the age of 14 years in the vehicle at the time of the offense  
24 shall have such person's punishment enhanced by one month of  
25 imprisonment. This imprisonment must be served consecutively to any  
26 other minimum mandatory penalty imposed for a violation of this section  
27 or an ordinance which prohibits the acts that this section prohibits. Any  
28 enhanced penalty imposed shall not exceed the maximum sentence  
29 allowable by law. During the service of the enhanced penalty, the judge  
30 may order the person on house arrest, work release or other conditional  
31 release.

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

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

40 (f) In lieu of payment of a fine imposed pursuant to this section, the  
41 court may order that the person perform community service specified by  
42 the court. The person shall receive a credit on the fine imposed in an  
43 amount equal to \$5 for each full hour spent by the person in the specified

1 community service. The community service ordered by the court shall be  
2 required to be performed not later than one year after the fine is imposed  
3 or by an earlier date specified by the court. If by the required date the  
4 person performs an insufficient amount of community service to reduce to  
5 zero the portion of the fine required to be paid by the person, the  
6 remaining balance of the fine shall become due on that date.

7 ~~(g) (1) Except as provided in paragraph (5), in addition to any other~~  
8 ~~penalty which may be imposed upon a first conviction of a violation of this~~  
9 ~~section, the court may order that the convicted person's motor vehicle or~~  
10 ~~vehicles be impounded or immobilized for a period not to exceed one year~~  
11 ~~and that the convicted person pay all towing, impoundment and storage~~  
12 ~~fees or other immobilization costs.~~

13 ~~(2) The court shall not order the impoundment or immobilization of a~~  
14 ~~motor vehicle driven by a person convicted of a violation of this section if~~  
15 ~~the motor vehicle had been stolen or converted at the time it was driven in~~  
16 ~~violation of this section.~~

17 ~~(3) Prior to ordering the impoundment or immobilization of a motor~~  
18 ~~vehicle or vehicles owned by a person convicted of a violation of this~~  
19 ~~section, the court shall consider, but not be limited to, the following:~~

20 ~~(A) Whether the impoundment or immobilization of the motor~~  
21 ~~vehicle would result in the loss of employment by the convicted person or~~  
22 ~~a member of such person's family; and~~

23 ~~(B) whether the ability of the convicted person or a member of such~~  
24 ~~person's family to attend school or obtain medical care would be impaired.~~

25 ~~(4) Any personal property in a vehicle impounded or immobilized~~  
26 ~~pursuant to this subsection may be retrieved prior to or during the period~~  
27 ~~of such impoundment or immobilization.~~

28 ~~(5) As used in this subsection, the convicted person's motor vehicle or~~  
29 ~~vehicles shall include any vehicle leased by such person. If the lease on the~~  
30 ~~convicted person's motor vehicle subject to impoundment or~~  
31 ~~immobilization expires in less than one year from the date of the~~  
32 ~~impoundment or immobilization, the time of impoundment or~~  
33 ~~immobilization of such vehicle shall be the amount of time remaining on~~  
34 ~~the lease.~~

35 ~~(h) (g)~~ Prior to filing a complaint alleging a violation of this section, a  
36 prosecutor shall request and shall receive from the:

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

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

41 ~~(i) (h)~~ The court shall electronically report every conviction of a  
42 violation of this section and every diversion agreement entered into in lieu  
43 of further criminal proceedings on a complaint alleging a violation of this

1 section to the division. Prior to sentencing under the provisions of this  
2 section, the court shall request and shall receive from the division a record  
3 of all prior convictions obtained against such person for any violations of  
4 any of the motor vehicle laws of this state.

5 ~~(j)~~ (i) For the purpose of determining whether a conviction is a first,  
6 second, third, fourth or subsequent conviction in sentencing under this  
7 section:

8 (1) "Conviction" includes being convicted of a violation of this  
9 section or entering into a diversion agreement in lieu of further criminal  
10 proceedings on a complaint alleging a violation of this section;

11 (2) "conviction" includes being convicted of a violation of a law of  
12 another state or an ordinance of any city, or resolution of any county,  
13 which prohibits the acts that this section prohibits or entering into a  
14 diversion agreement in lieu of further criminal proceedings in a case  
15 alleging a violation of such law, ordinance or resolution;

16 (3) only convictions occurring on or after July 1, 2001, shall be taken  
17 into account when determining the sentence to be imposed for a first,  
18 second, third, fourth or subsequent offender;

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

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

25 ~~(j)~~ (j) Upon conviction of a person of a violation of this section or a  
26 violation of a city ordinance or county resolution prohibiting the acts  
27 prohibited by this section, the division, upon receiving a report of  
28 conviction, shall suspend, restrict or suspend and restrict the person's  
29 driving privileges as provided by K.S.A. 8-1014, and amendments thereto.

30 ~~(k)~~ (k) (1) Nothing contained in this section shall be construed as  
31 preventing any city from enacting ordinances, or any county from adopting  
32 resolutions, declaring acts prohibited or made unlawful by this act as  
33 unlawful or prohibited in such city or county and prescribing penalties for  
34 violation thereof.

35 (2) The minimum penalty prescribed by any such ordinance or  
36 resolution shall not be less than the minimum penalty prescribed by this  
37 section for the same violation, and the maximum penalty in any such  
38 ordinance or resolution shall not exceed the maximum penalty prescribed  
39 for the same violation.

40 (3) On and after July 1, 2007, and retroactive for ordinance violations  
41 committed on or after July 1, 2006, an ordinance may grant to a municipal  
42 court jurisdiction over a violation of such ordinance which is concurrent  
43 with the jurisdiction of the district court over a violation of this section,

1 notwithstanding that the elements of such ordinance violation are the same  
2 as the elements of a violation of this section that would constitute, and be  
3 punished as, a felony.

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

7 ~~(5) Any such ordinance or resolution may require or authorize the~~  
8 ~~court to order that the convicted person's motor vehicle or vehicles be~~  
9 ~~impounded or immobilized in accordance with subsection (g).~~

10 ~~(m) (l)~~ (1) Upon the filing of a complaint, citation or notice to appear  
11 alleging a person has violated a city ordinance prohibiting the acts  
12 prohibited by this section, and prior to conviction thereof, a city attorney  
13 shall request and shall receive from the:

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

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

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

22 ~~(n) (m)~~ (m) No plea bargaining agreement shall be entered into nor shall  
23 any judge approve a plea bargaining agreement entered into for the  
24 purpose of permitting a person charged with a violation of this section, or a  
25 violation of any ordinance of a city or resolution of any county in this state  
26 which prohibits the acts prohibited by this section, to avoid the mandatory  
27 penalties established by this section or by the ordinance. For the purpose  
28 of this subsection, entering into a diversion agreement pursuant to K.S.A.  
29 12-4413 *et seq.* or 22-2906 *et seq.*, and amendments thereto, shall not  
30 constitute plea bargaining.

31 ~~(o) (n)~~ (n) The alternatives set out in subsections (a)(1), (a)(2) and (a)(3)  
32 may be pleaded in the alternative, and the state, city or county, but shall  
33 not be required to, may elect one or two of the three prior to submission of  
34 the case to the fact finder.

35 ~~(p) Upon a fourth or subsequent conviction, the judge of any court in~~  
36 ~~which any person is convicted of violating this section, may revoke the~~  
37 ~~person's license plate or temporary registration certificate of the motor~~  
38 ~~vehicle driven during the violation of this section for a period of one year.~~  
39 ~~Upon revoking any license plate or temporary registration certificate~~  
40 ~~pursuant to this subsection, the court shall require that such license plate or~~  
41 ~~temporary registration certificate be surrendered to the court.~~

42 ~~(q) (o)~~ (o) As used in this section: (1) "Alcohol concentration" means the  
43 number of grams of alcohol per 100 milliliters of blood or per 210 liters of



1 breath;

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

6 (3) "drug" includes toxic vapors as such term is defined in K.S.A.  
7 2011 Supp. 21-5712, and amendments thereto.

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

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

24 Sec. 20. K.S.A. 2011 Supp. 12-4106 is hereby amended to read as  
25 follows: 12-4106. (a) The municipal judge shall have the power to  
26 administer the oaths and enforce all orders, rules and judgments made by  
27 such municipal judge, and may fine or imprison for contempt in the same  
28 manner and to the same extent as a judge of the district court.

29 (b) The municipal judge shall have the power to hear and determine  
30 all cases properly brought before such municipal judge to: Grant  
31 continuances; sentence those found guilty to a fine or confinement in jail,  
32 or both; commit accused persons to jail in default of bond; determine  
33 applications for parole; release on probation; grant time in which a fine  
34 may be paid; correct a sentence; suspend imposition of a sentence; set  
35 aside a judgment; permit time for post trial motions; and discharge accused  
36 persons.

