

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Senator Vratil at 9:37 a.m. on February 7, 2002 in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Gordon Self, Revisor
Mike Heim, Research
Mary Blair, Secretary

Conferees appearing before the committee:

Ben Burgess, Parole Board
Sherry Sage, AAA Kansas
Senator James Barnett
John Heim, Superintendent, USD 253
Bill Sneed, State Farm Insurance
Chris Collins, Kansas Medical Society (KMS)
Tim Madden, Department of Corrections (DOC)
Amy Hyten, Office of Judicial Administration (OJA)

Others attending: see attached list

The minutes of the February 6th, 2002 meeting were approved on a motion by Senator Donovan, seconded by Senator Schmidt. Carried.

Bill Introduction:

Conferee Burgess discussed a disparity in the law related to sentencing and requested introduction of a bill to correct this. (no attachment) Senator O'Connor moved to introduce the bill, Senator Goodwin seconded. Carried.

SB 432—transportation of minor passengers

Conferee Sage testified in support of **SB 432**, a bill which places a limit on the type and number of passengers a minor driver may have in the vehicle while driving. The conferee discussed the statistics related to teenage driving fatalities specifically noting that an increase in the number of teenage passengers increased the risk for crash fatalities. (attachment 1)

Conferee Barnett testified in support of **SB 432**. He stated the intent of the bill was to reduce deaths and injuries related to teenage drivers. He provided statistical data to support the need for the bill and discussed the bill's provisions. (attachment 2) Discussion followed.

Conferee Heim testified in support of **SB 432** citing statistical data to support the need for the bill. (attachment 3)

Conferee Sneed testified in support of **SB 432**. He summarized the bill and presented further statistical data to support a need for the bill. (attachment 4)

Conferee Collins testified in support of **SB 432**. She cited statistical data to support the need for the bill. She briefly discussed the KMS support of graduated licensing for minor drivers referring to a copy of their policy in her handout. (attachment 5)

Written testimony supporting **SB 432** was submitted by the State Child Death Review Board. (attachment 6)

SB 433—DUI; notice to DOC

Conferee Madden testified in support of **SB 433**, a bill which would amend those provisions in current law relating to offenders convicted of fourth and subsequent DUI offenses. He discussed the amendments in detail. (attachment 7)

Conferee Hyten testified as neutral on **SB 433**. She reviewed certain provisions in the bill and requested Committee consider a balloon amendment proposed by the OJA. She discussed amendments in the balloon and the purpose for incorporating the proposed **SB 494** into this bill. (attachment 8)

The meeting adjourned at 10:30. The next scheduled meeting is February 8, 2002.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Feb 7, 2002

NAME	REPRESENTING
<i>Chris Collins</i>	<i>KMS</i>
Connie Burns	Whitney B. Dameron, PA
Kette Hays	Interim
Bill Sneed	State Farm
Catherine Rankin	State Farm
Jeff Boltberg	State Farm
Julie Sergeant	KDHE
Joe Harold	KSC
Brenda Harmon	KSC
Barbara Jombr	KSC
Ben Burger	Ks Paul Board
Tj Mohr	KDOC
Ann Cohen	student ^{MSW} / citizen
Joe Sprague	student ^{MSW} / citizen
Helen Pedigo	Governor's Office
<i>Timarie Waltw</i>	<i>KDMJA</i>
Aui Iyten	JUDICIAL BRANCH
Mark Gleeson	Judicial Branch
David Hanson	Ks Insur. Agents & NAI

Sheila J. Walker KDOR - DMV
Hubbard KHP

Testimony in Support of SB 432
February 7, 2002
Presented By: Cherie Sage
AAA Kansas

Thank you for the opportunity to appear in support of SB 432. My name is Cherie Sage and I appear today on behalf of AAA Kansas representing more than 140,000 members in Kansas.

The American Automobile Association was founded principally in an effort to support and promote highway safety. At AAA, it is our responsibility to represent the interests of motorists and travelers with regards to transportation and safety issues. Because highway and motorist safety is the foundation on which AAA was built, we feel it is our obligation to appear before this Committee and support SB 432 in effort to help save lives on our Kansas roads.

Motor vehicle crashes kill more people between the ages of 15 and 20 than any other cause. Even more disturbing is the fact that this age group accounts for only 7 percent of the driving population, but is involved in 14 percent of all fatal traffic crashes and nearly 20 percent of total crashes.

The consequences of teen crashes are jarring: some 6,000 fatalities each year; 600,000 injured, thousands permanently paralyzed and dependent on others for the remainder of their lives. More than half of those killed are drivers; the others are passengers and occupants of other vehicles.

Young novice drivers are a highway safety problem for many reasons, primarily a combination of immaturity, inexperience and high-risk driving exposure. Teenagers are also more likely to drive older and smaller cars, are less likely to wear seat belts, and are more likely to have multiple teenage passengers.

By limiting the number of passengers with a novice driver, we are reducing risk exposure. When you increase from no passengers to more than one passenger in a car driven by a teen, the risk of that teen having a crash that is their fault goes up by 13 percent. Research also shows that removing all teen passengers from a car driven by 16 and 17-year old reduces the overall crash risk by about 50 percent. Coincidentally, there is not an increase in the risk of that teen having a crash if you add an adult to the car. Clearly, teens are distracted by other teens -- not by adults.

The simple fact is that the more teen-agers there are in the car, the more there are to be hurt in crash. In 1996, 24 percent of all passenger deaths in this country occurred when a teenager was driving. Two-thirds of all the teen passengers killed in 1996 were in a vehicle driven by another teenager.

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Parents face a real dilemma when it comes to teen driving. On the one hand, most are quite anxious to give up the "chauffeur" duties and let their teens handle their own transportation. On the other hand, they are fearful of the increased risks this brings. But passenger restrictions won't prevent teen-agers from running errands. They can continue to run errands with older passengers and they can certainly run errands by themselves -- which is actually very important because they need time to practice without distractions

We need to remember that we are asking our teens to handle the extraordinarily complicated task of driving -- in extraordinarily fast-paced and dangerous conditions -- and to control a two-ton machine that all too often becomes a lethal weapon. Driving is a skill that improves with time and maturity. We need to give our novice drivers the time and the environment in which to learn to drive. That means limiting the number of passengers during the period in which the teenager is learning to drive.

As a final note to those who believe that this bill will place an unfair burden on parents: Children create burdens for parents. That's part of being a family. Parents or their designees manage household errands before the teenager in the house is eligible for a driver license. Ask any parent who has lost a teen to one of these crashes and they'll tell you they'd gladly drive their child anywhere they needed to go if they could have the chance. The funeral procession is the one route you never want to drive with your teen.

