

## Substitute for SENATE BILL No. 278

By Committee on Judiciary

3-4

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9 AN ACT concerning driving; creating the Kansas DUI commission; cre-  
10 ating the correctional services special revenue fund; relating to driver  
11 improvement clinics; providing for disposition of certain moneys; re-  
12 lating to penalties for driving under the influence of alcohol or drugs;  
13 information sent to the Kansas bureau of investigation central reposi-  
14 tory; amending K.S.A. 12-4517 and K.S.A. 2008 Supp. 8-255, 8-267,  
15 8-1567, 8-1567, as amended by section 2 of this act, and 12-4106 and  
16 repealing the existing sections.  
17

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

19 New Section 1. (a) There is hereby created the Kansas DUI  
20 commission.

21 (b) The commission shall:

22 (1) Review past and current driving under the influence statutes in  
23 Kansas;

24 (2) review driving under the influence statutes in other states;

25 (3) review what is effective in changing the behavior of driving under  
26 the influence offenders by examining evaluation, treatment and supervi-  
27 sion practices, enforcement strategies and penalty structure;

28 (4) develop a balanced and comprehensive legislative proposal that  
29 centralizes recordkeeping so that offenders are held accountable, assures  
30 highway safety by changing the behavior of driving under the influence  
31 offenders at the earliest possible time and provides for significant restric-  
32 tion on personal liberty at some level of frequency and quantity of of-  
33 fenses; and

34 (5) assess and gather information on all groups and committees work-  
35 ing on issues related to driving under the influence and determine if any  
36 results or conclusions have been found to address the issues.

37 (c) The commission shall be made up of the following members:

38 (1) The chairperson of the standing committee on judiciary of the  
39 senate;

40 (2) the chairperson of the standing committee on judiciary of the  
41 house of representatives;

42 (3) one member of the house of representatives from the minority  
43 party who is an attorney, appointed by the house minority leader;

- 1 (4) a district judge, a district magistrate judge and a municipal court
- 2 judge who exercise regular jurisdiction in driving under the influence
- 3 cases, each appointed by the chief justice of the supreme court;
- 4 (5) the attorney general, or the attorney general's designee;
- 5 (6) one prosecuting attorney who regularly prosecutes driving under
- 6 the influence cases, appointed by the Kansas county and district attorneys
- 7 association;
- 8 (7) one defense attorney who regularly represents defendants in driv-
- 9 ing under the influence cases, appointed by the Kansas bar association;
- 10 (8) one victim advocate, appointed by the governor;
- 11 (9) two persons appointed by the Kansas association of addiction
- 12 professionals;
- 13 (10) the secretary of corrections;
- 14 (11) the secretary of social and rehabilitation services;
- 15 (12) the secretary of revenue, or the secretary's designee;
- 16 (13) the secretary of transportation, or the secretary's designee;
- 17 (14) the chairperson of the Kansas sentencing commission, or the
- 18 chairperson's designee;
- 19 (15) the superintendent of the Kansas highway patrol, or the super-
- 20 intendent's designee;
- 21 (16) the director of the Kansas bureau of investigation, or the direc-
- 22 tor's designee;
- 23 (17) one sheriff, appointed by the attorney general who shall con-
- 24 sider, but not be limited to, a list of three nominees submitted therefor
- 25 by the Kansas sheriffs' association;
- 26 (18) one municipal law enforcement officer, appointed by the attor-
- 27 ney general who shall consider, but not be limited to, a list of three
- 28 nominees submitted therefor by the Kansas association of chiefs of police;
- 29 (19) one court services officer, appointed by the chief justice of the
- 30 supreme court; and
- 31 (20) one parole officer, appointed by the secretary of corrections.
- 32 (d) The members of the commission shall elect officers from among
- 33 its members necessary to discharge its duties.
- 34 (e) Each member of the commission shall receive compensation, sub-
- 35 sistence allowances, mileage and other expenses as provided for in K.S.A.
- 36 75-3223, and amendments thereto, except that the public members of
- 37 the commission shall receive compensation in the amount provided for
- 38 legislators pursuant to K.S.A. 75-3212, and amendments thereto, for each
- 39 day or part thereof actually spent on commission activities. No per diem
- 40 compensation shall be paid under this subsection to salaried state, county
- 41 or city officers or employees, except that the legislative members shall
- 42 receive compensation as provided in K.S.A. 75-3212, and amendments
- 43 thereto.

1 (f) The commission shall prepare and submit a report and recom-  
2 mendations on or before the first day of the 2010 legislative session and  
3 submit a final report and recommendations on or before the first day of  
4 the 2011 legislative session.

5 (g) The staff of the office of the revisor of statutes and legislative  
6 research department shall provide such assistance as may be requested  
7 by the commission and to the extent authorized by the legislative coor-  
8 dinating council.

9 (h) The provisions of this section shall expire on July 1, 2011.

10 New Sec. 2. On and after January 1, 2010, there is hereby created  
11 in the state treasury the correctional services special revenue fund. All  
12 moneys credited to the correctional services special revenue fund shall  
13 be used by the department of corrections only for the purpose of provid-  
14 ing substance abuse treatment in department of corrections facilities. All  
15 expenditures from the correctional services special revenue fund shall be  
16 made in accordance with appropriation acts, upon warrants of the director  
17 of accounts and reports issued pursuant to vouchers approved by the  
18 secretary of corrections.

19 Sec. 3. On and after January 1, 2010, K.S.A. 2008 Supp. 8-255 is  
20 hereby amended to read as follows: 8-255. (a) The division is authorized  
21 to restrict, suspend or revoke a person's driving privileges upon a showing  
22 by its records or other sufficient evidence the person:

23 (1) Has been convicted with such frequency of serious offenses  
24 against traffic regulations governing the movement of vehicles as to in-  
25 dicate a disrespect for traffic laws and a disregard for the safety of other  
26 persons on the highways;

27 (2) has been convicted of three or more moving traffic violations com-  
28 mitted on separate occasions within a 12-month period;

29 (3) is incompetent to drive a motor vehicle;

30 (4) has been convicted of a moving traffic violation, committed at a  
31 time when the person's driving privileges were restricted, suspended or  
32 revoked; or

33 (5) is a member of the armed forces of the United States stationed  
34 at a military installation located in the state of Kansas, and the authorities  
35 of the military establishment certify that such person's on-base driving  
36 privileges have been suspended, by action of the proper military author-  
37 ities, for violating the rules and regulations of the military installation  
38 governing the movement of vehicular traffic or for any other reason re-  
39 lating to the person's inability to exercise ordinary and reasonable control  
40 in the operation of a motor vehicle.

41 (b) The division shall suspend a person's driving privileges when re-  
42 quired by K.S.A. 8-262, 8-1014, 21-3765 or 41-727, and amendments  
43 thereto, and shall disqualify a person's privilege to drive commercial mo-

1 tor vehicles when required by K.S.A. 8-2,142, and amendments thereto.  
2 The division shall restrict a person's driving privileges when required by  
3 K.S.A. 2008 Supp. 39-7,155, and amendments thereto.

4 (c) When the action by the division restricting, suspending, revoking  
5 or disqualifying a person's driving privileges is based upon a report of a  
6 conviction or convictions from a convicting court, the person may not  
7 request a hearing but, within 30 days after notice of restriction, suspen-  
8 sion, revocation or disqualification is mailed, may submit a written request  
9 for administrative review and provide evidence to the division to show  
10 the person whose driving privileges have been restricted, suspended, re-  
11 voked or disqualified by the division was not convicted of the offense  
12 upon which the restriction, suspension, revocation or disqualification is  
13 based. Within 30 days of its receipt of the request for administrative  
14 review, the division shall notify the person whether the restriction, sus-  
15 pension, revocation or disqualification has been affirmed or set aside. The  
16 request for administrative review shall not stay any action taken by the  
17 division.