37 (c) The municipal judge shall maintain a docket in which every cause  
38 commenced before such municipal judge shall be entered. Such docket  
39 shall contain the names of the accused persons and complainant, the nature  
40 or character of the offense, the date of trial, the names of all witnesses  
41 sworn and examined, the finding of the court, the judgment and sentence,  
42 the date of payment, the date of issuing commitment, if any, and every  
43 other fact necessary to show the full proceedings in each case.

1 (d) The municipal judge shall promptly make such reports and  
2 furnish the information requested by any departmental justice or the  
3 judicial administrator, in the manner and form prescribed by the supreme  
4 court.

5 (e) The municipal judge shall ensure that information concerning  
6 dispositions of city ordinance violations that result in convictions  
7 comparable to convictions for class A and B misdemeanors under Kansas  
8 criminal statutes is forwarded to the Kansas bureau of investigation central  
9 repository. This information shall be transmitted, on a form or in a format  
10 approved by the attorney general, within 30 days of final disposition.

11 (f) In all cases alleging a violation of a city ordinance prohibiting the  
12 acts prohibited by K.S.A. 8-2,144 or 8-1567 or section 2, and amendments  
13 thereto, the municipal court judge shall ensure that the municipal court  
14 reports the filing and disposition of such case to the Kansas bureau of  
15 investigation central repository, and, on and after July 1, 2013, reports the  
16 filing and disposition of such case electronically to the Kansas bureau of  
17 investigation central repository.

18 (g) *In all cases in which a fine is imposed for a violation of a city*  
19 *ordinance prohibiting the acts prohibited by K.S.A. 8-2,144 or 8-1567 or*  
20 *section 2, and amendments thereto, the municipal court judge shall ensure*  
21 *that the municipal court remits the appropriate amount of such fine to the*  
22 *state treasurer as provided in section 1, and amendments thereto.*

23 Sec. 21. K.S.A. 12-4413 is hereby amended to read as follows: 12-  
24 4413. As used in K.S.A. 8-1009; and 12-4413 to 12-4418, inclusive ~~and~~  
25 ~~22-3609~~:

26 (a) "City attorney" means a city attorney of a city of this state.

27 (b) "Complaint" means complaint, citation or notice to appear in a  
28 municipal court.

29 (c) "Diversion" means referral of a defendant in a criminal case  
30 charging an alcohol related offense to a supervised performance program  
31 prior to adjudication.

32 (d) "Diversion agreement" means the specification of formal terms  
33 and conditions which a defendant must fulfill in order to have the charges  
34 against such person dismissed.

35 (e) "Alcohol related offense" means violation of an ordinance of a  
36 city of this state that prohibits the acts prohibited by K.S.A. 8-1567 or  
37 section 2, and amendments thereto, or violation of such statute.

38 Sec. 22. K.S.A. 2011 Supp. 12-4414 is hereby amended to read as  
39 follows: 12-4414. (a) Except as provided in K.S.A. 8-1567 and section 2,  
40 and amendments thereto, after a complaint has been filed charging a  
41 defendant with violation of an alcohol or drug related offense and prior to  
42 conviction thereof, and after the city attorney has considered the factors  
43 listed in K.S.A. 12-4415, and amendments thereto, if it appears to the city

1 attorney that diversion of the defendant would be in the interests of justice  
2 and of benefit to the defendant and the community, the city attorney may  
3 propose a diversion agreement to the defendant. The terms of each  
4 diversion agreement shall be established by the city attorney in accordance  
5 with K.S.A. 12-4416, and amendments thereto.

6 (b) Each city attorney shall adopt written policies and guidelines for  
7 the implementation of a diversion program in accordance with K.S.A. 8-  
8 1009 and 12-4412 to 12-4417, inclusive, and amendments thereto. Such  
9 policies and guidelines shall provide for a diversion conference and other  
10 procedures in those cases where the city attorney elects to offer diversion  
11 in lieu of further criminal proceedings on the complaint.

12 (c) Each defendant shall be informed in writing of the diversion  
13 program and the policies and guidelines adopted by the city attorney. The  
14 city attorney may require any defendant requesting diversion to provide  
15 information regarding prior criminal charges, education, work experience  
16 and training, family, residence in the community, medical history,  
17 including any psychiatric or psychological treatment or counseling, and  
18 other information relating to the diversion program. In all cases, the  
19 defendant shall be present and shall have the right to be represented by  
20 counsel at the diversion conference with the city attorney.

21 Sec. 23. K.S.A. 2011 Supp. 12-4415 is hereby amended to read as  
22 follows: 12-4415. (a) In determining whether diversion of a defendant is in  
23 the interests of justice and of benefit to the defendant and the community,  
24 the city attorney shall consider at least the following factors among all  
25 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 of an alcohol related  
30 offense and if the defendant has previously participated in diversion,  
31 according to the certification of the division of vehicles of the state  
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) the impact of the diversion of the defendant upon the community;

38 (7) recommendations, if any, of the involved law enforcement  
39 agency;

40 (8) recommendations, if any, of the victim;

41 (9) provisions for restitution; and

42 (10) any mitigating circumstances.

43 (b) A city attorney shall not enter into a diversion agreement in lieu of

1 further criminal proceedings on a complaint alleging an alcohol related  
2 offense if the defendant:

3 (1) Has previously participated in diversion of an alcohol related  
4 offense;

5 (2) has previously been convicted of or pleaded *nolo contendere* to an  
6 alcohol related offense in this state or has previously been convicted of or  
7 pleaded *nolo contendere* to a violation of K.S.A. 8-2,144 or 8-1567 or  
8 *section 2*, and amendments thereto, or of a law of another state, or of a  
9 political subdivision thereof, which prohibits the acts prohibited by those  
10 statutes; or

11 (3) during the time of the alleged alcohol related offense was  
12 involved in a motor vehicle accident or collision resulting in personal  
13 injury or death.

14 Sec. 24. K.S.A. 2011 Supp. 12-4416 is hereby amended to read as  
15 follows: 12-4416. (a) A diversion agreement shall provide that if the  
16 defendant fulfills the obligations of the program described therein, as  
17 determined by the city attorney, the city attorney shall act to have the  
18 criminal charges against the defendant dismissed with prejudice. The  
19 diversion agreement shall include specifically the waiver of all rights  
20 under the law or the constitution of Kansas or of the United States to  
21 counsel, a speedy arraignment, a speedy trial, and the right to trial by jury.  
22 The diversion agreement may include, but is not limited to, provisions  
23 concerning payment of restitution, including court costs and diversion  
24 costs, residence in a specified facility, maintenance of gainful employment,  
25 and participation in programs offering medical, educational, vocational,  
26 social and psychological services, corrective and preventive guidance and  
27 other rehabilitative services. The diversion agreement shall state:

28 (1) The defendant's full name;

29 (2) the defendant's full name at the time the complaint was filed, if  
30 different from the defendant's current name;

31 (3) the defendant's sex, race and date of birth;

32 (4) the crime with which the defendant is charged;

33 (5) the date the complaint was filed; and

34 (6) the municipal court with which the agreement is filed.

35 (b) If a diversion agreement is entered into in lieu of further criminal  
36 proceedings on a complaint alleging an alcohol related offense, the  
37 diversion agreement shall include a stipulation, agreed to by the defendant  
38 and the city attorney, of the facts upon which the charge is based and a  
39 provision that if the defendant fails to fulfill the terms of the specific  
40 diversion agreement and the criminal proceedings on the complaint are  
41 resumed, the proceedings, including any proceedings on appeal, shall be  
42 conducted on the record of the stipulation of facts relating to the  
43 complaint. In addition, the agreement shall include a requirement that the

1 defendant:

2 (1) Pay a fine specified by the agreement in an amount equal to an  
3 amount authorized by K.S.A. 8-1567 *or section 2*, and amendments  
4 thereto, for a first offense or, in lieu of payment of the fine, perform  
5 community service specified by the agreement, consonant with K.S.A. 8-  
6 1567 *or section 2*, and amendments thereto; and

7 (2) participate in an alcohol and drug evaluation conducted by a  
8 licensed provider pursuant to K.S.A. 8-1008, and amendments thereto, and  
9 follow any recommendation made by the provider after such evaluation.

10 (c) If the person entering into a diversion agreement is a nonresident,  
11 the city attorney shall transmit a copy of the diversion agreement to the  
12 division. The division shall forward a copy of the diversion agreement to  
13 the motor vehicle administrator of the person's state of residence.