Thank you again for allowing me the opportunity to be here today in support of SB 432.



TOPEKA

SENATE CHAMBER

TESTIMONY**Senate Bill 432**

COUNTIES

CHASE, COFFEY, GEARY,
LYON, MARION, MORRIS,
OSAGE AND WABAUNSEE

COMMITTEE ASSIGNMENTS

VICE CHAIR PUBLIC HEALTH AND WELFARE
MEMBER FEDERAL AND STATE AFFAIRS
FINANCIAL INSTITUTIONS AND
INSURANCE

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 OFFICE: STATE CAPITOL BUILDING—136 N
 TOPEKA, KANSAS 66612-1504
 785 296-7384
 1-800-432-3924

Chairman Vratil and other distinguished members of the Senate Judiciary Committee, thank you for the opportunity today to speak in support of Senate Bill 432.

This legislation is introduced as a passenger safety bill, with the intent of reducing deaths and injuries related to teenage drivers. Ten other states currently limit the number of passengers that teenage drivers can carry. A study done by Johns Hopkins University and subsequently published in the Journal of the American Medical Association demonstrated that the number of teenage passengers in the car with the teenage driver was one of the highest risk factors for death or serious injury. A 16-year-old carrying one passenger is 39% more likely to be killed than when driving alone. That likelihood increases to 86% with two passengers, and 182% with three or more passengers.

Aside from the issue of preventing deaths and injuries, this bill also has a practical implication related to our current budget deficit. We are all aware of the increasing number of SRS caseloads and the burgeoning dollars that are required for the care of disabled and injured persons. Head injury and spinal cord injury represent the most common cause of death and disability to our youth. Over half of those spinal cord and head injuries occur as a result of a traffic accident. Motor vehicle crashes are the leading cause of death among teenagers in the United States. This represents one way that as a legislative body, we can set public policy to help prevent those injuries.

Senate Bill 432 specifically exempts siblings. The bill also exempts attendance of school and school sponsored functions. Thus, brothers and sisters can car pool to school or drive to other locations. Young people can also double date to the Prom.

There are many very responsible and safe teenage drivers on our Kansas roads. This bill does not imply that we do not have many young people to be proud of in our state. However, risk-taking is a part of youth and that risk-taking is increased when there are other teenagers present in the car. The challenge may be to speed, run a light, jump over a bump, or drink and drive.

The bill specifically does not create a laundry list of school sponsored functions. I have reviewed this issue carefully with Lt. John Eichkorn from the Kansas Highway Patrol, and Bruce Kinzie from the Revisor of Statutes office. We felt it best to leave that to the judgement of the law enforcement officer.

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In conversation with one of my friends in Emporia, I shared with him that I felt that this bill would be opposed in the Kansas Legislature because of restriction of freedoms. He quickly interrupted me and said, "No, Jim, that's not true. They lose their freedom when they die or when they kill someone else."

I had no further comment to him. Thank you for the opportunity to come before this committee.

Signed:

A handwritten signature in black ink, appearing to be "Jim Barnett", written over a horizontal line.

Senator Jim Barnett

JAB/gkp

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**Testimony Presented to the
Senate Judiciary Committee
In Support of SB 432
By John Heim, Superintendent, Emporia Public Schools
February 7, 2002**

Yesterday, my oldest son turned 13. He wanted cash for his birthday because he has decided to start saving for a car. I have a new interest in Kansas driving laws. Truthfully, my job is to be interested in the health and well-being of Emporia's teenagers. We have a duty to protect our youth whenever we can.

Last fall, my family was visiting friends in Georgia. On Saturday night, their 16-year-old son climbed into a seven-passenger Toyota SUV and headed out for the evening. I questioned my friend's sanity for letting his son leave the house in that vehicle. I reminded him of the trouble that we would have found with a carload of friends 25 years earlier. Hopefully, the statute of limitations has expired on all of those incidents.

It was then that he told me about Georgia's teenage driving laws. Georgia, along with eight other states, restricts the number of passengers that a 16 or 17-year-old driver may have in the car with them. The law is based upon startling research compiled by the John's Hopkins School of Public Health and published in the Journal of the American Medical Association (JAMA, March 22/29, 2000 – Vol. 283, No. 12).

You are no doubt aware that motor vehicle crashes are the number one cause of death for teenagers in the United States. About half of those deaths are to the drivers of the vehicle and half to passengers. In all, more than a third of the deaths of 15 to 19-year-olds are due to vehicle crashes.

The John's Hopkins research focused only on deaths of drivers in car crashes. This controlled for the increased possibility of more deaths due to the increased number of people in the vehicle. This means that their data understates the actual number of deaths because it factors out the deaths of vehicle passengers.

Their research found that a 16-year-old driver with one passenger is 39% more likely to be killed in a crash than one driving alone. A 16-year-old with two passengers is 86% more likely to be killed. With three or more passengers, the chances of the 16-year-old driver being killed increase by 182%!

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The data for 17-year-olds is even more dramatic. The chances of being killed increase by 48% with one passenger, 158% with two passengers, and 207% with three or more passengers!

Although anyone who remembers their teenage years can speculate as to why passengers increase the chances of a fatality accident, data is available on that as well. Teenagers reported that they were more likely to speed, drink or use drugs, cross the center line, skid purposely, run red lights, etc. when driving with peers in the car. The research only discussed illegal acts, not simple and innocent distractions that occur when a group of friends are driving around.

Five years ago in Emporia, three boys drove into the country to "hill jump." The teen driver hit a car at the crossroads. The impact killed the driver of the other vehicle, the father of two children. Youth are not the only ones being harmed in these accidents. One of the boys in the truck was killed. One was maimed, disabled for life. The driver was not physically harmed. This accident did not make its way into the John's Hopkins data because the driver was not killed. But it had a significant impact on five Emporia families, and SB 342 could have prevented it.

Polsinelli | Shalton | Welte

A Professional Corporation

Memorandum

TO: The Honorable John Vratil, Chairman
Senate Judiciary Committee

FROM: William W. Sneed

RE: SB 432

DATE: February 7, 2002

Mr. Chairman, Members of the Committee: My name is Bill Sneed and I appear today on behalf of the State Farm Insurance Companies ("State Farm"). State Farm is the largest auto insurer in Kansas. We appreciate the opportunity to appear in support of SB 432, which restricts the ability of nonsiblings to ride in a car being driven by persons 16 to 18 years of age.