18 (d) Upon restricting, suspending, revoking or disqualifying the driv-  
19 ing privileges of any person as authorized by this act, the division shall  
20 immediately notify the person in writing. Except as provided by K.S.A.  
21 8-1002 and 8-2,145, and amendments thereto, and subsections (c) and  
22 (g), if the person makes a written request for hearing within 30 days after  
23 such notice of restriction, suspension or revocation is mailed, the division  
24 shall afford the person an opportunity for a hearing as early as practical  
25 not sooner than five days nor more than 30 days after such request is  
26 mailed. If the division has not revoked or suspended the person's driving  
27 privileges or vehicle registration prior to the hearing, the hearing may be  
28 held within not to exceed 45 days. Except as provided by K.S.A. 8-1002  
29 and 8-2,145, and amendments thereto, the hearing shall be held in the  
30 person's county of residence or a county adjacent thereto, unless the  
31 division and the person agree that the hearing may be held in some other  
32 county. Upon the hearing, the director or the director's duly authorized  
33 agent may administer oaths and may issue subpoenas for the attendance  
34 of witnesses and the production of relevant books and papers and may  
35 require an examination or reexamination of the person. When the action  
36 proposed or taken by the division is authorized but not required, the  
37 division, upon the hearing, shall either rescind or affirm its order of re-  
38 striction, suspension or revocation or, good cause appearing therefor, ex-  
39 tend the restriction or suspension of the person's driving privileges, mod-  
40 ify the terms of the restriction or suspension or revoke the person's driving  
41 privileges. When the action proposed or taken by the division is required,  
42 the division, upon the hearing, shall either affirm its order of restriction,  
43 suspension, revocation or disqualification, or, good cause appearing there-

1 for, dismiss the administrative action. If the person fails to request a  
2 hearing within the time prescribed or if, after a hearing, the order of  
3 restriction, suspension, revocation or disqualification is upheld, the per-  
4 son shall surrender to the division, upon proper demand, any driver's  
5 license in the person's possession.

6 (e) In case of failure on the part of any person to comply with any  
7 subpoena issued in behalf of the division or the refusal of any witness to  
8 testify to any matters regarding which the witness may be lawfully inter-  
9 rogated, the district court of any county, on application of the division,  
10 may compel obedience by proceedings for contempt, as in the case of  
11 disobedience of the requirements of a subpoena issued from the court or  
12 a refusal to testify in the court. Each witness who appears before the  
13 director or the director's duly authorized agent by order or subpoena,  
14 other than an officer or employee of the state or of a political subdivision  
15 of the state, shall receive for the witness' attendance the fees and mileage  
16 provided for witnesses in civil cases in courts of record, which shall be  
17 audited and paid upon the presentation of proper vouchers sworn to by  
18 the witness.

19 ~~(f) The division, in the interest of traffic and safety, may establish~~  
20 ~~driver improvement clinics throughout the state and, upon reviewing the~~  
21 ~~driving record of a person whose driving privileges are subject to suspen-~~  
22 ~~sion under subsection (a)(2), may permit the person to retain such per-~~  
23 ~~son's driving privileges by attending a driver improvement clinic. A person~~  
24 ~~who is required to attend a driver improvement clinic shall pay a fee of~~  
25 ~~\$15. Amounts received under this subsection shall be remitted to the state~~  
26 ~~treasurer in accordance with the provisions of K.S.A. 75-4215, and~~  
27 ~~amendments thereto. Upon receipt of each such remittance, the state~~  
28 ~~treasurer shall deposit the same in the state treasury to the credit of the~~  
29 ~~division of vehicles operating fund.~~

30 (f) *The division, in the interest of traffic and safety, may establish or*  
31 *contract with a private individual, corporation, partnership or association*  
32 *for the services of driver improvement clinics throughout the state and,*  
33 *upon reviewing the driving record of a person whose driving privileges*  
34 *are subject to suspension under subsection (a)(2), may permit the person*  
35 *to retain such person's driving privileges by attending a driver improve-*  
36 *ment clinic. Any person other than a person issued a commercial driver's*  
37 *license under K.S.A. 8-2,125 et seq., and amendments thereto, desiring to*  
38 *attend a driver improvement clinic shall make application to the division*  
39 *and such application shall be accompanied by the required fee. The sec-*  
40 *retary of revenue shall adopt rules and regulations prescribing a driver's*  
41 *improvement clinic fee which shall not exceed \$500 and such rules and*  
42 *regulations deemed necessary for carrying out the provisions of this sec-*  
43 *tion, including the development of standards and criteria to be utilized*

1 *by such driver improvement clinics. Amounts received under this subsec-*  
2 *tion shall be remitted to the state treasurer in accordance with the pro-*  
3 *visions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each*  
4 *such remittance, the state treasurer shall deposit the same in the state*  
5 *treasury as prescribed by subsection (f) of K.S.A. 8-267, and amendments*  
6 *thereto.*

7 (g) When the action by the division restricting a person's driving priv-  
8 ileges is based upon certification by the secretary of social and rehabili-  
9 tation services pursuant to K.S.A. 2008 Supp. 39-7,155, and amendments  
10 thereto, the person may not request a hearing but, within 30 days after  
11 notice of ~~suspension~~ restriction is mailed, may submit a written request  
12 for administrative review and provide evidence to the division to show  
13 the person whose driving privileges have been restricted by the division  
14 is not the person certified by the secretary of social and rehabilitation  
15 services, did not receive timely notice of the proposed restriction from  
16 the secretary of social and rehabilitation services or has been decertified  
17 by the secretary of social and rehabilitation services. Within 30 days of its  
18 receipt of the request for administrative review, the division shall notify  
19 the person whether the restriction has been affirmed or set aside. The  
20 request for administrative review shall not stay any action taken by the  
21 division.

22 Sec. 4. On and after January 1, 2010, K.S.A. 2008 Supp. 8-267 is  
23 hereby amended to read as follows: 8-267. All moneys received under  
24 this act shall be remitted by the secretary of revenue to the state treasurer  
25 in accordance with the provisions of K.S.A. 75-4215, and amendments  
26 thereto. Upon receipt of each such remittance, the state treasurer shall  
27 deposit the entire amount in the state treasury and shall:

28 (a) Credit 37.5% of all moneys so received from class C driver's li-  
29 censes and 20% of all moneys so received from class M driver's licenses  
30 and 20% of all moneys so received from class A or B driver's licenses and  
31 20% of all moneys so received from all commercial driver licensee classes  
32 remaining after the \$2 credit provided in subsection (c) to a special fund,  
33 which is hereby created and shall be known as the state safety fund;

34 (b) credit 20% of all moneys so received from class M driver's licenses  
35 to a special fund which is hereby created and shall be known as the  
36 motorcycle safety fund;

37 (c) credit \$2 from each commercial driver's license fee to a special  
38 fund which is hereby created and shall be known as the truck driver  
39 training fund;

40 (d) credit all photo fees collected under K.S.A. 8-243, and amend-  
41 ments thereto, to the photo fee fund; ~~and~~

42 (e) credit all hazardous materials endorsement fees collected under  
43 K.S.A. 2008 Supp. 8-2,151, and amendments thereto, to the hazmat fee

1 fund; and

2 (f) credit the driver improvement clinic fees collected under K.S.A. 8-  
3 255, and amendments thereto, as follows:

4 (1) Credit 50% of each such fee to the division of vehicles operating  
5 fund; and

6 (2) credit 50% of each such fee to the correctional services special  
7 revenue fund.