14 (d) If the city attorney elects to offer diversion in lieu of further  
15 criminal proceedings on the complaint and the defendant agrees to all of  
16 the terms of the proposed agreement, the diversion agreement shall be  
17 filed with the municipal court and the municipal court shall stay further  
18 proceedings on the complaint. If the defendant declines to accept  
19 diversion, the municipal court shall resume the criminal proceedings on  
20 the complaint.

21 (e) The city attorney shall forward to the division of vehicles of the  
22 state department of revenue a copy of the diversion agreement at the time  
23 such agreement is filed with the municipal court. The copy of the  
24 agreement shall be made available upon request to any county, district or  
25 city attorney or court.

26 Sec. 25. K.S.A. 2011 Supp. 12-4517 is hereby amended to read as  
27 follows: 12-4517. (a) (1) The municipal court judge shall ensure that all  
28 persons convicted of violating municipal ordinance provisions that  
29 prohibit conduct comparable to a class A or B misdemeanor or assault as  
30 defined in subsection (a) of K.S.A. 2011 Supp. 21-5412, and amendments  
31 thereto, under a Kansas criminal statute are fingerprinted and processed.

32 (2) The municipal court judge shall ensure that all persons arrested or  
33 charged with a violation of a city ordinance prohibiting the acts prohibited  
34 by K.S.A. 8-2,144 *or 8-1567 or section 2*, and amendments thereto, are  
35 fingerprinted and processed at the time of booking or first appearance,  
36 whichever occurs first.

37 (b) The municipal court judge shall order the individual to be  
38 fingerprinted at an appropriate location as determined by the municipal  
39 court judge. Failure of the person to be fingerprinted after court order  
40 issued by the municipal judge shall constitute contempt of court. To  
41 reimburse the city or other entity for costs associated with fingerprinting,  
42 the municipal court judge may assess reasonable court costs, in addition to  
43 other court costs imposed by the state or municipality.

1       Sec. 26. K.S.A. 2011 Supp. 21-5203 is hereby amended to read as  
2 follows: 21-5203. A person may be guilty of a crime without having a  
3 culpable mental state if the crime is:

4       (a) A misdemeanor, cigarette or tobacco infraction or traffic infraction  
5 and the statute defining the crime clearly indicates a legislative purpose to  
6 impose absolute liability for the conduct described;

7       (b) a felony and the statute defining the crime clearly indicates a  
8 legislative purpose to impose absolute liability for the conduct described;

9       (c) a violation of K.S.A. 8-1567 or 8-1567a, and amendments thereto;

10       (d) a violation of K.S.A. 8-2,144, and amendments thereto; ~~or~~

11       (e) *a violation of section 2, and amendments thereto; or*

12       ~~(e)~~ (f) a violation of K.S.A. 22-4901 *et seq.*, and amendments thereto.

13       Sec. 27. K.S.A. 2011 Supp. 21-6804 is hereby amended to read as  
14 follows: 21-6804. (a) The provisions of this section shall be applicable to  
15 the sentencing guidelines grid for nondrug crimes. The following  
16 sentencing guidelines grid shall be applicable to nondrug felony crimes:

17  
18       (b) Sentences expressed in the sentencing guidelines grid for nondrug  
19 crimes represent months of imprisonment.

20       (c) The sentencing guidelines grid is a two-dimensional crime  
21 severity and criminal history classification tool. The grid's vertical axis is  
22 the crime severity scale which classifies current crimes of conviction. The  
23 grid's horizontal axis is the criminal history scale which classifies criminal  
24 histories.

25       (d) The sentencing guidelines grid for nondrug crimes as provided in  
26 this section defines presumptive punishments for felony convictions,  
27 subject to the sentencing court's discretion to enter a departure sentence.  
28 The appropriate punishment for a felony conviction should depend on the  
29 severity of the crime of conviction when compared to all other crimes and  
30 the offender's criminal history.

31       (e) (1) The sentencing court has discretion to sentence at any place  
32 within the sentencing range. In the usual case it is recommended that the  
33 sentencing judge select the center of the range and reserve the upper and  
34 lower limits for aggravating and mitigating factors insufficient to warrant a  
35 departure.

36       (2) In presumptive imprisonment cases, the sentencing court shall  
37 pronounce the complete sentence which shall include the:

38       (A) Prison sentence;

39       (B) maximum potential reduction to such sentence as a result of good  
40 time; and

41       (C) period of postrelease supervision at the sentencing hearing.  
42 Failure to pronounce the period of postrelease supervision shall not negate  
43 the existence of such period of postrelease supervision.

**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 Nonperson 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 48 46	47 44 41	43 41 38	38 36 34	34 32 31
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	28 26 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	18 17 16	17 16 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 Imprisonment	

1 (3) In presumptive nonprison cases, the sentencing court shall  
2 pronounce the:

3 (A) Prison sentence; and

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

5 (f) Each grid block states the presumptive sentencing range for an  
6 offender whose crime of conviction and criminal history place such  
7 offender in that grid block. If an offense is classified in a grid block below  
8 the dispositional line, the presumptive disposition shall be  
9 nonimprisonment. If an offense is classified in a grid block above the  
10 dispositional line, the presumptive disposition shall be imprisonment. If an  
11 offense is classified in grid blocks 5-H, 5-I or 6-G, the court may impose  
12 an optional nonprison sentence as provided in subsection (q).

13 (g) The sentence for a violation of K.S.A. 21-3415, prior to its repeal,  
14 aggravated battery against a law enforcement officer committed prior to  
15 July 1, 2006, or a violation of subsection (d) of K.S.A. 2011 Supp. 21-  
16 5412, and amendments thereto, aggravated assault against a law  
17 enforcement officer, which places the defendant's sentence in grid block 6-  
18 H or 6-I shall be presumed imprisonment. The court may impose an  
19 optional nonprison sentence as provided in subsection (q).

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

23 (i) (l) The sentence for the violation of the felony provision of K.S.A.  
24 8-1567, subsection (b)(3) of K.S.A. 2011 Supp. 21-5414, subsections (b)  
25 (3) and (b)(4) of K.S.A. 2011 Supp. 21-5823, 21-6412 and 21-6416, and  
26 amendments thereto, shall be as provided by the specific mandatory  
27 sentencing requirements of that section and shall not be subject to the  
28 provisions of this section or K.S.A. 2011 Supp. 21-6807, and amendments  
29 thereto.

30 (2) If because of the offender's criminal history classification the  
31 offender is subject to presumptive imprisonment or if the judge departs  
32 from a presumptive probation sentence and the offender is subject to  
33 imprisonment, the provisions of this section and K.S.A. 2011 Supp. 21-  
34 6807, and amendments thereto, shall apply and the offender shall not be  
35 subject to the mandatory sentence as provided in K.S.A. 2011 Supp. 21-  
36 5823, and amendments thereto.

37 (3) Notwithstanding the provisions of any other section, the term of  
38 imprisonment imposed for the violation of the felony provision of *section*  
39 *2, K.S.A. 8-2,144*, K.S.A. 8-1567, subsection (b)(3) of K.S.A. 2011 Supp.  
40 21-5414, subsections (b)(3) and (b)(4) of K.S.A. 2011 Supp. 21-5823, 21-  
41 6412 and 21-6416, and amendments thereto, shall not be served in a state  
42 facility in the custody of the secretary of corrections, except that the term  
43 of imprisonment for felony violations of *section 2 or K.S.A. 8-2,144 or*



1 K.S.A. 8-1567, and amendments thereto, may be served in a state  
2 correctional facility designated by the secretary of corrections if the  
3 secretary determines that substance abuse treatment resources and facility  
4 capacity is available. The secretary's determination regarding the  
5 availability of treatment resources and facility capacity shall not be subject  
6 to review. Prior to imposing any sentence pursuant to this subsection, the  
7 court may consider assigning the defendant to a house arrest program  
8 pursuant to K.S.A. 2011 Supp. 21-6609, and amendments thereto.

9 (j) (1) The sentence for any persistent sex offender whose current  
10 convicted crime carries a presumptive term of imprisonment shall be  
11 double the maximum duration of the presumptive imprisonment term. The  
12 sentence for any persistent sex offender whose current conviction carries a  
13 presumptive nonprison term shall be presumed imprisonment and shall be  
14 double the maximum duration of the presumptive imprisonment term.