Kansas law currently prohibits a person under the age of 16 with a restricted license from transporting any nonsibling minor passengers. SB 432 would extend such restrictions to drivers age 16 to 18, as such persons may not transport more than one nonsibling except to and from school and for participation in school sponsored activities. As a proponent of highway safety, State Farm supports limitations on the age and number of passengers in a vehicle driven by a teenager, as statistics continue to show a strong connection between accidents with teenage drivers and cars that contained teenage passengers. For instance, the Insurance Institute for Highway Safety and Highway Data Loss Institute did an analysis of the U.S. Department of

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Transportation's motor vehicle fatality data. Their analysis found the following startling statistics:

Motor vehicle death rates per 100,000 people in 2000 peaked at age 18 and 19 for drivers and ages 17 and 18 for passengers

Slightly more than half of teenage passenger vehicle occupant deaths in 2000 were drivers (53%) and a little less than half were passengers (45%).

Sixty-three percent of teenage passenger deaths in 2000 occurred in crashes in which another teenager was driving. Among people of all ages, 20% of passenger deaths in 2000 occurred when a teenager was driving.

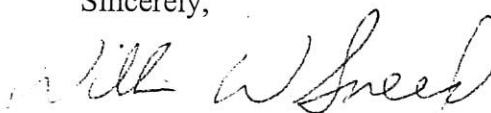
The crash rate per mile driven is almost 3 times as high among 16-year olds as it is among 18-19 year-olds.

A white paper commissioned by the Institute noted that unsupervised driving with teenage passengers increases crash risk compared to driving alone. The more passengers the greater the risk. This correlation holds true whether the driving occurs during the day or night.

Recent tragic events involving teenage motorists unfortunately confirm the accuracy of the above statistics, as many of you will remember the tragic deaths of three young, unrelated girls that were driving after school in Overland Park. A fatal accident also occurred here in Topeka in 2000 involving unrelated teenagers in the same car. Although nothing can bring back the loved ones lost in the above incidents, the enactment of SB 432 might prevent further tragic deaths. Therefore, the restriction of nonsibling passengers in a car is simply good public policy and should be enacted, for all too often, the immaturity of a long driver combined with his or her driving inexperience leads to tragic consequences.

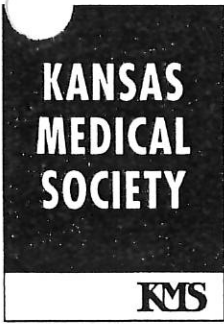
Thus, for the reasons stated above, State Farm strongly encourages passage of SB 432. Please do not hesitate to contact me if you have questions or need further information.

Sincerely,

A handwritten signature in cursive script that reads "William W. Sneed". The signature is written in dark ink and is positioned above the printed name.

William W. Sneed

WWS



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To: Senate Committee on Federal and State Affairs
From: Chris Collins *Chris Collins*
Director of Government Affairs
Date: February 7, 2002
Subject: SB 432: Transportation of Minor Passengers

The Kansas Medical Society appreciates the opportunity to testify today on SB 432.

The Kansas Medical Society supports Dr. Barnett's efforts to ensure that further restrictions are placed on minor drivers. A National Highway Traffic Safety Administration (NHTSA) study reports that the crash rate for 16 year- old drivers is 15 times that of 20 to 24 year-olds. Crashes were the leading cause of death for teenagers in 1996, costing 5,805 lives nationally, with incalculable economic consequences. (AMA House of Delegates Resolution 408, A-99) Adolescent drivers are also more likely to speed, tail, gate, shun seat belts and participate in immature driving activities.

The American Medical Association takes a strong stand in support of graduated licensing for minor drivers. Attached is a copy of the AMA Policy H-15.955 for your perusal. An important element of the AMA policy is the restriction of all passengers that minor drivers may transport. Dr. Barnett's policy, deeply rooted in public safety concerns, presents a tempered approach to reducing the safety risk that teenager drivers present to themselves and other drivers. This bill recognizes the need of families to allow multiple teenagers to transport themselves to and from school activities. However, it limits the number of other teens a teen driver may transport. This is a reasoned approach well supported by empirical studies which demonstrate that teens are much more likely to engage in immature driving activities while in the presence of other teens.

For the foregoing reasons, the Kansas Medical Society would respectfully urge the passage of SB 432. Thank you for the opportunity to testify today on this important subject.

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PolicyFinder

H-15.955 Restrictions on New Adolescent Drivers - Development of Model State Legislation on Graduated Driving Laws

Our AMA, recognizing the developmental driving issues that continue to threaten the lives of adolescents, will strengthen our model state legislation on graduated driver's licenses to (1) require adolescents to obtain a provisional driving license (separate from a learner's permit); (2) require experienced adult supervision for adolescent drivers during the provisional driving period; and (3) limit the number of passengers in vehicles driven by adolescents during the provisional driving period. (Res. 408, A-99)

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STATE CHILD DEATH REVIEW BOARD



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Lorne Phillips, PhD
State Registrar
Topeka

Terry Morgan, SSA
KBI
Overland Park

February 7, 2002

Senator John Vratil
Senate Judiciary Committee
State Capitol
Topeka, KS 66612-1504

Dear Mr. Chairman and Members of the Committee:

This letter serves as official support of the State Child Death Review Board (SCDRB) for the provisions contained in SB 432.

This bill will provide additional protection for youth by limiting the number of nonsibling passengers young drivers are able to transport. Teenage passengers add a dangerous distraction for young, inexperienced drivers, increasing the risk of a car crash. Phasing in driving privileges over time, as proposed in this bill, helps introduce young drivers to the driving experience gradually. This allows beginning young drivers to gain initial experience under lower risk conditions, leading to a reduction in traffic crashes, injuries and fatalities.

In the newest annual report of the SCDRB, which will be released shortly, we devote an entire section to motor vehicle crashes. On page 11 of the report we state: "Among children less than 14 years of age, there are increases in the number of crashes during hours of the day commonly associated with going to school, returning from school, and evening commute. Among 15 to 17 year olds there are similar increases in the number of crashes during these times. In addition, in the older age group, there was an increase in fatal motor vehicle crashes between the hours of 10:00 p.m. and 2:00 a.m."

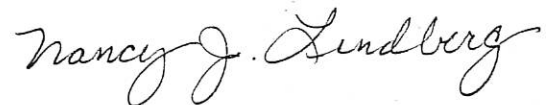
On page 13 we state: "In summary, for the years 1994-1999, motor vehicle crashes are the leading cause of unintentional injury deaths for Kansas children. Kansas has a significantly higher mortality rate for child deaths from motor vehicle crashes than does the rest of the nation." And finally, in the last paragraph of the Public Policy Recommendation section of the report, page 15, we state: "Finally, a graduated licensing system would likely reduce the death rate from motor vehicle crashes for Kansas teenagers and for all Kansans."