8 Moneys in the state safety fund and in the motorcycle safety fund shall  
9 be distributed to provide funds for driver training courses in the schools  
10 in Kansas and for the administration of this act, as the legislature shall  
11 provide. In addition, moneys in the motorcycle safety fund shall be dis-  
12 tributed to provide funds for courses in motorcycle safety in community  
13 colleges in Kansas. Moneys in the truck driver training fund shall be  
14 distributed to provide funds for courses in truck driver training in com-  
15 munity colleges, area vocational schools and area vocational-technical  
16 schools in Kansas. Except as otherwise provided by K.S.A. 8-241, and  
17 amendments thereto, the state treasurer shall credit the balance of all  
18 moneys received under this act, including all moneys received from com-  
19 mercial driver's license endorsements to the state highway fund.

20 Sec. 5. K.S.A. 2008 Supp. 8-1567 is hereby amended to read as fol-  
21 lows: 8-1567. (a) No person shall operate or attempt to operate any vehicle  
22 within this state while:

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

27 (2) the alcohol concentration in the person's blood or breath, as meas-  
28 ured within two hours of the time of operating or attempting to operate  
29 a vehicle, is .08 or more;

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

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

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

37 (b) No person shall operate or attempt to operate any vehicle within  
38 this state if the person is a habitual user of any narcotic, hypnotic, som-  
39 nifacient or stimulating drug.

40 (c) If a person is charged with a violation of this section involving  
41 drugs, the fact that the person is or has been entitled to use the drug  
42 under the laws of this state shall not constitute a defense against the  
43 charge.

1 (d) Upon a first conviction of a violation of this section, a person shall  
2 be guilty of a class B, nonperson misdemeanor and sentenced to not less  
3 than 48 consecutive hours nor more than six months' imprisonment, or  
4 in the court's discretion 100 hours of public service, and fined not less  
5 than \$500 nor more than \$1,000. The person convicted must serve at  
6 least 48 consecutive hours' imprisonment or 100 hours of public service  
7 either before or as a condition of any grant of probation or suspension,  
8 reduction of sentence or parole.

9 In addition, the court shall enter an order which requires that the  
10 person enroll in and successfully complete an alcohol and drug safety  
11 action education program or treatment program as provided in K.S.A. 8-  
12 1008, and amendments thereto, or both the education and treatment  
13 programs.

14 (e) On a second conviction of a violation of this section, a person shall  
15 be guilty of a class A, nonperson misdemeanor and sentenced to not less  
16 than 90 days nor more than one year's imprisonment and fined not less  
17 than \$1,000 nor more than \$1,500. The person convicted must serve at  
18 least five consecutive days' imprisonment before the person is granted  
19 probation, suspension or reduction of sentence or parole or is otherwise  
20 released. The five days' imprisonment mandated by this subsection may  
21 be served in a work release program only after such person has served  
22 48 consecutive hours' imprisonment, provided such work release program  
23 requires such person to return to confinement at the end of each day in  
24 the work release program. The court may place the person convicted  
25 under a house arrest program pursuant to K.S.A. 21-4603b, and amend-  
26 ments thereto, to serve the remainder of the minimum sentence only  
27 after such person has served 48 consecutive hours' imprisonment.

28 As a condition of any grant of probation, suspension of sentence or  
29 parole or of any other release, the person shall be required to enter into  
30 and complete a treatment program for alcohol and drug abuse as provided  
31 in K.S.A. 8-1008, and amendments thereto.

32 (f) (1) On the third conviction of a violation of this section, a person  
33 shall be guilty of a nonperson felony and sentenced to not less than 90  
34 days nor more than one year's imprisonment and fined not less than  
35 \$1,500 nor more than \$2,500. The person convicted shall not be eligible  
36 for release on probation, suspension or reduction of sentence or parole  
37 until the person has served at least 90 days' imprisonment. The 90 days'  
38 imprisonment mandated by this paragraph may be served in a work re-  
39 lease program only after such person has served 48 consecutive hours'  
40 imprisonment, provided such work release program requires such person  
41 to return to confinement at the end of each day in the work release  
42 program. The court may place the person convicted under a house arrest  
43 program pursuant to K.S.A. 21-4603b, and amendments thereto, to serve



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

3 (2) The court may order that the term of imprisonment imposed pur-  
4 suant to paragraph (1) be served in a state facility in the custody of the  
5 secretary of corrections in a facility designated by the secretary for the  
6 provision of substance abuse treatment pursuant to the provisions of  
7 K.S.A. 21-4704, and amendments thereto. The person shall remain im-  
8 prisoned at the state facility only while participating in the substance  
9 abuse treatment program designated by the secretary and shall be re-  
10 turned to the custody of the sheriff for execution of the balance of the  
11 term of imprisonment upon completion of or the person's discharge from  
12 the substance abuse treatment program. Custody of the person shall be  
13 returned to the sheriff for execution of the sentence imposed in the event  
14 the secretary of corrections determines: (A) That substance abuse treat-  
15 ment resources or the capacity of the facility designated by the secretary  
16 for the incarceration and treatment of the person is not available; (B) the  
17 person fails to meaningfully participate in the treatment program of the  
18 designated facility; (C) the person is disruptive to the security or operation  
19 of the designated facility; or (D) the medical or mental health condition  
20 of the person renders the person unsuitable for confinement at the des-  
21 ignated facility. The determination by the secretary that the person either  
22 is not to be admitted into the designated facility or is to be transferred  
23 from the designated facility is not subject to review. The sheriff shall be  
24 responsible for all transportation expenses to and from the state correc-  
25 tional facility.

26 The court shall also require as a condition of parole that such person  
27 enter into and complete a treatment program for alcohol and drug abuse  
28 as provided by K.S.A. 8-1008, and amendments thereto.

29 (g) (1) On the fourth or subsequent conviction of a violation of this  
30 section, a person shall be guilty of a nonperson felony and sentenced to  
31 not less than 90 days nor more than one year's imprisonment and fined  
32 \$2,500. The person convicted shall not be eligible for release on proba-  
33 tion, suspension or reduction of sentence or parole until the person has  
34 served at least 90 days' imprisonment. The 90 days' imprisonment man-  
35 dated by this paragraph may be served in a work release program only  
36 after such person has served 72 consecutive hours' imprisonment, pro-  
37 vided such work release program requires such person to return to con-  
38 finement at the end of each day in the work release program.

39 (2) The court may order that the term of imprisonment imposed pur-  
40 suant to paragraph (1) be served in a state facility in the custody of the  
41 secretary of corrections in a facility designated by the secretary for the  
42 provision of substance abuse treatment pursuant to the provisions of  
43 K.S.A. 21-4704, and amendments thereto. The person shall remain im-

1   prisoned at the state facility only while participating in the substance  
2   abuse treatment program designated by the secretary and shall be re-  
3   turned to the custody of the sheriff for execution of the balance of the  
4   term of imprisonment upon completion of or the person's discharge from  
5   the substance abuse treatment program. Custody of the person shall be  
6   returned to the sheriff for execution of the sentence imposed in the event  
7   the secretary of corrections determines: (A) That substance abuse treat-  
8   ment resources or the capacity of the facility designated by the secretary  
9   for the incarceration and treatment of the person is not available; (B) the  
10   person fails to meaningfully participate in the treatment program of the  
11   designated facility; (C) the person is disruptive to the security or operation  
12   of the designated facility; or (D) the medical or mental health condition  
13   of the person renders the person unsuitable for confinement at the des-  
14   ignated facility. The determination by the secretary that the person either  
15   is not to be admitted into the designated facility or is to be transferred  
16   from the designated facility is not subject to review. The sheriff shall be  
17   responsible for all transportation expenses to and from the state correc-  
18   tional facility.