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

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

19 (ii) at the time of the conviction under subsection (j)(2)(A)(i) has at  
20 least one conviction for a sexually violent crime, as defined in K.S.A. 22-  
21 3717, and amendments thereto, in this state or comparable felony under  
22 the laws of another state, the federal government or a foreign government;  
23 or

24 (B) (i) has been convicted of rape, as defined in K.S.A. 21-3502,  
25 prior to its repeal, or K.S.A. 2011 Supp. 21-5503, and amendments  
26 thereto; and

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

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

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

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

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

43 (B) the commission of felony violations of K.S.A. 2010 Supp. 21-

1 36a01 through 21-36a17, and amendments thereto, or any felony violation  
2 of any provision of the uniform controlled substances act prior to July 1,  
3 2009; and

4 (C) its members have a common name or common identifying sign or  
5 symbol; and

6 (D) its members, individually or collectively, engage in or have  
7 engaged in the commission, attempted commission, conspiracy to commit  
8 or solicitation of two or more person felonies or felony violations of  
9 K.S.A. 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto,  
10 any felony violation of any provision of the uniform controlled substances  
11 act prior to July 1, 2009, or any substantially similar offense from another  
12 jurisdiction.

13 (l) Except as provided in subsection (o), the sentence for a violation  
14 of subsection (a)(1) of K.S.A. 2011 Supp. 21-5807, and amendments  
15 thereto, or any attempt or conspiracy, as defined in K.S.A. 2011 Supp. 21-  
16 5301 and 21-5302, and amendments thereto, to commit such offense, when  
17 such person being sentenced has a prior conviction for a violation of  
18 subsection (a) or (b) of K.S.A. 21-3715, prior to its repeal, 21-3716, prior  
19 to its repeal, subsection (a)(1) or (a)(2) of K.S.A. 2011 Supp. 21-5807, or  
20 subsection (b) of K.S.A. 2011 Supp. 21-5807, and amendments thereto, or  
21 any attempt or conspiracy to commit such offense, shall be presumptive  
22 imprisonment.

23 (m) The sentence for a violation of K.S.A 22-4903 or subsection (a)  
24 (2) of K.S.A. 2011 Supp. 21-5913, and amendments thereto, shall be  
25 presumptive imprisonment. If an offense under such sections is classified  
26 in grid blocks 5-E, 5-F, 5-G, 5-H or 5-I, the court may impose an optional  
27 nonprison sentence as provided in subsection (q).

28 (n) The sentence for a violation of criminal deprivation of property, as  
29 defined in K.S.A. 2011 Supp. 21-5803, and amendments thereto, when  
30 such property is a motor vehicle, and when such person being sentenced  
31 has any combination of two or more prior convictions of subsection (b)  
32 K.S.A. 21-3705, prior to its repeal, or of criminal deprivation of property,  
33 as defined in K.S.A. 2011 Supp. 21-5803, and amendments thereto, when  
34 such property is a motor vehicle, shall be presumptive imprisonment. Such  
35 sentence shall not be considered a departure and shall not be subject to  
36 appeal.

37 (o) The sentence for a felony violation of theft of property as defined  
38 in K.S.A. 2011 Supp. 21-5801, and amendments thereto, or burglary as  
39 defined in subsection (a) of K.S.A. 2011 Supp. 21-5807, and amendments  
40 thereto, when such person being sentenced has no prior convictions for a  
41 violation of K.S.A. 21-3701 or 21-3715, prior to their repeal, or theft of  
42 property as defined in K.S.A. 2011 Supp. 21-5801, and amendments  
43 thereto, or burglary as defined in subsection (a) of K.S.A. 2011 Supp. 21-

1 5807, and amendments thereto; or the sentence for a felony violation of  
2 theft of property as defined in K.S.A. 2011 Supp. 21-5801, and  
3 amendments thereto, when such person being sentenced has one or two  
4 prior felony convictions for a violation of K.S.A. 21-3701, 21-3715 or 21-  
5 3716, prior to their repeal, or theft of property as defined in K.S.A. 2011  
6 Supp. 21-5801, and amendments thereto, or burglary or aggravated  
7 burglary as defined in K.S.A. 2011 Supp. 21-5807, and amendments  
8 thereto; or the sentence for a felony violation of burglary as defined in  
9 subsection (a) of K.S.A. 2011 Supp. 21-5807, and amendments thereto,  
10 when such person being sentenced has one prior felony conviction for a  
11 violation of K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal, or  
12 theft of property as defined in K.S.A. 2011 Supp. 21-5801, and  
13 amendments thereto, or burglary or aggravated burglary as defined in  
14 K.S.A. 2011 Supp. 21-5807, and amendments thereto, shall be the  
15 sentence as provided by this section, except that the court may order an  
16 optional nonprison sentence for a defendant to participate in a drug  
17 treatment program, including, but not limited to, an approved after-care  
18 plan, if the court makes the following findings on the record:

19 (1) Substance abuse was an underlying factor in the commission of  
20 the crime;

21 (2) substance abuse treatment in the community is likely to be more  
22 effective than a prison term in reducing the risk of offender recidivism;  
23 and

24 (3) participation in an intensive substance abuse treatment program  
25 will serve community safety interests.

26 A defendant sentenced to an optional nonprison sentence under this  
27 subsection shall be supervised by community correctional services. The  
28 provisions of subsection (f)(1) of K.S.A. 2011 Supp. 21-6824, and  
29 amendments thereto, shall apply to a defendant sentenced under this  
30 subsection. The sentence under this subsection shall not be considered a  
31 departure and shall not be subject to appeal.

32 (p) The sentence for a felony violation of theft of property as defined  
33 in K.S.A. 2011 Supp. 21-5801, and amendments thereto, when such person  
34 being sentenced has any combination of three or more prior felony  
35 convictions for violations of K.S.A. 21-3701, 21-3715 or 21-3716, prior to  
36 their repeal, or theft of property as defined in K.S.A. 2011 Supp. 21-5801,  
37 and amendments thereto, or burglary or aggravated burglary as defined in  
38 K.S.A. 2011 Supp. 21-5807, and amendments thereto; or the sentence for a  
39 violation of burglary as defined in subsection (a) of K.S.A. 2011 Supp. 21-  
40 5807, and amendments thereto, when such person being sentenced has any  
41 combination of two or more prior convictions for violations of K.S.A. 21-  
42 3701, 21-3715 and 21-3716, prior to their repeal, or theft of property as  
43 defined in K.S.A. 2011 Supp. 21-5801, and amendments thereto, or

1 burglary or aggravated burglary as defined in K.S.A. 2011 Supp. 21-5807,  
2 and amendments thereto, shall be presumed imprisonment and the  
3 defendant shall be sentenced to prison as provided by this section, except  
4 that the court may recommend that an offender be placed in the custody of  
5 the secretary of corrections, in a facility designated by the secretary to  
6 participate in an intensive substance abuse treatment program, upon  
7 making the following findings on the record:

8 (1) Substance abuse was an underlying factor in the commission of  
9 the crime;

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

13 (3) participation in an intensive substance abuse treatment program  
14 with the possibility of an early release from imprisonment will serve  
15 community safety interests by promoting offender reformation.

16 The intensive substance abuse treatment program shall be determined  
17 by the secretary of corrections, but shall be for a period of at least four  
18 months. Upon the successful completion of such intensive treatment  
19 program, the offender shall be returned to the court and the court may  
20 modify the sentence by directing that a less severe penalty be imposed in  
21 lieu of that originally adjudged within statutory limits. If the offender's  
22 term of imprisonment expires, the offender shall be placed under the  
23 applicable period of postrelease supervision. The sentence under this  
24 subsection shall not be considered a departure and shall not be subject to  
25 appeal.

26 (q) As used in this section, an "optional nonprison sentence" is a  
27 sentence which the court may impose, in lieu of the presumptive sentence,  
28 upon making the following findings on the record:

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

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

34 (3) the nonprison sanction will serve community safety interests by  
35 promoting offender reformation.

36 Any decision made by the court regarding the imposition of an optional  
37 nonprison sentence shall not be considered a departure and shall not be  
38 subject to appeal.

39 (r) The sentence for a violation of subsection (c)(2) of K.S.A. 2011  
40 Supp. 21-5413, and amendments thereto, shall be presumptive  
41 imprisonment and shall be served consecutively to any other term or terms  
42 of imprisonment imposed. Such sentence shall not be considered a  
43 departure and shall not be subject to appeal.

1 (s) The sentence for a violation of K.S.A. 2011 Supp. 21-5512, and  
2 amendments thereto, shall be presumptive imprisonment. Such sentence  
3 shall not be considered a departure and shall not be subject to appeal.

4 (t) (1) If the trier of fact makes a finding that an offender wore or  
5 used ballistic resistant material in the commission of, or attempt to  
6 commit, or flight from any felony, in addition to the sentence imposed  
7 pursuant to the Kansas sentencing guidelines act, the offender shall be  
8 sentenced to an additional 30 months' imprisonment.