According to the National Highway Traffic Safety Administration (NHTSA), fatal crashes involving teenage drivers occur 17 times a day across the nation. Teen drivers are far more likely than other drivers to be involved in fatal crashes because they lack driving experience and tend to take greater risks. This risk increases when additional young passengers are in the vehicle. Many other states have implemented similar restrictions to those proposed in SB 432. Depending upon the severity of the driving restrictions, crash mortality rates have been reduced by seven percent to 32 percent for teenage drivers.

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The Board encourages your support of Senate Bill 432. Please help us keep the youth in Kansas safe. We thank the Committee for its time and attention.

Sincerely,

A handwritten signature in cursive script that reads "Nancy J. Lindberg". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

Nancy J. Lindberg
Chair, SCDRB



DEPARTMENT OF CORRECTIONS
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Bill Graves
Governor

Charles E. Simmons
Secretary

Memorandum

DATE: February 7, 2002
TO: Senate Judiciary Committee
FROM: Charles E. Simmons
Secretary of Corrections
RE: SB 433

SB 433 amends K.S.A. 8-1567 by:

- incorporating the intermediate period of substance abuse treatment into the postrelease supervision period,
- requiring the sentencing court to provide to the Department of Corrections a copy of the sentencing order at the time the sentence is imposed, and
- providing that the transfer of the custody of the offender by the local law enforcement agency to the department occur at a location designated by the department.

K.S.A. 8-1567 (driving under the influence of alcohol or drugs) provides a sentencing disposition for fourth and subsequent convictions consisting of three distinct components. Offenders convicted of DUI four or more times are sentenced to a term of confinement in a county jail. After the term of imprisonment, the offender is placed in the custody of the Department of Corrections in order to participate in either inpatient or outpatient substance abuse treatment as directed by the department. Finally, upon

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completion of the treatment program, the offender is to begin a one year period of postrelease supervision that is also supervised by the department.

The introduction of SB 433 was requested by the department to address the department's concerns pertaining to the intermediate treatment period that follows the offender's release from imprisonment but prior to the commencement of the one year period of postrelease supervision; and the mechanics of the transfer of the custody of the offender from local officials to the department.

The department's concerns regarding the status of the offender during the intermediate treatment period involve both the sanctions that can be imposed against the offender during that period as well as its indefinite length of time. SB 433 addresses both of these concerns. SB 433 provides that the required participation in a substance abuse treatment program selected by the department occur during the postrelease supervision period. Thus, pursuant to SB 433, the department would have leverage with offenders who fail or refuse to participate in an inpatient or outpatient substance abuse treatment program since the offenders would unambiguously be subject to the possibility of having their postrelease supervision revoked for such refusal. Additionally, SB 433 provides a definite time period during which the offender is in the custody of the department.

The department's concern regarding the ambiguous status of the offender during the treatment phase set out in K.S.A. 8-1567 is due to that statute's clear language that while violations of supervision conditions imposed during the offender's postrelease supervision subject the offender to the revocation of his or her postrelease supervision or other sanctions, the period of postrelease supervision does not commence until after completion of the required treatment program. Therefore, there is no provision in current law that would enable to Department of Corrections, in conjunction with the Kansas Parole Board, to sanction an offender through the revocation of his or her release during the treatment phase. Thus, if an offender fails or refuses to participate in the prescribed treatment program, the recourse available to the department would be to commence the offender's postrelease supervision with a condition of treatment and sanction the refusal through revocation or other consequences if the refusal continues. This has the unintended consequence of an offender being able to advance the commencement of his or her postrelease supervision period through unacceptable behavior during the treatment phase.

SB 433, by providing that all of the supervision exerted over the offender once he or she is released from imprisonment is by virtue of the offender's postrelease supervision obligation, also serves to clearly extend the Parole Board's broad authority regarding the

imposition of postrelease supervision conditions applicable to all other offenses to these offenders. This authority would include the board's ability to impose conditions for participation in substance abuse aftercare as appropriate and would avoid any argument that the board's authority to impose supervision conditions is limited to aftercare participation.

SB 433 also provides for the efficient transfer of the custody of the offender from local officials to the department. SB 433 mandates that the court provide the department with a copy of the sentencing order at the time the order is filed. This notification would enable the department to timely develop a substance abuse treatment plan for the individual offender and otherwise track the offender's status. This will aid the orderly transfer of custody once the offender has completed the confinement obligation with the county.

Efficiency in the transfer of the offender's custody is further provided by SB 433 relative to the location where the transfer is to take place. SB 433 provides that custody of the offender be transferred at a location designated by the department once the local law enforcement agency has executed the term of imprisonment imposed upon the offender.

Since the offender has already fully served the term of confinement imposed by the court when his or her custody is transferred to the department, there is no authority to confine that individual in a department facility for the sole purpose of processing that person immediately back into the community. Additionally, since offenders sentenced for the commission of a fourth or subsequent DUI offense may participate in a local work release program while confined by a county, neither the public nor the offender is benefited by the disruption of that employment or the cost imposed upon sheriffs if transportation of the offender to the department's Reception and Diagnostic facility is required. The department anticipates that local law enforcement officials will accommodate the department in providing any photographs, fingerprints and other information necessary to transfer custody in order to avoid travel to the department's reception and diagnostic facility. The department is interested not only in aiding local officials in avoiding unnecessary expenses but also in conserving its limited correctional facility resources. To do so the department would strive to accept custody locally, either at a jail or a parole office.

The department urges favorable consideration of SB 433.

CES/TGM



State of Kansas
Office of Judicial Administration

Kansas Judicial Center
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Senate Judiciary Committee

Thursday, February 7, 2002

Testimony on SB 433
Ami Hyten

Following the enactment of 2001 Senate Bill 67, a new group of criminal defendants were brought into the custody of the Secretary of Corrections under circumstances that had not previously existed. Under these new conditions, the courts were required to identify a subcategory of DUI defendants (fourth and subsequent offenders) and notify the Secretary of Corrections of their remand to his custody. However, the Kansas Sentencing Guidelines Journal Entry of Judgment in use at that time identified the offense only as "felony DUI," offering no way for the clerks of the district court to identify those journal entries for fourth and subsequent DUIs to send to the Secretary of Corrections. At the Judicial Branch's request, the Kansas Sentencing Commission reviewed the standard Journal Entry of Judgment forms promulgated by that agency, and revised them to identify those cases where a fourth or subsequent DUI conviction occurs. Therefore, the clerks have a clear indication of those cases in which they need to prepare a packet for submission to the Department of Corrections. In this sense, in its current form, SB 433 largely reflects the procedure for notifying the Department of Corrections of felony DUI convictions that the courts and the Department of Corrections agreed upon as a temporary solution.