19   At the time of the filing of the judgment form or journal entry as  
20   required by K.S.A. 21-4620 or 22-3426, and amendments thereto, the  
21   court shall cause a certified copy to be sent to the officer having the  
22   offender in charge. The law enforcement agency maintaining custody and  
23   control of a defendant for imprisonment shall cause a certified copy of  
24   the judgment form or journal entry to be sent to the secretary of correc-  
25   tions within three business days of receipt of the judgment form or journal  
26   entry from the court and notify the secretary of corrections when the  
27   term of imprisonment expires and upon expiration of the term of impris-  
28   onment shall deliver the defendant to a location designated by the sec-  
29   retary. After the term of imprisonment imposed by the court, the person  
30   shall be placed in the custody of the secretary of corrections for a man-  
31   datory one-year period of postrelease supervision, which such period of  
32   postrelease supervision shall not be reduced. During such postrelease  
33   supervision, the person shall be required to participate in an inpatient or  
34   outpatient program for alcohol and drug abuse, including, but not limited  
35   to, an approved aftercare plan or mental health counseling, as determined  
36   by the secretary and satisfy conditions imposed by the Kansas parole  
37   board as provided by K.S.A. 22-3717, and amendments thereto. Any vi-  
38   olation of the conditions of such postrelease supervision may subject such  
39   person to revocation of postrelease supervision pursuant to K.S.A. 75-  
40   5217 et seq., and amendments thereto and as otherwise provided by law.

41   (h) Any person convicted of violating this section or an ordinance  
42   which prohibits the acts that this section prohibits who had one or more  
43   children under the age of 14 years in the vehicle at the time of the offense

1 shall have such person's punishment enhanced by one month of impris-  
2 onment. This imprisonment must be served consecutively to any other  
3 minimum mandatory penalty imposed for a violation of this section or an  
4 ordinance which prohibits the acts that this section prohibits. Any en-  
5 hanced penalty imposed shall not exceed the maximum sentence allow-  
6 able by law. During the service of the enhanced penalty, the judge may  
7 order the person on house arrest, work release or other conditional  
8 release.

9 (i) The court may establish the terms and time for payment of any  
10 fines, fees, assessments and costs imposed pursuant to this section. Any  
11 assessment and costs shall be required to be paid not later than 90 days  
12 after imposed, and any remainder of the fine shall be paid prior to the  
13 final release of the defendant by the court.

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

24 (k) (1) Except as provided in paragraph (5), in addition to any other  
25 penalty which may be imposed upon a first conviction of a violation of  
26 this section, the court may order that the convicted person's motor vehicle  
27 or vehicles be impounded or immobilized for a period not to exceed one  
28 year and that the convicted person pay all towing, impoundment and  
29 storage fees or other immobilization costs.

30 (2) The court shall not order the impoundment or immobilization of  
31 a motor vehicle driven by a person convicted of a violation of this section  
32 if the motor vehicle had been stolen or converted at the time it was driven  
33 in violation of this section.

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

37 (A) Whether the impoundment or immobilization of the motor ve-  
38 hicle would result in the loss of employment by the convicted person or  
39 a member of such person's family; and

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

42 (4) Any personal property in a vehicle impounded or immobilized  
43 pursuant to this subsection may be retrieved prior to or during the period

1 of such impoundment or immobilization.

2 (5) As used in this subsection, the convicted person's motor vehicle  
3 or vehicles shall include any vehicle leased by such person. If the lease  
4 on the convicted person's motor vehicle subject to impoundment or im-  
5 mobilization expires in less than one year from the date of the impound-  
6 ment or immobilization, the time of impoundment or immobilization of  
7 such vehicle shall be the amount of time remaining on the lease.

8 (1) (1) Except as provided in paragraph (3), in addition to any other  
9 penalty which may be imposed upon a second or subsequent conviction  
10 of a violation of this section, the court shall order that each motor vehicle  
11 owned or leased by the convicted person shall either be equipped with  
12 an ignition interlock device or be impounded or immobilized for a period  
13 of two years. The convicted person shall pay all costs associated with the  
14 installation, maintenance and removal of the ignition interlock device and  
15 all towing, impoundment and storage fees or other immobilization costs.

16 (2) Any personal property in a vehicle impounded or immobilized  
17 pursuant to this subsection may be retrieved prior to or during the period  
18 of such impoundment or immobilization.

19 (3) As used in this subsection, the convicted person's motor vehicle  
20 or vehicles shall include any vehicle leased by such person. If the lease  
21 on the convicted person's motor vehicle subject to impoundment or im-  
22 mobilization expires in less than two years from the date of the impound-  
23 ment or immobilization, the time of impoundment or immobilization of  
24 such vehicle shall be the amount of time remaining on the lease.

25 (m) (1) *Prior to filing a complaint alleging a violation of this section,*  
26 *a prosecutor shall request and shall receive from the division a record of*  
27 *all prior convictions obtained against such person for any violations of*  
28 *any of the motor vehicle laws of this state.*

29 (2) *Prior to filing a complaint alleging a violation of this section, a*  
30 *prosecutor shall request and shall receive from the Kansas bureau of in-*  
31 *vestigation central repository all criminal history record information con-*  
32 *cerning such person.*

33 ~~(n)~~ (n) The court shall *electronically* report every conviction of a  
34 violation of this section and every diversion agreement entered into in  
35 lieu of further criminal proceedings or a complaint alleging a violation of  
36 this section to the division. Prior to sentencing under the provisions of  
37 this section, the court shall request and shall receive from the division a  
38 record of all prior convictions obtained against such person for any vio-  
39 lations of any of the motor vehicle laws of this state.

40 ~~(o)~~ (o) For the purpose of determining whether a conviction is a first,  
41 second, third, fourth or subsequent conviction in sentencing under this  
42 section:

43 (1) "Conviction" includes being convicted of a violation of this section

1 or entering into a diversion agreement in lieu of further criminal pro-  
2 ceedings on a complaint alleging a violation of this section;

3 (2) “conviction” includes being convicted of a violation of a law of  
4 another state or an ordinance of any city, or resolution of any county,  
5 which prohibits the acts that this section prohibits or entering into a di-  
6 version agreement in lieu of further criminal proceedings in a case alleg-  
7 ing a violation of such law, ordinance or resolution;

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

11 (4) it is irrelevant whether an offense occurred before or after con-  
12 viction for a previous offense; and

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

17 ~~(p)~~ Upon conviction of a person of a violation of this section or a  
18 violation of a city ordinance or county resolution prohibiting the acts  
19 prohibited by this section, the division, upon receiving a report of con-  
20 viction, shall suspend, restrict or suspend and restrict the person’s driving  
21 privileges as provided by K.S.A. 8-1014, and amendments thereto.

22 ~~(p)~~ ~~(1)~~ (q) (1) (A) Nothing contained in this section shall be con-  
23 strued as preventing any city from enacting ordinances, or any county  
24 from adopting resolutions, declaring acts prohibited or made unlawful by  
25 this act as unlawful or prohibited in such city or county and prescribing  
26 penalties for violation thereof. Except as specifically provided by this sub-  
27 section, the minimum penalty prescribed by any such ordinance or res-  
28 olution shall not be less than the minimum penalty prescribed by this act  
29 for the same violation, and the maximum penalty in any such ordinance  
30 or resolution shall not exceed the maximum penalty prescribed for the  
31 same violation.

32 (B) On and after July 1, 2007, and retroactive for ordinance violations  
33 committed on or after July 1, 2006, an ordinance may grant to a municipal  
34 court jurisdiction over a violation of such ordinance which is concurrent  
35 with the jurisdiction of the district court over a violation of this section,  
36 notwithstanding that the elements of such ordinance violation are the  
37 same as the elements of a violation of this section that would constitute,  
38 and be punished as, a felony.