9 (2) The sentence imposed pursuant to subsection (t)(1) shall be  
10 presumptive imprisonment and shall be served consecutively to any other  
11 term or terms of imprisonment imposed. Such sentence shall not be  
12 considered a departure and shall not be subject to appeal.

13 (3) As used in this subsection, "ballistic resistant material" means:  
14 (A) Any commercially produced material designed with the purpose of  
15 providing ballistic and trauma protection, including, but not limited to,  
16 bulletproof vests and kevlar vests; and (B) any homemade or fabricated  
17 substance or item designed with the purpose of providing ballistic and  
18 trauma protection.

19 (u) The sentence for a violation of K.S.A. 2011 Supp. 21-6107, and  
20 amendments thereto, or any attempt or conspiracy, as defined in K.S.A.  
21 2011 Supp. 21-5301 and 21-5302, and amendments thereto, to commit  
22 such offense, when such person being sentenced has a prior conviction for  
23 a violation of K.S.A. 21-4018, prior to its repeal, or K.S.A. 2011 Supp. 21-  
24 6107, and amendments thereto, or any attempt or conspiracy to commit  
25 such offense, shall be presumptive imprisonment. Such sentence shall not  
26 be considered a departure and shall not be subject to appeal.

27 Sec. 28. K.S.A. 2011 Supp. 22-2802 is hereby amended to read as  
28 follows: 22-2802. (1) Any person charged with a crime shall, at the  
29 person's first appearance before a magistrate, be ordered released pending  
30 preliminary examination or trial upon the execution of an appearance bond  
31 in an amount specified by the magistrate and sufficient to assure the  
32 appearance of such person before the magistrate when ordered and to  
33 assure the public safety. If the person is being bound over for a felony, the  
34 bond shall also be conditioned on the person's appearance in the district  
35 court or by way of a two-way electronic audio-video communication as  
36 provided in subsection (14) at the time required by the court to answer the  
37 charge against such person and at any time thereafter that the court  
38 requires. Unless the magistrate makes a specific finding otherwise, if the  
39 person is being bonded out for a person felony or a person misdemeanor,  
40 the bond shall be conditioned on the person being prohibited from having  
41 any contact with the alleged victim of such offense for a period of at least  
42 72 hours. The magistrate may impose such of the following additional  
43 conditions of release as will reasonably assure the appearance of the

1 person for preliminary examination or trial:

2 (a) Place the person in the custody of a designated person or  
3 organization agreeing to supervise such person;

4 (b) place restrictions on the travel, association or place of abode of  
5 the person during the period of release;

6 (c) impose any other condition deemed reasonably necessary to  
7 assure appearance as required, including a condition requiring that the  
8 person return to custody during specified hours;

9 (d) place the person under a house arrest program pursuant to K.S.A.  
10 2011 Supp. 21-6609, and amendments thereto; or

11 (e) place the person under the supervision of a court services officer  
12 responsible for monitoring the person's compliance with any conditions of  
13 release ordered by the magistrate. The magistrate may order the person to  
14 pay for any costs associated with the supervision provided by the court  
15 services department in an amount not to exceed \$15 per week of such  
16 supervision. The magistrate may also order the person to pay for all other  
17 costs associated with the supervision and conditions for compliance in  
18 addition to the \$15 per week.

19 (2) In addition to any conditions of release provided in subsection (1),  
20 for any person charged with a felony, the magistrate may order such  
21 person to submit to a drug and alcohol abuse examination and evaluation  
22 in a public or private treatment facility or state institution and, if  
23 determined by the head of such facility or institution that such person is a  
24 drug or alcohol abuser or is incapacitated by drugs or alcohol, to submit to  
25 treatment for such drug or alcohol abuse, as a condition of release.

26 (3) The appearance bond shall be executed with sufficient solvent  
27 sureties who are residents of the state of Kansas, unless the magistrate  
28 determines, in the exercise of such magistrate's discretion, that requiring  
29 sureties is not necessary to assure the appearance of the person at the time  
30 ordered.

31 (4) A deposit of cash in the amount of the bond may be made in lieu  
32 of the execution of the bond pursuant to subsection (3). Except as provided  
33 in subsection (5), such deposit shall be in the full amount of the bond and  
34 in no event shall a deposit of cash in less than the full amount of bond be  
35 permitted. Any person charged with a crime who is released on a cash  
36 bond shall be entitled to a refund of all moneys paid for the cash bond,  
37 after deduction of any outstanding restitution, costs, fines and fees, after  
38 the final disposition of the criminal case if the person complies with all  
39 requirements to appear in court. The court may not exclude the option of  
40 posting bond pursuant to subsection (3).

41 (5) Except as provided further, the amount of the appearance bond  
42 shall be the same whether executed as described in subsection (3) or  
43 posted with a deposit of cash as described in subsection (4). When the

1 appearance bond has been set at \$2,500 or less and the most serious charge  
2 against the person is a misdemeanor, a severity level 8, 9 or 10 nonperson  
3 felony, a drug severity level 4 felony or a violation of K.S.A. 8-1567 *or*  
4 *section 2*, and amendments thereto, the magistrate may allow the person to  
5 deposit cash with the clerk in the amount of 10% of the bond, provided the  
6 person meets at least the following qualifications:

- 7 (A) Is a resident of the state of Kansas;
- 8 (B) has a criminal history score category of G, H or I;
- 9 (C) has no prior history of failure to appear for any court  
10 appearances;
- 11 (D) has no detainer or hold from any other jurisdiction;
- 12 (E) has not been extradited from, and is not awaiting extradition to,  
13 another state; and
- 14 (F) has not been detained for an alleged violation of probation.

15 (6) In the discretion of the court, a person charged with a crime may  
16 be released upon the person's own recognizance by guaranteeing payment  
17 of the amount of the bond for the person's failure to comply with all  
18 requirements to appear in court. The release of a person charged with a  
19 crime upon the person's own recognizance shall not require the deposit of  
20 any cash by the person.

21 (7) The court shall not impose any administrative fee.

22 (8) In determining which conditions of release will reasonably assure  
23 appearance and the public safety, the magistrate shall, on the basis of  
24 available information, take into account the nature and circumstances of  
25 the crime charged; the weight of the evidence against the defendant;  
26 whether the defendant is lawfully present in the United States; the  
27 defendant's family ties, employment, financial resources, character, mental  
28 condition, length of residence in the community, record of convictions,  
29 record of appearance or failure to appear at court proceedings or of flight  
30 to avoid prosecution; the likelihood or propensity of the defendant to  
31 commit crimes while on release, including whether the defendant will be  
32 likely to threaten, harass or cause injury to the victim of the crime or any  
33 witnesses thereto; and whether the defendant is on probation or parole  
34 from a previous offense at the time of the alleged commission of the  
35 subsequent offense.

36 (9) The appearance bond shall set forth all of the conditions of  
37 release.

38 (10) A person for whom conditions of release are imposed and who  
39 continues to be detained as a result of the person's inability to meet the  
40 conditions of release shall be entitled, upon application, to have the  
41 conditions reviewed without unnecessary delay by the magistrate who  
42 imposed them. If the magistrate who imposed conditions of release is not  
43 available, any other magistrate in the county may review such conditions.

1 (11) A magistrate ordering the release of a person on any conditions  
2 specified in this section may at any time amend the order to impose  
3 additional or different conditions of release. If the imposition of additional  
4 or different conditions results in the detention of the person, the provisions  
5 of subsection (10) shall apply.

6 (12) Statements or information offered in determining the conditions  
7 of release need not conform to the rules of evidence. No statement or  
8 admission of the defendant made at such a proceeding shall be received as  
9 evidence in any subsequent proceeding against the defendant.

10 (13) The appearance bond and any security required as a condition of  
11 the defendant's release shall be deposited in the office of the magistrate or  
12 the clerk of the court where the release is ordered. If the defendant is  
13 bound to appear before a magistrate or court other than the one ordering  
14 the release, the order of release, together with the bond and security shall  
15 be transmitted to the magistrate or clerk of the court before whom the  
16 defendant is bound to appear.

17 (14) Proceedings before a magistrate as provided in this section to  
18 determine the release conditions of a person charged with a crime  
19 including release upon execution of an appearance bond may be conducted  
20 by two-way electronic audio-video communication between the defendant  
21 and the judge in lieu of personal presence of the defendant or defendant's  
22 counsel in the courtroom in the discretion of the court. The defendant may  
23 be accompanied by the defendant's counsel. The defendant shall be  
24 informed of the defendant's right to be personally present in the courtroom  
25 during such proceeding if the defendant so requests. Exercising the right to  
26 be present shall in no way prejudice the defendant.