As a practical matter, notifying the Department of Corrections of any felon's remand to the department's custody has become the responsibility of, and is actually performed by, law enforcement officers, primarily sheriffs' officers. The clerks of the district court prepare the commitment packet and provide it to the officer having custody of the offender, and the officer then transmits the required information to the Department of Corrections. The officer and the Department of Corrections are in communication about the arrangements and the assignment of the offender. In an effort to bring the "best practices" employed by courts and officers across the state with statutory directives, the Judicial Branch requested the introduction of SB 494 in this committee.

We have offered a series of suggested amendments to SB 433, indicated in the balloon handed out to members of the committee. The amendment offered on page three, line 10, would simply introduce the language used in other contexts to refer to the standard sentencing document

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KANSAS SENTENCING GUIDELINES JOURNAL ENTRY OF JUDGMENT

SECTION I. CASE IDENTIFYING INFORMATION

Case Name STATE v. _____		Court O.R.I. Number	K.B.I. Number	
County	Court Case Number	Sentencing Judge	Sentencing Date	
Type of Counsel <input type="checkbox"/> Appointed <input type="checkbox"/> Retained <input type="checkbox"/> Self <input type="checkbox"/> Other		Type of Trial <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input type="checkbox"/> Plea	Date of Conviction _____	Pre-Trial Status of Offender <input type="checkbox"/> In Custody <input type="checkbox"/> Released on Bond <input type="checkbox"/> Other Release

SECTION II. CRIMINAL HISTORY CLASSIFICATION

Offender's Overall Criminal History Classification as Found by the Court (please circle): Nondrug A B C D E F G H I Drug A B C D E F G H I	Objection to Criminal History? <input type="checkbox"/> Yes <input type="checkbox"/> No	If Yes, By: <input type="checkbox"/> Defendant <input type="checkbox"/> State
Court's Ruling on Objection: <input type="checkbox"/> Criminal history was amended. <input type="checkbox"/> Criminal history was not amended.		

SECTION III. CURRENT CONVICTION INFORMATION

Name of PRIMARY Offense of Conviction: Count No. _____ Date of Offense _____	K.S.A. Title, Section, Subsection(s) <input type="checkbox"/> Attempt <input type="checkbox"/> Conspiracy <input type="checkbox"/> Solicitation	Grade of Offense <input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor Class _____ <input type="checkbox"/> Person <input type="checkbox"/> Nonperson	Offense Severity Level Level _____ <input type="checkbox"/> Nondrug <input type="checkbox"/> Drug <input type="checkbox"/> Offgrid <input type="checkbox"/> Nongrid	Case Tracking Number _____
Presumptive Sentencing Range: Standard Aggravated Mitigated _____ _____ _____				
<input type="checkbox"/> Presumptive Prison <input type="checkbox"/> Presumptive Probation <input type="checkbox"/> Border Box				

THIS FORM MUST BE ACCOMPANIED BY AN ATTACHED COPY OF THE PRESENTENCE INVESTIGATION FORM. K.S.A. 22-3439

PLEASE USE A SUPPLEMENTAL PAGE FOR ADDITIONAL OFFENSES OF CONVICTION.

KANSAS SENTENCING GUIDELINES JOURNAL ENTRY OF JUDGMENT (PAGE 2)

<p>Sentence Imposed:</p> <p><input type="checkbox"/> Prison – DOC _____ months Life Imprisonment (for Offgrid Crime)</p> <p><input type="checkbox"/> Life 15 <input type="checkbox"/> Life 20 <input type="checkbox"/> Hard 10 <input type="checkbox"/> Hard 25 <input type="checkbox"/> Hard 40 <input type="checkbox"/> Hard 50 <input type="checkbox"/> Death Penalty</p> <p><input type="checkbox"/> County Jail _____ days _____ months (for misdemeanor or nongrid felony)</p> <p><input type="checkbox"/> County Jail _____ days _____ months followed by DOC custody for fourth or subsequent D.U.I.</p> <p><input type="checkbox"/> Standard Probation for: <input type="checkbox"/> 12 months <input type="checkbox"/> 18 months <input type="checkbox"/> 24 months <input type="checkbox"/> 36 months <input type="checkbox"/> 60 months <input type="checkbox"/> other _____</p> <p><input type="checkbox"/> Extended Probation under K.S.A. 21-4611(c)(5) for: _____ months.</p> <p>(Underlying prison term is _____ months.)</p>	<p>Guideline Range Imposed:</p> <p><input type="checkbox"/> Standard</p> <p><input type="checkbox"/> Aggravated</p> <p><input type="checkbox"/> Mitigated</p> <p><input type="checkbox"/> Departure – Complete Section IV</p>	<p>Special Rule Applicable to Sentence, If Any:</p> <p><input type="checkbox"/> Person Felony Committed With a Firearm. <input type="checkbox"/> Aggravated Battery of a L.E.O. <input type="checkbox"/> Aggravated Assault of a L.E.O. <input type="checkbox"/> Crime Committed for Benefit of a Criminal Street Gang. <input type="checkbox"/> Persistent Sex Offender. <input type="checkbox"/> Felony D.U.I. <input type="checkbox"/> Felony Domestic Battery. <input type="checkbox"/> Crime Committed While on Probation, Parole, Etc. <input type="checkbox"/> Crime Committed While on Felony Bond. <input type="checkbox"/> Extended Juvenile Jurisdiction Imposed. <input type="checkbox"/> Second or Subsequent Manufacture of a Controlled Substance Conviction. <input type="checkbox"/> Residential Burglary With a Prior Residential, Nonresidential or Aggravated Burglary Conviction. <input type="checkbox"/> Other _____</p>
<p>Was the crime sexually motivated?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>		

<p>Postrelease Supervision Term:</p> <p><input type="checkbox"/> 12 months</p> <p><input type="checkbox"/> 24 months</p> <p><input type="checkbox"/> 36 months</p> <p><input type="checkbox"/> 60 months (sex offense) – Complete Section IV</p> <p><input type="checkbox"/> Other _____</p>	<p>Probation to:</p> <p><input type="checkbox"/> Court Services</p> <p><input type="checkbox"/> Community Corrections</p>	<p>County Jail Time Imposed as a Condition of Probation: _____ days</p> <p>Comments: _____</p> <hr/> <p>Assignment to Correctional Conservation Camp: _____ days</p> <p><input type="checkbox"/> Men's Camp <input type="checkbox"/> Women's Camp</p> <p>Comments: _____</p> <hr/>
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SECTION IV. DEPARTURE INFORMATION

Type of Departure: (Check all that apply.)