39 (C) Any such ordinance or resolution shall authorize the court to or-  
40 der that the convicted person pay restitution to any victim who suffered  
41 loss due to the violation for which the person was convicted. Except as  
42 provided in paragraph (5), any such ordinance or resolution may require  
43 or authorize the court to order that the convicted person’s motor vehicle

1 or vehicles be impounded or immobilized for a period not to exceed one  
2 year and that the convicted person pay all towing, impoundment and  
3 storage fees or other immobilization costs.

4 (2) The court shall not order the impoundment or immobilization of  
5 a motor vehicle driven by a person convicted of a violation of this section  
6 if the motor vehicle had been stolen or converted at the time it was driven  
7 in violation of this section.

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

11 (A) Whether the impoundment or immobilization of the motor ve-  
12 hicle would result in the loss of employment by the convicted person or  
13 a member of such person's family; and

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

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

19 (5) As used in this subsection, the convicted person's motor vehicle  
20 or vehicles shall include any vehicle leased by such person. If the lease  
21 on the convicted person's motor vehicle subject to impoundment or im-  
22 mobilization expires in less than one year from the date of the impound-  
23 ment or immobilization, the time of impoundment or immobilization of  
24 such vehicle shall be the amount of time remaining on the lease.

25 (r) (1) *Upon the filing of a complaint, citation or notice to appear*  
26 *alleging a person has violated a city ordinance prohibiting the acts pro-*  
27 *hibited by this section, and prior to conviction thereof, a city attorney*  
28 *shall request and shall receive from the division a record of all prior*  
29 *convictions obtained against such person for any violations of any of the*  
30 *motor vehicle laws of this state.*

31 (2) *Upon the filing of a complaint, citation or notice to appear alleging*  
32 *a person has violated a city ordinance prohibiting the acts prohibited by*  
33 *this section, and prior to conviction thereof, a city attorney shall request*  
34 *and shall receive from the Kansas bureau of investigation central repos-*  
35 *itory all criminal history record information concerning such person.*

36 (3) *If the elements of such ordinance violation are the same as the*  
37 *elements of a violation of this section that would constitute, and be pun-*  
38 *ished as, a felony, the city attorney shall refer the violation to the appro-*  
39 *priate county or district attorney for prosecution.*

40 ~~(q)~~ (s) No plea bargaining agreement shall be entered into nor shall  
41 any judge approve a plea bargaining agreement entered into for the pur-  
42 pose of permitting a person charged with a violation of this section, or a  
43 violation of any ordinance of a city or resolution of any county in this state

1 which prohibits the acts prohibited by this section, to avoid the mandatory  
2 penalties established by this section or by the ordinance. For the purpose  
3 of this subsection, entering into a diversion agreement pursuant to K.S.A.  
4 12-4413 et seq. or 22-2906 et seq., and amendments thereto, shall not  
5 constitute plea bargaining.

6 ~~(t)~~ (t) The alternatives set out in subsections (a)(1), (a)(2) and (a)(3)  
7 may be pleaded in the alternative, and the state, city or county, but shall  
8 not be required to, may elect one or two of the three prior to submission  
9 of the case to the fact finder.

10 ~~(u)~~ (u) Upon a fourth or subsequent conviction, the judge of any court  
11 in which any person is convicted of violating this section, may revoke the  
12 person's license plate or temporary registration certificate of the motor  
13 vehicle driven during the violation of this section for a period of one year.  
14 Upon revoking any license plate or temporary registration certificate pur-  
15 suant to this subsection, the court shall require that such license plate or  
16 temporary registration certificate be surrendered to the court.

17 ~~(v)~~ (v) For the purpose of this section: (1) "Alcohol concentration"  
18 means the number of grams of alcohol per 100 milliliters of blood or per  
19 210 liters of breath.

20 (2) "Imprisonment" shall include any restrained environment in  
21 which the court and law enforcement agency intend to retain custody and  
22 control of a defendant and such environment has been approved by the  
23 board of county commissioners or the governing body of a city.

24 (3) "Drug" includes toxic vapors as such term is defined in K.S.A. 65-  
25 4165, and amendments thereto.

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

35 ~~(x)~~ (x) Upon every conviction of a violation of this section, the court  
36 shall order such person to submit to a pre-sentence alcohol and drug  
37 abuse evaluation pursuant to K.S.A. 8-1008, and amendments thereto.  
38 Such pre-sentence evaluation shall be made available, and shall be con-  
39 sidered by the sentencing court.

40 Sec. 6. On and after July 1, 2010, K.S.A. 2008 Supp. 8-1567, as  
41 amended by section 2 of this act, is hereby amended to read as follows:  
42 8-1567. (a) No person shall operate or attempt to operate any vehicle  
43 within this state while:

- 1 (1) The alcohol concentration in the person's blood or breath as  
2 shown by any competent evidence, including other competent evidence,  
3 as defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and amend-  
4 ments thereto, is .08 or more;
- 5 (2) the alcohol concentration in the person's blood or breath, as meas-  
6 ured within two hours of the time of operating or attempting to operate  
7 a vehicle, is .08 or more;
- 8 (3) under the influence of alcohol to a degree that renders the person  
9 incapable of safely driving a vehicle;
- 10 (4) under the influence of any drug or combination of drugs to a  
11 degree that renders the person incapable of safely driving a vehicle; or
- 12 (5) under the influence of a combination of alcohol and any drug or  
13 drugs to a degree that renders the person incapable of safely driving a  
14 vehicle.
- 15 (b) No person shall operate or attempt to operate any vehicle within  
16 this state if the person is a habitual user of any narcotic, hypnotic, som-  
17 nifacient or stimulating drug.
- 18 (c) If a person is charged with a violation of this section involving  
19 drugs, the fact that the person is or has been entitled to use the drug  
20 under the laws of this state shall not constitute a defense against the  
21 charge.
- 22 (d) Upon a first conviction of a violation of this section, a person shall  
23 be guilty of a class B, nonperson misdemeanor and sentenced to not less  
24 than 48 consecutive hours nor more than six months' imprisonment, or  
25 in the court's discretion 100 hours of public service, and fined not less  
26 than \$500 nor more than \$1,000. The person convicted must serve at  
27 least 48 consecutive hours' imprisonment or 100 hours of public service  
28 either before or as a condition of any grant of probation or suspension,  
29 reduction of sentence or parole.
- 30 In addition, the court shall enter an order which requires that the  
31 person enroll in and successfully complete an alcohol and drug safety  
32 action education program or treatment program as provided in K.S.A. 8-  
33 1008, and amendments thereto, or both the education and treatment  
34 programs.
- 35 (e) On a second conviction of a violation of this section, a person shall  
36 be guilty of a class A, nonperson misdemeanor and sentenced to not less  
37 than 90 days nor more than one year's imprisonment and fined not less  
38 than \$1,000 nor more than \$1,500. The person convicted must serve at  
39 least five consecutive days' imprisonment before the person is granted  
40 probation, suspension or reduction of sentence or parole or is otherwise  
41 released. The five days' imprisonment mandated by this subsection may  
42 be served in a work release program only after such person has served  
43 48 consecutive hours' imprisonment, provided such work release program



1 requires such person to return to confinement at the end of each day in  
2 the work release program. The court may place the person convicted  
3 under a house arrest program pursuant to K.S.A. 21-4603b, and amend-  
4 ments thereto, to serve the remainder of the minimum sentence only  
5 after such person has served 48 consecutive hours' imprisonment.

6 As a condition of any grant of probation, suspension of sentence or  
7 parole or of any other release, the person shall be required to enter into  
8 and complete a treatment program for alcohol and drug abuse as provided  
9 in K.S.A. 8-1008, and amendments thereto.