27 (15) The magistrate may order the person to pay for any costs  
28 associated with the supervision of the conditions of release of the  
29 appearance bond in an amount not to exceed \$15 per week of such  
30 supervision. As a condition of sentencing under K.S.A. 2011 Supp. 21-  
31 6604, and amendments thereto, the court may impose the full amount of  
32 any such costs in addition to the \$15 per week, including, but not limited to,  
33 costs for treatment and evaluation under subsection (2).

34 Sec. 29. K.S.A. 2011 Supp. 22-2908 is hereby amended to read as  
35 follows: 22-2908. (a) In determining whether diversion of a defendant is in  
36 the interests of justice and of benefit to the defendant and the community,  
37 the county or district attorney shall consider at least the following factors  
38 among all factors considered:

39 (1) The nature of the crime charged and the circumstances  
40 surrounding it;

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

42 (3) whether the defendant is a first-time offender and if the defendant  
43 has previously participated in diversion, according to the certification of



1 the Kansas bureau of investigation or the division of vehicles of the  
2 department of revenue;

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

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

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

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

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

11 (9) provisions for restitution; and

12 (10) any mitigating circumstances.

13 (b) A county or district attorney shall not enter into a diversion  
14 agreement in lieu of further criminal proceedings on a complaint if:

15 (1) The complaint alleges a violation of K.S.A. 8-1567 *or section 2*,  
16 and amendments thereto, and the defendant: (A) Has previously  
17 participated in diversion upon a complaint alleging a violation of that  
18 statute or an ordinance of a city in this state which prohibits the acts  
19 prohibited by that statute; (B) has previously been convicted of or pleaded  
20 *nolo contendere* to a violation of that statute or a violation of a law of  
21 another state or of a political subdivision of this or any other state, which  
22 law prohibits the acts prohibited by that statute; or (C) during the time of  
23 the alleged violation was involved in a motor vehicle accident or collision  
24 resulting in personal injury or death;

25 (2) the complaint alleges that the defendant committed a class A or B  
26 felony or for crimes committed on or after July 1, 1993, an off-grid crime,  
27 a severity level 1, 2 or 3 felony for nondrug crimes or drug severity level 1  
28 or 2 felony for drug crimes; or

29 (3) the complaint alleges a domestic violence offense, as defined in  
30 K.S.A. 2011 Supp. 21-5111, and amendments thereto, and the defendant  
31 has participated in two or more diversions in the previous five year period  
32 upon complaints alleging a domestic violence offense.

33 (c) A county or district attorney may enter into a diversion agreement  
34 in lieu of further criminal proceedings on a complaint for violations of  
35 article 10 of chapter 32 of the Kansas Statutes Annotated, and amendments  
36 thereto, if such diversion carries the same penalties as the conviction for  
37 the corresponding violations. If the defendant has previously participated  
38 in one or more diversions for violations of article 10 of chapter 32 of the  
39 Kansas Statutes Annotated, and amendments thereto, then each subsequent  
40 diversion shall carry the same penalties as the conviction for the  
41 corresponding violations.

42 Sec. 30. K.S.A. 2011 Supp. 22-2909 is hereby amended to read as  
43 follows: 22-2909. (a) A diversion agreement shall provide that if the

1 defendant fulfills the obligations of the program described therein, as  
2 determined by the attorney general or county or district attorney, such  
3 attorney shall act to have the criminal charges against the defendant  
4 dismissed with prejudice. The diversion agreement shall include  
5 specifically the waiver of all rights under the law or the constitution of  
6 Kansas or of the United States to a speedy arraignment, preliminary  
7 examinations and hearings, and a speedy trial, and in the case of diversion  
8 under subsection (c) waiver of the rights to counsel and trial by jury. The  
9 diversion agreement may include, but is not limited to, provisions  
10 concerning payment of restitution, including court costs and diversion  
11 costs, residence in a specified facility, maintenance of gainful employment,  
12 and participation in programs offering medical, educational, vocational,  
13 social and psychological services, corrective and preventive guidance and  
14 other rehabilitative services. If a county creates a local fund under the  
15 property crime restitution and compensation act, a county or district  
16 attorney may require in all diversion agreements as a condition of  
17 diversion the payment of a diversion fee in an amount not to exceed \$100.  
18 Such fees shall be deposited into the local fund and disbursed pursuant to  
19 recommendations of the local board under the property crime restitution  
20 and victims compensation act.

21 (b) The diversion agreement shall state: (1) The defendant's full  
22 name; (2) the defendant's full name at the time the complaint was filed, if  
23 different from the defendant's current name; (3) the defendant's sex, race  
24 and date of birth; (4) the crime with which the defendant is charged; (5)  
25 the date the complaint was filed; and (6) the district court with which the  
26 agreement is filed.

27 (c) If a diversion agreement is entered into in lieu of further criminal  
28 proceedings on a complaint alleging a violation of K.S.A. 8-1567 *or*  
29 *section 2*, and amendments thereto, the diversion agreement shall include a  
30 stipulation, agreed to by the defendant, the defendant's attorney if the  
31 defendant is represented by an attorney and the attorney general or county  
32 or district attorney, of the facts upon which the charge is based and a  
33 provision that if the defendant fails to fulfill the terms of the specific  
34 diversion agreement and the criminal proceedings on the complaint are  
35 resumed, the proceedings, including any proceedings on appeal, shall be  
36 conducted on the record of the stipulation of facts relating to the  
37 complaint. In addition, the agreement shall include a requirement that the  
38 defendant:

39 (1) Pay a fine specified by the agreement in an amount equal to an  
40 amount authorized by K.S.A. 8-1567 *or section 2*, and amendments  
41 thereto, for a first offense or, in lieu of payment of the fine, perform  
42 community service specified by the agreement, in accordance with K.S.A.  
43 8-1567 *or section 2*, and amendments thereto; and

1 (2) participate in an alcohol and drug evaluation conducted by a  
2 licensed provider pursuant to K.S.A. 8-1008, and amendments thereto, and  
3 follow any recommendation made by the provider after such evaluation.

4 (d) If a diversion agreement is entered into in lieu of further criminal  
5 proceedings on a complaint alleging a domestic violence offense, as  
6 defined in K.S.A. 2011 Supp. 21-5111, and amendments thereto, the  
7 diversion agreement shall include a requirement that the defendant  
8 undergo a domestic violence offender assessment and follow all  
9 recommendations unless otherwise agreed to with the prosecutor in the  
10 diversion agreement. The defendant shall be required to pay for such  
11 assessment and, unless otherwise agreed to with the prosecutor in the  
12 diversion agreement, for completion of all recommendations.

13 (e) If a diversion agreement is entered into in lieu of further criminal  
14 proceedings on a complaint alleging a violation other than K.S.A. 8-1567  
15 *or section 2*, and amendments thereto, the diversion agreement may  
16 include a stipulation, agreed to by the defendant, the defendant's attorney if  
17 the defendant is represented by an attorney and the attorney general or  
18 county or district attorney, of the facts upon which the charge is based and  
19 a provision that if the defendant fails to fulfill the terms of the specific  
20 diversion agreement and the criminal proceedings on the complaint are  
21 resumed, the proceedings, including any proceedings on appeal, shall be  
22 conducted on the record of the stipulation of facts relating to the  
23 complaint.

24 (f) If the person entering into a diversion agreement is a nonresident,  
25 the attorney general or county or district attorney shall transmit a copy of  
26 the diversion agreement to the division. The division shall forward a copy  
27 of the diversion agreement to the motor vehicle administrator of the  
28 person's state of residence.

29 (g) If the attorney general or county or district attorney elects to offer  
30 diversion in lieu of further criminal proceedings on the complaint and the  
31 defendant agrees to all of the terms of the proposed agreement, the  
32 diversion agreement shall be filed with the district court and the district  
33 court shall stay further proceedings on the complaint. If the defendant  
34 declines to accept diversion, the district court shall resume the criminal  
35 proceedings on the complaint.

36 (h) Except as provided in subsection ~~(h)~~ (i), if a diversion agreement  
37 is entered into in lieu of further criminal proceedings alleging commission  
38 of a misdemeanor by the defendant, while under 21 years of age, under  
39 K.S.A. 2011 Supp. 21-5701 through 21-5717, and amendments thereto, or  
40 K.S.A. 41-719, 41-727, 41-804, 41-2719 or 41-2720, and amendments  
41 thereto, the agreement shall require the defendant to participate in an  
42 alcohol and drug evaluation conducted by a licensed provider pursuant to  
43 K.S.A. 8-1008, and amendments thereto, and follow any recommendation

1 made by the provider after such evaluation.