Downward Durational Downward Dispositional Upward Durational Upward Dispositional

Postrelease Supervision (sex offense)

Reasons Cited as Basis for Departure:

SECTION V. OTHER CONDITIONS

General/Special Conditions of Probation (ATTACH ORDER OF PROBATION TO THIS JOURNAL ENTRY)

<p>Costs Ordered:</p> <p>Total Restitution \$ _____</p> <p>Total Court Costs _____</p> <p>Total Fines _____</p> <p>Total Fees _____</p>	<p>Comments:</p> <div style="border: 1px solid black; height: 100px; width: 100%;"></div>
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KANSAS SENTENCING GUIDELINES JOURNAL ENTRY OF JUDGMENT (PAGE 3)

SECTION VI. RECAP OF SENTENCE

Total Period of Confinement in DOC (please state): 	Prior Case(s) to Which the Current Sentence is to Run Concurrent or Consecutive (include Case No., County of Conviction, and Sentence Length, and State Whether Concurrent or Consecutive):
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Standard Probation Period <input type="checkbox"/> 12 months <input type="checkbox"/> 18 months <input type="checkbox"/> 24 months <input type="checkbox"/> 36 months <input type="checkbox"/> 60 months <input type="checkbox"/> Extended Period under KSA 21-4611(c)(5) _____ <input type="checkbox"/> Other _____	Postrelease Period <input type="checkbox"/> 12 months <input type="checkbox"/> 24 months <input type="checkbox"/> 36 months <input type="checkbox"/> 60 months <input type="checkbox"/> Other _____
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Sentence Begins Date (to include jail credit) _____	Dates of Jail Credit Earned From: _____ To: _____ = _____ Days From: _____ To: _____ = _____ Days From: _____ To: _____ = _____ Days From: _____ To: _____ = _____ Days (attach additional pages if necessary) Total Days of Jail Credit Earned = _____ Days
--	---

Maximum Good Time Credit: <input type="checkbox"/> 15% <input type="checkbox"/> 20% <input type="checkbox"/> Under K.S.A. 22-3725	Additional Comments:
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Motion for New Trial Denied: Yes No Motion for Judgment of Acquittal Denied? Yes No

SECTION VII. SIGNATURES

Judge's Signature 	Date
Name of Prosecuting Attorney: Date: _____ By: _____ Address: Phone No:	Name of Defense Attorney: Date: _____ By: _____ Address: Phone No:

85

KANSAS SENTENCING GUIDELINES JOURNAL ENTRY OF JUDGMENT (SUPPLEMENTAL PAGE)

Name of Additional Offense of Conviction Count No. _____ Date of Offense _____	K.S.A. Title, Section, Subsection(s) <input type="checkbox"/> Attempt <input type="checkbox"/> Conspiracy <input type="checkbox"/> Solicitation	Grade of Offense <input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor Class _____ <input type="checkbox"/> Person <input type="checkbox"/> Nonperson	Offense Severity Level Level _____ <input type="checkbox"/> Nondrug Grid <input type="checkbox"/> Drug Grid <input type="checkbox"/> Offgrid <input type="checkbox"/> Nongrid	Case Tracking Number
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Presumptive Sentencing Range (Use Criminal History Classification "I" for nonbase sentences.)	Standard _____	Aggravated _____	Mitigated _____	<input type="checkbox"/> Presumptive Prison <input type="checkbox"/> Presumptive Probation <input type="checkbox"/> Border Box
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Sentence Imposed <input type="checkbox"/> Prison – DOC _____ months Life Imprisonment (for Offgrid crime) <input type="checkbox"/> Life 15 <input type="checkbox"/> Life 20 <input type="checkbox"/> Hard 10 <input type="checkbox"/> Hard 25 <input type="checkbox"/> Hard 40 <input type="checkbox"/> Hard 50 <input type="checkbox"/> Death Sentence <input type="checkbox"/> County Jail _____ days _____ months (for misdemeanor or nongrid felony) <input type="checkbox"/> Standard Probation for: <input type="checkbox"/> 12 months <input type="checkbox"/> 18 months <input type="checkbox"/> 24 months <input type="checkbox"/> 36 months <input type="checkbox"/> 60 months <input type="checkbox"/> Other _____ <input type="checkbox"/> Extended Probation under K.S.A. 21-4611(c)(5) for: _____ months (Underlying Prison Term is _____ months.)	Guideline Range Imposed <input type="checkbox"/> Standard <input type="checkbox"/> Aggravated <input type="checkbox"/> Mitigated <input type="checkbox"/> Departure – Complete Section IV Was the crime sexually motivated? <input type="checkbox"/> Yes <input type="checkbox"/> No	Special Rule Applicable to Sentence, If Any: <input type="checkbox"/> Person Felony Committed With a Firearm <input type="checkbox"/> Aggravated Battery L.E.O. <input type="checkbox"/> Aggravated Assault L.E.O. <input type="checkbox"/> Crime Committed for the Benefit of a Criminal Street Gang <input type="checkbox"/> Persistent Sex Offender <input type="checkbox"/> Felony DUI <input type="checkbox"/> Felony Domestic Battery <input type="checkbox"/> Crime Committed While on Probation, Parole, Etc. <input type="checkbox"/> Crime Committed While on Felony Bond <input type="checkbox"/> Extended Juvenile Jurisdiction Imposed <input type="checkbox"/> Second or Subsequent Manufacture of a Controlled Substance <input type="checkbox"/> Residential Burglary with a Prior Residential, Nonresidential or Aggravated Burglary Conviction <input type="checkbox"/> Other _____
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Postrelease Supervision Term <input type="checkbox"/> 12 months <input type="checkbox"/> 24 months <input type="checkbox"/> 36 months <input type="checkbox"/> 60 months (sex offense) – Complete Section IV <input type="checkbox"/> Other _____	Concurrent/Consecutive <input type="checkbox"/> Concurrent <input type="checkbox"/> Consecutive To counts: _____
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Name of Additional Offense of Conviction Count No. _____ Date of Offense _____	K.S.A. Title, Section, Subsection(s) <input type="checkbox"/> Attempt <input type="checkbox"/> Conspiracy <input type="checkbox"/> Solicitation	Grade of Offense <input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor <input type="checkbox"/> Person <input type="checkbox"/> Nonperson	Offense Severity Level Level _____ <input type="checkbox"/> Nondrug Grid <input type="checkbox"/> Drug Grid <input type="checkbox"/> Offgrid <input type="checkbox"/> Nongrid	Case Tracking Number
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Presumptive Sentencing Range (Use Criminal History Classification "I" for nonbase sentences.)	Standard _____	Aggravated _____	Mitigated _____	<input type="checkbox"/> Presumptive Prison <input type="checkbox"/> Presumptive Probation <input type="checkbox"/> Border Box
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Sentence Imposed <input type="checkbox"/> Prison – DOC _____ months Life Imprisonment (for Offgrid crime) <input type="checkbox"/> Life 15 <input type="checkbox"/> Life 20 <input type="checkbox"/> Hard 10 <input type="checkbox"/> Hard 25 <input type="checkbox"/> Hard 40 <input type="checkbox"/> Hard 50 <input type="checkbox"/> Death Sentence <input type="checkbox"/> County Jail _____ days _____ months (for misdemeanor or nongrid felony) <input type="checkbox"/> Standard Probation for: <input type="checkbox"/> 12 months <input type="checkbox"/> 18 months <input type="checkbox"/> 24 months <input type="checkbox"/> 36 months <input type="checkbox"/> 60 months <input type="checkbox"/> Other _____ <input type="checkbox"/> Extended Probation under K.S.A. 21-4611(c)(5) for: _____ months (Underlying Prison Term is _____ months.)	Guideline Range Imposed <input type="checkbox"/> Standard <input type="checkbox"/> Aggravated <input type="checkbox"/> Mitigated <input type="checkbox"/> Departure – Complete Section IV Was the crime sexually motivated? <input type="checkbox"/> Yes <input type="checkbox"/> No	Special Rule Applicable to Sentence, If Any: <input type="checkbox"/> Person Felony Committed With a Firearm <input type="checkbox"/> Aggravated Battery L.E.O. <input type="checkbox"/> Aggravated Assault L.E.O. <input type="checkbox"/> Crime Committed for the Benefit of a Criminal Street Gang <input type="checkbox"/> Persistent Sex Offender <input type="checkbox"/> Felony DUI <input type="checkbox"/> Felony Domestic Battery <input type="checkbox"/> Crime Committed While on Probation, Parole, Etc. <input type="checkbox"/> Crime Committed While on Felony Bond <input type="checkbox"/> Extended Juvenile Jurisdiction Imposed <input type="checkbox"/> Second or Subsequent Manufacture of a Controlled Substance <input type="checkbox"/> Residential Burglary with a Prior Residential, Nonresidential or Aggravated Burglary Conviction <input type="checkbox"/> Other _____
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Postrelease Supervision Term <input type="checkbox"/> 12 months <input type="checkbox"/> 24 months <input type="checkbox"/> 36 months <input type="checkbox"/> 60 months (sex offense) – Complete Section IV <input type="checkbox"/> Other _____	Concurrent/Consecutive <input type="checkbox"/> Concurrent <input type="checkbox"/> Consecutive To counts: _____
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SENATE BILL No. 433