10 ~~(f) (1) On the third conviction of a violation of this section, a person~~  
11 ~~shall be guilty of a nonperson felony and sentenced to not less than 90~~  
12 ~~days nor more than one year's imprisonment and fined not less than~~  
13 ~~\$1,500 nor more than \$2,500. The person convicted shall not be eligible~~  
14 ~~for release on probation, suspension or reduction of sentence or parole~~  
15 ~~until the person has served at least 90 days' imprisonment. The 90 days'~~  
16 ~~imprisonment mandated by this paragraph may be served in a work re-~~  
17 ~~lease program only after such person has served 48 consecutive hours'~~  
18 ~~imprisonment, provided such work release program requires such person~~  
19 ~~to return to confinement at the end of each day in the work release~~  
20 ~~program. The court may place the person convicted under a house arrest~~  
21 ~~program pursuant to K.S.A. 21-4603b, and amendments thereto, to serve~~  
22 ~~the remainder of the minimum sentence only after such person has served~~  
23 ~~48 consecutive hours' imprisonment.~~

24 ~~—(2) The court may order that the term of imprisonment imposed pur-~~  
25 ~~suant to paragraph (1) be served in a state facility in the custody of the~~  
26 ~~secretary of corrections in a facility designated by the secretary for the~~  
27 ~~provision of substance abuse treatment pursuant to the provisions of~~  
28 ~~K.S.A. 21-4704, and amendments thereto. The person shall remain im-~~  
29 ~~prisoned at the state facility only while participating in the substance~~  
30 ~~abuse treatment program designated by the secretary and shall be re-~~  
31 ~~turned to the custody of the sheriff for execution of the balance of the~~  
32 ~~term of imprisonment upon completion of or the person's discharge from~~  
33 ~~the substance abuse treatment program. Custody of the person shall be~~  
34 ~~returned to the sheriff for execution of the sentence imposed in the event~~  
35 ~~the secretary of corrections determines: (A) That substance abuse treat-~~  
36 ~~ment resources or the capacity of the facility designated by the secretary~~  
37 ~~for the incarceration and treatment of the person is not available; (B) the~~  
38 ~~person fails to meaningfully participate in the treatment program of the~~  
39 ~~designated facility; (C) the person is disruptive to the security or operation~~  
40 ~~of the designated facility; or (D) the medical or mental health condition~~  
41 ~~of the person renders the person unsuitable for confinement at the des-~~  
42 ~~ignated facility. The determination by the secretary that the person either~~  
43 ~~is not to be admitted into the designated facility or is to be transferred~~

1 ~~from the designated facility is not subject to review. The sheriff shall be~~  
2 ~~responsible for all transportation expenses to and from the state correc-~~  
3 ~~tional facility.~~

4 ~~The court shall also require as a condition of parole that such person~~  
5 ~~enter into and complete a treatment program for alcohol and drug abuse~~  
6 ~~as provided by K.S.A. 8-1008, and amendments thereto.~~

7 ~~(g) (1) On the fourth or subsequent (f) (1) On a third~~ conviction  
8 of a violation of this section, a person shall be guilty of a nonperson felony  
9 and sentenced to not less than 90 days nor more than one year's impris-  
10 onment and fined \$2,500. The person convicted shall not be eligible for  
11 release on probation, suspension or reduction of sentence or parole until  
12 the person has served at least 90 days' imprisonment. The 90 days' im-  
13 prisonment mandated by this paragraph may be served in a work release  
14 program only after such person has served 72 consecutive hours' impris-  
15 onment, provided such work release program requires such person to  
16 return to confinement at the end of each day in the work release program.

17 (2) The court may order that the term of imprisonment imposed pur-  
18 suant to paragraph (1) be served in a state facility in the custody of the  
19 secretary of corrections in a facility designated by the secretary for the  
20 provision of substance abuse treatment pursuant to the provisions of  
21 K.S.A. 21-4704, and amendments thereto. The person shall remain im-  
22 prisoned at the state facility only while participating in the substance  
23 abuse treatment program designated by the secretary and shall be re-  
24 turned to the custody of the sheriff for execution of the balance of the  
25 term of imprisonment upon completion of or the person's discharge from  
26 the substance abuse treatment program. Custody of the person shall be  
27 returned to the sheriff for execution of the sentence imposed in the event  
28 the secretary of corrections determines: (A) That substance abuse treat-  
29 ment resources or the capacity of the facility designated by the secretary  
30 for the incarceration and treatment of the person is not available; (B) the  
31 person fails to meaningfully participate in the treatment program of the  
32 designated facility; (C) the person is disruptive to the security or operation  
33 of the designated facility; or (D) the medical or mental health condition  
34 of the person renders the person unsuitable for confinement at the des-  
35 ignated facility. The determination by the secretary that the person either  
36 is not to be admitted into the designated facility or is to be transferred  
37 from the designated facility is not subject to review. The sheriff shall be  
38 responsible for all transportation expenses to and from the state correc-  
39 tional facility.

40 At the time of the filing of the judgment form or journal entry as  
41 required by K.S.A. 21-4620 or 22-3426, and amendments thereto, the  
42 court shall cause a certified copy to be sent to the officer having the  
43 offender in charge. The law enforcement agency maintaining custody and

1 control of a defendant for imprisonment shall cause a certified copy of  
2 the judgment form or journal entry to be sent to the secretary of correc-  
3 tions within three business days of receipt of the judgment form or journal  
4 entry from the court and notify the secretary of corrections when the  
5 term of imprisonment expires and upon expiration of the term of impris-  
6 onment shall deliver the defendant to a location designated by the sec-  
7 retary. After the term of imprisonment imposed by the court, the person  
8 shall be placed in the custody of the secretary of corrections for a man-  
9 datory one-year period of postrelease supervision, which such period of  
10 postrelease supervision shall not be reduced. During such postrelease  
11 supervision, the person shall be required to participate in an inpatient or  
12 outpatient program for alcohol and drug abuse, including, but not limited  
13 to, an approved aftercare plan or mental health counseling, as determined  
14 by the secretary and satisfy conditions imposed by the Kansas parole  
15 board as provided by K.S.A. 22-3717, and amendments thereto. Any vi-  
16 olation of the conditions of such postrelease supervision may subject such  
17 person to revocation of postrelease supervision pursuant to K.S.A. 75-  
18 5217 et seq., and amendments thereto and as otherwise provided by law.

19 *(g) (1) On the fourth or subsequent conviction of a violation of this*  
20 *section, a person shall be guilty of a nonperson felony and sentenced to*  
21 *not less than 180 days nor more than one year's imprisonment and fined*  
22 *\$2,500. The person convicted shall not be eligible for release on probation,*  
23 *suspension or reduction of sentence or parole until the person has served*  
24 *at least 180 days' imprisonment. The 180 days' imprisonment mandated*  
25 *by this paragraph may be served in a work release program only after*  
26 *such person has served 144 consecutive hours' imprisonment, provided*  
27 *such work release program requires such person to return to confinement*  
28 *at the end of each day in the work release program.*

29 *(2) The court may order that the term of imprisonment imposed pur-*  
30 *suant to paragraph (1) be served in a state facility in the custody of the*  
31 *secretary of corrections in a facility designated by the secretary for the*  
32 *provision of substance abuse treatment pursuant to the provisions of*  
33 *K.S.A. 21-4704, and amendments thereto. The person shall remain im-*  
34 *prisoned at the state facility only while participating in the substance*  
35 *abuse treatment program designated by the secretary and shall be re-*  
36 *turned to the custody of the sheriff for execution of the balance of the*  
37 *term of imprisonment upon completion of or the person's discharge from*  
38 *the substance abuse treatment program. Custody of the person shall be*  
39 *returned to the sheriff for execution of the sentence imposed in the event*  
40 *the secretary of corrections determines: (A) That substance abuse treat-*  
41 *ment resources or the capacity of the facility designated by the secretary*  
42 *for the incarceration and treatment of the person is not available; (B) the*  
43 *person fails to meaningfully participate in the treatment program of the*