2 (i) If the defendant is 18 or more years of age but less than 21 years  
3 of age and allegedly committed a violation of K.S.A. 41-727, and  
4 amendments thereto, involving cereal malt beverage, the provisions of  
5 subsection ~~(g)~~ (h) are permissive and not mandatory.

6 (j) Except diversion agreements reported under subsection ~~(j)~~ (k), the  
7 attorney general or county or district attorney shall forward to the Kansas  
8 bureau of investigation a copy of the diversion agreement at the time such  
9 agreement is filed with the district court. The copy of the agreement shall  
10 be made available upon request to the attorney general or any county,  
11 district or city attorney or court.

12 (k) At the time of filing the diversion agreement with the district  
13 court, the attorney general or county or district attorney shall forward to  
14 the division of vehicles of the state department of revenue a copy of any  
15 diversion agreement entered into in lieu of further criminal proceedings on  
16 a complaint alleging a violation of K.S.A. 8-1567, and amendments  
17 thereto. The copy of the agreement shall be made available upon request to  
18 the attorney general or any county, district or city attorney or court.

19 Sec. 31. K.S.A. 22-2910 is hereby amended to read as follows: 22-  
20 2910. No defendant shall be required to enter any plea to a criminal charge  
21 as a condition for diversion. No statements made by the defendant or  
22 counsel in any diversion conference or in any other discussion of a  
23 proposed diversion agreement shall be admissible as evidence in criminal  
24 proceedings on crimes charged or facts alleged in the complaint. Except  
25 for sentencing proceedings and as otherwise provided in subsection (c) of  
26 K.S.A. 22-2909, and amendments thereto, and as otherwise provided in  
27 K.S.A. 8-285 and 8-1567 *and section 2*, and amendments to these sections,  
28 the following shall not be admissible as evidence in criminal proceedings  
29 which are resumed under K.S.A. 22-2911: (1) Participation in a diversion  
30 program; (2) the facts of such participation; or (3) the diversion agreement  
31 entered into.

32 Sec. 32. K.S.A. 2011 Supp. 22-4704 is hereby amended to read as  
33 follows: 22-4704. (a) In accordance with the provisions of K.S.A. 77-415  
34 *et seq.*, and amendments thereto, the director shall adopt appropriate rules  
35 and regulations for agencies in the executive branch of government and for  
36 criminal justice agencies other than those that are part of the judicial  
37 branch of government to implement the provisions of this act.

38 (b) The director shall develop procedures to permit and encourage the  
39 transfer of criminal history record information among and between courts  
40 and affected agencies in the executive branch, and especially between  
41 courts and the central repository.

42 (c) The rules and regulations adopted by the director shall include  
43 those: (1) Governing the collection, reporting, and dissemination of

1 criminal history record information by criminal justice agencies;

2 (2) necessary to insure the security of all criminal history record  
3 information reported, collected and disseminated by and through the  
4 criminal justice information system;

5 (3) necessary for the coordination of all criminal justice data and  
6 information processing activities as they relate to criminal history record  
7 information;

8 (4) governing the dissemination of criminal history record  
9 information;

10 (5) governing the procedures for inspection and challenging of  
11 criminal history record information;

12 (6) governing the auditing of criminal justice agencies to insure that  
13 criminal history record information is accurate and complete and that it is  
14 collected, reported, and disseminated in accordance with this act;

15 (7) governing the development and content of agreements between  
16 the central repository and criminal justice and noncriminal justice  
17 agencies;

18 (8) governing the exercise of the rights of inspection and challenge  
19 provided in this act.

20 (d) The rules and regulations adopted by the director shall not include  
21 any provision that allows the charging of a fee for information requests for  
22 the purpose of participating in a block parent program, including but not  
23 limited to, the McGruff house program.

24 (e) Rules and regulations adopted by the director may not be  
25 inconsistent with the provisions of this act.

26 (f) (1) On or before July 1, 2012, the director shall adopt rules and  
27 regulations requiring district courts to report the filing of all cases alleging  
28 a violation of K.S.A. 8-1567, and amendments thereto, to the central  
29 repository.

30 (2) On or before July 1, 2013, the director shall adopt rules and  
31 regulations requiring district courts to electronically report all case filings  
32 for violations of K.S.A. 8-1567 *or section 2*, and amendments thereto, to  
33 the central repository.

34 Sec. 33. K.S.A. 2011 Supp. 60-427 is hereby amended to read as  
35 follows: 60-427. (a) As used in this section:

36 (1) "Patient" means a person who, for the sole purpose of securing  
37 preventive, palliative, or curative treatment, or a diagnosis preliminary to  
38 such treatment, of such person's physical or mental condition, consults a  
39 physician, or submits to an examination by a physician.

40 (2) "Physician" means a person licensed or reasonably believed by  
41 the patient to be licensed to practice medicine or one of the healing arts as  
42 defined in K.S.A. 65-2802, and amendments thereto, in the state or  
43 jurisdiction in which the consultation or examination takes place.

1 (3) "Holder of the privilege" means the patient while alive and not  
2 under guardianship or conservatorship or the guardian or conservator of  
3 the patient, or the personal representative of a deceased patient.

4 (4) "Confidential communication between physician and patient"  
5 means such information transmitted between physician and patient,  
6 including information obtained by an examination of the patient, as is  
7 transmitted in confidence and by a means which, so far as the patient is  
8 aware, discloses the information to no third persons other than those  
9 reasonably necessary for the transmission of the information or the  
10 accomplishment of the purpose for which it is transmitted.

11 (b) Except as provided by subsections (c), (d), (e) and (f), a person,  
12 whether or not a party, has a privilege in a civil action or in a prosecution  
13 for a misdemeanor, other than a prosecution for a violation of K.S.A. 8-  
14 2,144 or 8-1567 or *section 2*, and amendments thereto, or a city ordinance  
15 or county resolution which prohibits the acts prohibited by those statutes,  
16 to refuse to disclose, and to prevent a witness from disclosing, a  
17 communication, if the person claims the privilege and the judge finds that:  
18 (1) The communication was a confidential communication between patient  
19 and physician; (2) the patient or the physician reasonably believed the  
20 communication necessary or helpful to enable the physician to make a  
21 diagnosis of the condition of the patient or to prescribe or render treatment  
22 therefor; (3) the witness (i) is the holder of the privilege, (ii) at the time of  
23 the communication was the physician or a person to whom disclosure was  
24 made because reasonably necessary for the transmission of the  
25 communication or for the accomplishment of the purpose for which it was  
26 transmitted or (iii) is any other person who obtained knowledge or  
27 possession of the communication as the result of an intentional breach of  
28 the physician's duty of nondisclosure by the physician or the physician's  
29 agent or servant; and (4) the claimant is the holder of the privilege or a  
30 person authorized to claim the privilege for the holder of the privilege.

31 (c) There is no privilege under this section as to any relevant  
32 communication between the patient and the patient's physician: (1) Upon  
33 an issue of the patient's condition in an action to commit the patient or  
34 otherwise place the patient under the control of another or others because  
35 of alleged incapacity or mental illness, in an action in which the patient  
36 seeks to establish the patient's competence or in an action to recover  
37 damages on account of conduct of the patient which constitutes a criminal  
38 offense other than a misdemeanor; (2) upon an issue as to the validity of a  
39 document as a will of the patient; or (3) upon an issue between parties  
40 claiming by testate or intestate succession from a deceased patient.

41 (d) There is no privilege under this section in an action in which the  
42 condition of the patient is an element or factor of the claim or defense of  
43 the patient or of any party claiming through or under the patient or

1 claiming as a beneficiary of the patient through a contract to which the  
2 patient is or was a party.

3 (e) There is no privilege under this section: (1) As to blood drawn at  
4 the request of a law enforcement officer pursuant to K.S.A. 8-1001, and  
5 amendments thereto; and (2) as to information which the physician or the  
6 patient is required to report to a public official or as to information  
7 required to be recorded in a public office, unless the statute requiring the  
8 report or record specifically provides that the information shall not be  
9 disclosed.

10 (f) No person has a privilege under this section if the judge finds that  
11 sufficient evidence, aside from the communication has been introduced to  
12 warrant a finding that the services of the physician were sought or  
13 obtained to enable or aid anyone to commit or to plan to commit a crime or  
14 a tort, or to escape detection or apprehension after the commission of a  
15 crime or a tort.

16 (g) A privilege under this section as to a communication is terminated  
17 if the judge finds that any person while a holder of the privilege has caused  
18 the physician or any agent or servant of the physician to testify in any  
19 action to any matter of which the physician or the physician's agent or  
20 servant gained knowledge through the communication.