By Committee on Judiciary

1-24

9 AN ACT concerning motor vehicles; relating to driving under the influ-
10 ence of alcohol or drugs; requiring certain notice be sent to the sec-
11 retary of corrections; mandatory participation and conditions imposed;
12 amending K.S.A. 8-1567 ~~and repealing the existing section.~~

, 75-5218 and repealing the
existing sections.

13
14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 8-1567 is hereby amended to read as follows: 8-
16 1567. (a) No person shall operate or attempt to operate any vehicle within
17 this state while:

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

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

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

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

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

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

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

39 (d) Upon a first conviction of a violation of this section, a person shall
40 be guilty of a class B, nonperson misdemeanor and sentenced to not less
41 than 48 consecutive hours nor more than six months' imprisonment, or
42 in the court's discretion 100 hours of public service, and fined not less
43 than \$500 nor more than \$1,000. The person convicted must serve at

1 least 48 consecutive hours' imprisonment or 100 hours of public service
2 either before or as a condition of any grant of probation or suspension,
3 reduction of sentence or parole. In addition, the court shall enter an order
4 which requires that the person enroll in and successfully complete an
5 alcohol and drug safety action education program or treatment program
6 as provided in K.S.A. 8-1008, and amendments thereto, or both the ed-
7 ucation and treatment programs.

8 (e) On a second conviction of a violation of this section, a person shall
9 be guilty of a class A, nonperson misdemeanor and sentenced to not less
10 than 90 days nor more than one year's imprisonment and fined not less
11 than \$1,000 nor more than \$1,500. The person convicted must serve at
12 least five consecutive days' imprisonment before the person is granted
13 probation, suspension or reduction of sentence or parole or is otherwise
14 released. The five days' imprisonment mandated by this subsection may
15 be served in a work release program only after such person has served
16 48 consecutive hours' imprisonment, provided such work release program
17 requires such person to return to confinement at the end of each day in
18 the work release program. The court may place the person convicted
19 under a house arrest program pursuant to K.S.A. 21-4603b, and amend-
20 ments thereto, to serve the remainder of the minimum sentence only
21 after such person has served 48 consecutive hours' imprisonment. As a
22 condition of any grant of probation, suspension of sentence or parole or
23 of any other release, the person shall be required to enter into and com-
24 plete a treatment program for alcohol and drug abuse as provided in
25 K.S.A. 8-1008, and amendments thereto.

26 (f) On the third conviction of a violation of this section, a person shall
27 be guilty of a nonperson felony and sentenced to not less than 90 days
28 nor more than one year's imprisonment and fined not less than \$1,500
29 nor more than \$2,500. The person convicted shall not be eligible for
30 release on probation, suspension or reduction of sentence or parole until
31 the person has served at least 90 days' imprisonment. The court may also
32 require as a condition of parole that such person enter into and complete
33 a treatment program for alcohol and drug abuse as provided by K.S.A. 8-
34 1008, and amendments thereto. The 90 days' imprisonment mandated by
35 this subsection may be served in a work release program only after such
36 person has served 48 consecutive hours' imprisonment, provided such
37 work release program requires such person to return to confinement at
38 the end of each day in the work release program. The court may place
39 the person convicted under a house arrest program pursuant to K.S.A.
40 21-4603b, and amendments thereto, to serve the remainder of the min-
41 imum sentence only after such person has served 48 consecutive hours'
42 imprisonment.