1 *designated facility; (C) the person is disruptive to the security or operation*  
2 *of the designated facility; or (D) the medical or mental health condition*  
3 *of the person renders the person unsuitable for confinement at the des-*  
4 *ignated facility. The determination by the secretary that the person either*  
5 *is not to be admitted into the designated facility or is to be transferred*  
6 *from the designated facility is not subject to review. The sheriff shall be*  
7 *responsible for all transportation expenses to and from the state correc-*  
8 *tional facility.*

9 *At the time of the filing of the judgment form or journal entry as re-*  
10 *quired by K.S.A. 21-4620 or 22-3426, and amendments thereto, the court*  
11 *shall cause a certified copy to be sent to the officer having the offender in*  
12 *charge. The law enforcement agency maintaining custody and control of*  
13 *a defendant for imprisonment shall cause a certified copy of the judgment*  
14 *form or journal entry to be sent to the secretary of corrections within*  
15 *three business days of receipt of the judgment form or journal entry from*  
16 *the court and notify the secretary of corrections when the term of im-*  
17 *prisonment expires and upon expiration of the term of imprisonment shall*  
18 *deliver the defendant to a location designated by the secretary.*

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

30 (i) The court may establish the terms and time for payment of any  
31 fines, fees, assessments and costs imposed pursuant to this section. Any  
32 assessment and costs shall be required to be paid not later than 90 days  
33 after imposed, and any remainder of the fine shall be paid prior to the  
34 final release of the defendant by the court.

35 (j) In lieu of payment of a fine imposed pursuant to this section, the  
36 court may order that the person perform community service specified by  
37 the court. The person shall receive a credit on the fine imposed in an  
38 amount equal to \$5 for each full hour spent by the person in the specified  
39 community service. The community service ordered by the court shall be  
40 required to be performed not later than one year after the fine is imposed  
41 or by an earlier date specified by the court. If by the required date the  
42 person performs an insufficient amount of community service to reduce  
43 to zero the portion of the fine required to be paid by the person, the

1 remaining balance of the fine shall become due on that date.

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

8 (2) The court shall not order the impoundment or immobilization of  
9 a motor vehicle driven by a person convicted of a violation of this section  
10 if the motor vehicle had been stolen or converted at the time it was driven  
11 in violation of this section.

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

15 (A) Whether the impoundment or immobilization of the motor ve-  
16 hicle would result in the loss of employment by the convicted person or  
17 a member of such person's family; and

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

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

23 (5) As used in this subsection, the convicted person's motor vehicle  
24 or vehicles shall include any vehicle leased by such person. If the lease  
25 on the convicted person's motor vehicle subject to impoundment or im-  
26 mobilization expires in less than one year from the date of the impound-  
27 ment or immobilization, the time of impoundment or immobilization of  
28 such vehicle shall be the amount of time remaining on the lease.

29 (l) (1) Except as provided in paragraph (3), in addition to any other  
30 penalty which may be imposed upon a second or subsequent conviction  
31 of a violation of this section, the court shall order that each motor vehicle  
32 owned or leased by the convicted person shall either be equipped with  
33 an ignition interlock device or be impounded or immobilized for a period  
34 of two years. The convicted person shall pay all costs associated with the  
35 installation, maintenance and removal of the ignition interlock device and  
36 all towing, impoundment and storage fees or other immobilization costs.

37 (2) Any personal property in a vehicle impounded or immobilized  
38 pursuant to this subsection may be retrieved prior to or during the period  
39 of such impoundment or immobilization.

40 (3) As used in this subsection, the convicted person's motor vehicle  
41 or vehicles shall include any vehicle leased by such person. If the lease  
42 on the convicted person's motor vehicle subject to impoundment or im-  
43 mobilization expires in less than two years from the date of the impound-

- 1 ment or immobilization, the time of impoundment or immobilization of  
2 such vehicle shall be the amount of time remaining on the lease.
- 3 (m) (1) Prior to filing a complaint alleging a violation of this section,  
4 a prosecutor shall request and shall receive from the division a record of  
5 all prior convictions obtained against such person for any violations of any  
6 of the motor vehicle laws of this state.
- 7 (2) Prior to filing a complaint alleging a violation of this section, a  
8 prosecutor shall request and shall receive from the Kansas bureau of  
9 investigation central repository all criminal history record information  
10 concerning such person.
- 11 (n) The court shall electronically report every conviction of a violation  
12 of this section and every diversion agreement entered into in lieu of fur-  
13 ther criminal proceedings or a complaint alleging a violation of this section  
14 to the division. Prior to sentencing under the provisions of this section,  
15 the court shall request and shall receive from the division a record of all  
16 prior convictions obtained against such person for any violations of any  
17 of the motor vehicle laws of this state.
- 18 (o) For the purpose of determining whether a conviction is a first,  
19 second, third, fourth or subsequent conviction in sentencing under this  
20 section:
- 21 (1) “Conviction” includes being convicted of a violation of this section  
22 or entering into a diversion agreement in lieu of further criminal pro-  
23 ceedings on a complaint alleging a violation of this section;
- 24 (2) “conviction” includes being convicted of a violation of a law of  
25 another state or an ordinance of any city, or resolution of any county,  
26 which prohibits the acts that this section prohibits or entering into a di-  
27 version agreement in lieu of further criminal proceedings in a case alleg-  
28 ing a violation of such law, ordinance or resolution;
- 29 (3) any convictions occurring during a person’s lifetime shall be taken  
30 into account when determining the sentence to be imposed for a first,  
31 second, third, fourth or subsequent offender;
- 32 (4) it is irrelevant whether an offense occurred before or after con-  
33 viction for a previous offense; and
- 34 (5) a person may enter into a diversion agreement in lieu of further  
35 criminal proceedings for a violation of this section, and amendments  
36 thereto, or an ordinance which prohibits the acts of this section, and  
37 amendments thereto, only once during the person’s lifetime.
- 38 (p) Upon conviction of a person of a violation of this section or a  
39 violation of a city ordinance or county resolution prohibiting the acts  
40 prohibited by this section, the division, upon receiving a report of con-  
41 viction, shall suspend, restrict or suspend and restrict the person’s driving  
42 privileges as provided by K.S.A. 8-1014, and amendments thereto.
- 43 (q) (1) (A) Nothing contained in this section shall be construed as

1 preventing any city from enacting ordinances, or any county from adopt-  
2 ing resolutions, declaring acts prohibited or made unlawful by this act as  
3 unlawful or prohibited in such city or county and prescribing penalties  
4 for violation thereof. Except as specifically provided by this subsection,  
5 the minimum penalty prescribed by any such ordinance or resolution shall  
6 not be less than the minimum penalty prescribed by this act for the same  
7 violation, and the maximum penalty in any such ordinance or resolution  
8 shall not exceed the maximum penalty prescribed for the same violation.

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

16 (C) Any such ordinance or resolution shall authorize the court to or-  
17 der that the convicted person pay restitution to any victim who suffered  
18 loss due to the violation for which the person was convicted. Except as  
19 provided in paragraph (5), any such ordinance or resolution may require  
20 or authorize the court to order that the convicted person's motor vehicle  
21 or vehicles be impounded or immobilized for a period not to exceed one  
22 year and that the convicted person pay all towing, impoundment and  
23 storage fees or other immobilization costs.

24 (2) The court shall not order the impoundment or immobilization of  
25 a motor vehicle driven by a person convicted of a violation of this section  
26 if the motor vehicle had been stolen or converted at the time it was driven  
27 in violation of this section.