21 (h) Providing false information to a physician for the purpose of  
22 obtaining a prescription-only drug shall not be a confidential  
23 communication between physician and patient and no person shall have a  
24 privilege in any prosecution for unlawfully obtaining or distributing a  
25 prescription-only drug under K.S.A. 2011 Supp. 21-5708, and  
26 amendments thereto.

27 Sec. 34. K.S.A. 2011 Supp. 74-2012 is hereby amended to read as  
28 follows: 74-2012. (a) (1) All motor vehicle records shall be subject to the  
29 provisions of the open records act, except as otherwise provided under the  
30 provisions of this section and by K.S.A. 74-2022, and amendments thereto.

31 (2) For the purpose of this section, "motor vehicle records" means  
32 any record that pertains to a motor vehicle drivers license, motor vehicle  
33 certificate of title, motor vehicle registration or identification card issued  
34 by the division of vehicles.

35 (b) All motor vehicle records which relate to the physical or mental  
36 condition of any person, have been expunged or are photographs or digital  
37 images maintained in connection with the issuance of drivers' licenses  
38 shall be confidential and shall not be disclosed except in accordance with a  
39 proper judicial order or as otherwise more specifically provided in this  
40 section or by other law. Photographs or digital images maintained by the  
41 division of vehicles in connection with the issuance of drivers' licenses  
42 may be disclosed to any federal, state or local agency, including any court  
43 or law enforcement agency, to assist such agency in carrying out the

1 functions required of such governmental agency. In January of each year  
2 the division shall report to the house committee on veterans, military and  
3 homeland security regarding the utilization of the provisions of this  
4 subsection. Motor vehicle records relating to diversion agreements for the  
5 purposes of K.S.A. 8-1567, 12-4415 and 22-2908 *and section 2*, and  
6 amendments thereto, shall be confidential and shall not be disclosed except  
7 in accordance with a proper judicial order or by direct computer access to:

8 (1) A city, county or district attorney, for the purpose of determining a  
9 person's eligibility for diversion or to determine the proper charge for a  
10 violation of K.S.A. 8-2,144 or 8-1567 *or section 2*, and amendments  
11 thereto, or any ordinance of a city or resolution of a county in this state  
12 which prohibits any acts prohibited by those statutes;

13 (2) a municipal or district court, for the purpose of using the record in  
14 connection with any matter before the court;

15 (3) a law enforcement agency, for the purpose of supplying the record  
16 to a person authorized to obtain it under paragraph (1) or (2) of this  
17 subsection; or

18 (4) an employer when a person is required to retain a commercial  
19 driver's license due to the nature of such person's employment.

20 (c) Lists of persons' names and addresses contained in or derived  
21 from motor vehicle records shall not be sold, given or received for the  
22 purposes prohibited by K.S.A. 2011 Supp. 45-230, and amendments  
23 thereto, except that:

24 (1) The director of vehicles may provide to a requesting party, and a  
25 requesting party may receive, such a list and accompanying information  
26 from motor vehicle records upon written certification that the requesting  
27 party shall use the list solely for the purpose of:

28 (A) Assisting manufacturers of motor vehicles in compiling statistical  
29 reports or in notifying owners of vehicles believed to:

30 (i) Have safety-related defects,

31 (ii) fail to comply with emission standards; or

32 (iii) have any defect to be remedied at the expense of the  
33 manufacturer;

34 (B) assisting an insurer authorized to do business in this state, or the  
35 insurer's authorized agent:

36 (i) In processing an application for, or renewal or cancellation of, a  
37 motor vehicle liability insurance policy; or

38 (ii) in conducting antifraud activities by identifying potential  
39 undisclosed drivers of a motor vehicle currently insured by an insurer  
40 licensed to do business in this state by providing only the following  
41 information: drivers license number, license type, date of birth, name,  
42 address, issue date and expiration date;

43 (C) assisting the selective service system in the maintenance of a list



1 of persons 18 to 26 years of age in this state as required under the  
2 provisions of section 3 of the federal military selective service act;

3 (D) assisting any federal, state or local agency, including any court or  
4 law enforcement agency, or any private person acting on behalf of such  
5 agencies in carrying out the functions required of such governmental  
6 agency, except that such records shall not be redisclosed;

7 (E) assisting businesses with the verification or reporting of  
8 information derived from the title and registration records of the division  
9 to prepare and assemble vehicle history reports, except that such vehicle  
10 history reports shall not include the names or addresses of any current or  
11 previous owners;

12 (F) assisting businesses in producing motor vehicle title or motor  
13 vehicle registration, or both, statistical reports, so long as personal  
14 information is not published, redisclosed or used to contact individuals; or

15 (G) assisting an employer or an employer's authorized agent in  
16 monitoring the driving record of the employees required to drive in the  
17 course of employment to ensure driver behavior, performance or safety.

18 (2) Any law enforcement agency of this state which has access to  
19 motor vehicle records may furnish to a requesting party, and a requesting  
20 party may receive, such a list and accompanying information from such  
21 records upon written certification that the requesting party shall use the list  
22 solely for the purpose of assisting an insurer authorized to do business in  
23 this state, or the insurer's authorized agent, in processing an application  
24 for, or renewal or cancellation of, a motor vehicle liability insurance  
25 policy.

26 (d) If a law enforcement agency of this state furnishes information to  
27 a requesting party pursuant to paragraph (2) of subsection (c), the law  
28 enforcement agency shall charge the fee prescribed by the secretary of  
29 revenue pursuant to K.S.A. 74-2022, and amendments thereto, for any  
30 copies furnished and may charge an additional fee to be retained by the  
31 law enforcement agency to cover its cost of providing such copies. The fee  
32 prescribed pursuant to K.S.A. 74-2022, and amendments thereto, shall be  
33 paid monthly to the secretary of revenue and upon receipt thereof shall be  
34 deposited in the state treasury to the credit of the electronic databases fee  
35 fund, except for the \$1 of the fee for each record required to be credited to  
36 the highway patrol training center fund under subsection (f).

37 (e) The secretary of revenue, the secretary's agents or employees, the  
38 director of vehicles or the director's agents or employees shall not be liable  
39 for damages caused by any negligent or wrongful act or omission of a law  
40 enforcement agency in furnishing any information obtained from motor  
41 vehicle records.

42 (f) A fee in an amount fixed by the secretary of revenue pursuant to  
43 K.S.A. 74-2022, and amendments thereto, of not less than \$2 for each full

1 or partial motor vehicle record shall be charged by the division, except that  
2 the director may charge a lesser fee pursuant to a contract between the  
3 secretary of revenue and any person to whom the director is authorized to  
4 furnish information under paragraph (1) of subsection (c), and such fee  
5 shall not be less than the cost of production or reproduction of any full or  
6 partial motor vehicle record requested. Except for the fees charged  
7 pursuant to a contract for motor vehicle records authorized by this  
8 subsection pertaining to motor vehicle titles or motor vehicle registrations  
9 or pursuant to subsection (c)(1)(B)(ii) or (c)(1)(D), \$1 shall be credited to  
10 the highway patrol training center fund for each motor vehicle record  
11 provided by the division of vehicles.

12 (g) The secretary of revenue may adopt such rules and regulations as  
13 are necessary to implement the provisions of this section.

14 Sec. 35. K.S.A. 2011 Supp. 75-712h is hereby amended to read as  
15 follows: 75-712h. ~~On or before July 1, 2012,~~ The director of the Kansas  
16 bureau of investigation ~~shall~~ *is authorized to* adopt rules and regulations  
17 establishing: (a) Criteria for preliminary screening devices for testing of  
18 saliva for law enforcement purposes, based on health and performance  
19 considerations; and (b) a list of preliminary screening devices which are  
20 approved for testing of saliva for law enforcement purposes and which law  
21 enforcement agencies may purchase and train officers to use as aids in  
22 determining probable cause to arrest and grounds for requiring testing  
23 pursuant to K.S.A. 8-1001, and amendments thereto.

24 Sec. 36. K.S.A. 8-241, 8-286, 8-288, 8-1501, 12-4413 and 22-2910  
25 and K.S.A. 2011 Supp. 8-235, 8-262, 8-285, 8-287, 8-2,144, 8-1001, 8-  
26 1008, 8-1012, 8-1013, 8-1014, 8-1015, 8-1020, 8-1020b, 8-1567, 12-4106,  
27 12-4414, 12-4415, 12-4416, 12-4517, 21-5203, 21-6804, 22-2802, 22-  
28 2908, 22-2909, 22-2909c, 22-4704, 60-427, 74-2012 and 75-712h are  
29 hereby repealed.

30 Sec. 37. This act shall take effect and be in force from and after its  
31 publication in the statute book.