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

31 (A) Whether the impoundment or immobilization of the motor ve-  
32 hicle would result in the loss of employment by the convicted person or  
33 a member of such person's family; and

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

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

39 (5) As used in this subsection, the convicted person's motor vehicle  
40 or vehicles shall include any vehicle leased by such person. If the lease  
41 on the convicted person's motor vehicle subject to impoundment or im-  
42 mobilization expires in less than one year from the date of the impound-  
43 ment or immobilization, the time of impoundment or immobilization of

- 1 such vehicle shall be the amount of time remaining on the lease.
- 2 (r) (1) Prior to filing a complaint alleging a violation of a city ordi-  
3 nance prohibiting the acts prohibited by this section, a city attorney shall  
4 request and shall receive from the division a record of all prior convictions  
5 obtained against such person for any violations of any of the motor vehicle  
6 laws of this state.
- 7 (2) Prior to filing a complaint alleging a violation of a city ordinance  
8 prohibiting the acts prohibited by this section, a city attorney shall request  
9 and shall receive from the Kansas bureau of investigation central repos-  
10 itory all criminal history record information concerning such person.
- 11 (3) If the elements of such ordinance violation are the same as the  
12 elements of a violation of this section that would constitute, and be pun-  
13 ished as, a felony, the city attorney shall refer the violation to the appro-  
14 priate county or district attorney for prosecution.
- 15 (s) No plea bargaining agreement shall be entered into nor shall any  
16 judge approve a plea bargaining agreement entered into for the purpose  
17 of permitting a person charged with a violation of this section, or a vio-  
18 lation of any ordinance of a city or resolution of any county in this state  
19 which prohibits the acts prohibited by this section, to avoid the mandatory  
20 penalties established by this section or by the ordinance. For the purpose  
21 of this subsection, entering into a diversion agreement pursuant to K.S.A.  
22 12-4413 et seq. or 22-2906 et seq., and amendments thereto, shall not  
23 constitute plea bargaining.
- 24 (t) The alternatives set out in subsections (a)(1), (a)(2) and (a)(3) may  
25 be pleaded in the alternative, and the state, city or county, but shall not  
26 be required to, may elect one or two of the three prior to submission of  
27 the case to the fact finder.
- 28 (u) Upon a ~~fourth~~ *third* or subsequent conviction, the judge of any  
29 court in which any person is convicted of violating this section, may revoke  
30 the person's license plate or temporary registration certificate of the mo-  
31 tor vehicle driven during the violation of this section for a period of one  
32 year. Upon revoking any license plate or temporary registration certificate  
33 pursuant to this subsection, the court shall require that such license plate  
34 or temporary registration certificate be surrendered to the court.
- 35 (v) For the purpose of this section: (1) "Alcohol concentration" means  
36 the number of grams of alcohol per 100 milliliters of blood or per 210  
37 liters of breath.
- 38 (2) "Imprisonment" shall include any restrained environment in  
39 which the court and law enforcement agency intend to retain custody and  
40 control of a defendant and such environment has been approved by the  
41 board of county commissioners or the governing body of a city.
- 42 (3) "Drug" includes toxic vapors as such term is defined in K.S.A. 65-  
43 4165, and amendments thereto.



- 1 (w) The amount of the increase in fines as specified in this section  
2 shall be remitted by the clerk of the district court to the state treasurer  
3 in accordance with the provisions of K.S.A. 75-4215, and amendments  
4 thereto. Upon receipt of remittance of the increase provided in this act,  
5 the state treasurer shall deposit the entire amount in the state treasury  
6 and the state treasurer shall credit 50% to the community alcoholism and  
7 intoxication programs fund and 50% to the department of corrections  
8 alcohol and drug abuse treatment fund, which is hereby created in the  
9 state treasury.
- 10 (x) Upon every conviction of a violation of this section, the court shall  
11 order such person to submit to a pre-sentence alcohol and drug abuse  
12 evaluation pursuant to K.S.A. 8-1008, and amendments thereto. Such pre-  
13 sentence evaluation shall be made available, and shall be considered by  
14 the sentencing court.
- 15 Sec. 7. K.S.A. 2008 Supp. 12-4106 is hereby amended to read as  
16 follows: 12-4106. (a) The municipal judge shall have the power to admin-  
17 ister the oaths and enforce all orders, rules and judgments made by such  
18 municipal judge, and may fine or imprison for contempt in the same  
19 manner and to the same extent as a judge of the district court.
- 20 (b) The municipal judge shall have the power to hear and determine  
21 all cases properly brought before such municipal judge to: Grant contin-  
22 uances; sentence those found guilty to a fine or confinement in jail, or  
23 both; commit accused persons to jail in default of bond; determine ap-  
24 plications for parole; release on probation; grant time in which a fine may  
25 be paid; correct a sentence; suspend imposition of a sentence; set aside  
26 a judgment; permit time for post trial motions; and discharge accused  
27 persons.
- 28 (c) The municipal judge shall maintain a docket in which every cause  
29 commenced before such municipal judge shall be entered. Such docket  
30 shall contain the names of the accused persons and complainant, the  
31 nature or character of the offense, the date of trial, the names of all  
32 witnesses sworn and examined, the finding of the court, the judgment  
33 and sentence, the date of payment, the date of issuing commitment, if  
34 any, and every other fact necessary to show the full proceedings in each  
35 case.
- 36 (d) The municipal judge shall promptly make such reports and fur-  
37 nish the information requested by any departmental justice or the judicial  
38 administrator, in the manner and form prescribed by the supreme court.
- 39 (e) The municipal judge shall ensure that information concerning dis-  
40 positions of city ordinance violations that result in convictions comparable  
41 to convictions for class A and B misdemeanors under Kansas criminal  
42 statutes is forwarded to the Kansas bureau of investigation central repos-  
43 itory. This information shall be transmitted, on a form or in a format

1 approved by the attorney general, within 30 days of final disposition.  
2 (f) *The municipal court judge shall ensure that information concern-*  
3 *ing persons arrested or charged with a violation of a city ordinance pro-*  
4 *hibiting the acts prohibited by K.S.A. 8-1567, and amendments thereto,*  
5 *is forwarded to the Kansas bureau of investigation central repository.*  
6 Sec. 8. K.S.A. 12-4517 is hereby amended to read as follows: 12-  
7 4517. (a) (1) The municipal court judge shall ensure that all persons con-  
8 victed of violating municipal ordinance provisions that prohibit conduct  
9 comparable to a class A or B misdemeanor or assault as defined in K.S.A.  
10 21-3408 and amendments thereto under a Kansas criminal statute are  
11 fingerprinted and processed.  
12 (2) *The municipal court judge shall ensure that all persons arrested*  
13 *or charged with a violation of a city ordinance prohibiting the acts pro-*  
14 *hibited by K.S.A. 8-1567, and amendments thereto, are fingerprinted and*  
15 *processed at the time of booking.*  
16 (b) The municipal court judge shall order the individual to be fin-  
17 gerprinted at an appropriate location as determined by the municipal  
18 court judge. Failure of the person to be fingerprinted after court order  
19 issued by the municipal judge shall constitute contempt of court. To re-  
20 imburse the city or other entity for costs associated with fingerprinting,  
21 the municipal court judge may assess reasonable court costs, in addition  
22 to other court costs imposed by the state or municipality.  
23 Sec. 9. K.S.A. 12-4517 and K.S.A. 2008 Supp. 8-1567 and 12-4106  
24 are hereby repealed.  
25 Sec. 10. On and after January 1, 2010, K.S.A. 2008 Supp. 8-255 and  
26 8-267 are hereby repealed.  
27 Sec. 11. On and after July 1, 2010, K.S.A. 2008 Supp. 8-1567, as  
28 amended by section 2 of this act, is hereby repealed.  
29 Sec. 12. This act shall take effect and be in force from and after its  
30 publication in the statute book.