43 (g) On the fourth or subsequent conviction of a violation of this

1 section, a person shall be guilty of a nonperson felony and sentenced to
 2 not less than 90 days nor more than one year's imprisonment and fined
 3 \$2,500. The person convicted shall not be eligible for release on proba-
 4 tion, suspension or reduction of sentence or parole until the person has
 5 served at least 90 days' imprisonment. The 90 days' imprisonment man-
 6 dated by this subsection may be served in a work release program only
 7 after such person has served 72 consecutive hours' imprisonment, pro-
 8 vided such work release program requires such person to return to con-
 9 finement at the end of each day in the work release program. *At the time*
 10 *of the filing of the journal entry of conviction and sentence, the court shall*
 11 *cause a certified copy to be sent to the ~~secretary of corrections~~. The law*
 12 *enforcement agency maintaining custody and control of a defendant for*
 13 *imprisonment shall notify the secretary of corrections when the term of*
 14 *imprisonment expires and upon expiration of the term of imprisonment*
 15 *shall deliver the defendant to a location designated by the secretary. After*
 16 *the term of imprisonment imposed by the court, the person shall be*
 17 *placed in the custody of the secretary of corrections and shall be required*
 18 *to participate in an inpatient or outpatient program for alcohol and drug*
 19 *abuse as determined by the secretary. Upon completion of the term of*
 20 *imprisonment and the required treatment program for alcohol and drug*
 21 *abuse, the person shall be released to for a mandatory one-year period*
 22 *of postrelease supervision, which such period of postrelease supervision*
 23 *shall not be reduced. During such postrelease supervision, the person*
 24 *shall be required to participate in an approved aftercare plan as deter-*
 25 *mined by the Kansas parole board as a condition of release inpatient or*
 26 *outpatient program for alcohol and drug abuse as determined by the sec-*
 27 *retary and satisfy conditions imposed by the Kansas parole board as pro-*
 28 *vided by K.S.A. 22-3717, and amendments thereto. Any violation of the*
 29 *conditions of such postrelease supervision may subject such person to*
 30 *revocation of postrelease supervision pursuant to K.S.A. 75-5217 et seq.,*
 31 *and amendments thereto and as otherwise provided by law.*

32 (h) Any person convicted of violating this section or an ordinance
 33 which prohibits the acts that this section prohibits who had a child under
 34 the age of 14 years in the vehicle at the time of the offense shall have
 35 such person's punishment enhanced by one month of imprisonment. This
 36 imprisonment must be served consecutively to any other penalty imposed
 37 for a violation of this section or an ordinance which prohibits the acts that
 38 this section prohibits. During the service of the one month enhanced
 39 penalty, the judge may order the person on house arrest, work release or
 40 other conditional release.

41 (i) The court may establish the terms and time for payment of any
 42 fines, fees, assessments and costs imposed pursuant to this section. Any
 43 assessment and costs shall be required to be paid not later than 90 days

judgment form or journal entry
as required by K.S.A. 21-4620 or
22-3426, and amendments thereto,

officer having custody of the
defendant.

1 after imposed, and any remainder of the fine shall be paid prior to the
2 final release of the defendant by the court.

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

13 (k) The court shall report every conviction of a violation of this section
14 and every diversion agreement entered into in lieu of further criminal
15 proceedings or a complaint alleging a violation of this section to the di-
16 vision. Prior to sentencing under the provisions of this section, the court
17 shall request and shall receive from the division a record of all prior
18 convictions obtained against such person for any violations of any of the
19 motor vehicle laws of this state.

20 (l) For the purpose of determining whether a conviction is a first,
21 second, third, fourth or subsequent conviction in sentencing under this
22 section:

23 (1) "Conviction" includes being convicted of a violation of this section
24 or entering into a diversion agreement in lieu of further criminal pro-
25 ceedings on a complaint alleging a violation of this section;

26 (2) "conviction" includes being convicted of a violation of a law of
27 another state or an ordinance of any city, or resolution of any county,
28 which prohibits the acts that this section prohibits or entering into a di-
29 version agreement in lieu of further criminal proceedings in a case alleg-
30 ing a violation of such law, ordinance or resolution;

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

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

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

40 (m) Upon conviction of a person of a violation of this section or a
41 violation of a city ordinance or county resolution prohibiting the acts
42 prohibited by this section, the division, upon receiving a report of con-
43 viction, shall suspend, restrict or suspend and restrict the person's driving

1 privileges as provided by K.S.A. 8-1014, and amendments thereto.

2 (n) Nothing contained in this section shall be construed as preventing
3 any city from enacting ordinances, or any county from adopting resolu-
4 tions, declaring acts prohibited or made unlawful by this act as unlawful
5 or prohibited in such city or county and prescribing penalties for violation
6 thereof, but the minimum penalty prescribed by any such ordinance or
7 resolution shall not be less than the minimum penalty prescribed by this
8 act for the same violation, and the maximum penalty in any such ordi-
9 nance or resolution shall not exceed the maximum penalty prescribed for
10 the same violation. In addition, any such ordinance or resolution shall
11 authorize the court to order that the convicted person pay restitution to
12 any victim who suffered loss due to the violation for which the person
13 was convicted.

14 (o) No plea bargaining agreement shall be entered into nor shall any
15 judge approve a plea bargaining agreement entered into for the purpose
16 of permitting a person charged with a violation of this section, or a vio-
17 lation of any ordinance of a city or resolution of any county in this state
18 which prohibits the acts prohibited by this section, to avoid the mandatory
19 penalties established by this section or by the ordinance. For the purpose
20 of this subsection, entering into a diversion agreement pursuant to K.S.A.
21 12-4413 *et seq.* or 22-2906 *et seq.*, and amendments thereto, shall not
22 constitute plea bargaining.

23 (p) The alternatives set out in subsections (a)(1), (a)(2) and (a)(3) may
24 be pleaded in the alternative, and the state, city or county, but shall not
25 be required to, may elect one or two of the three prior to submission of
26 the case to the fact finder.

27 (q) Upon a fourth or subsequent conviction, the judge of any court
28 in which any person is convicted of violating this section, may revoke the
29 person's license plate or temporary registration certificate of the motor
30 vehicle driven during the violation of this section for a period of one year.
31 Upon revoking any license plate or temporary registration certificate pur-
32 suant to this subsection, the court shall require that such license plate or
33 temporary registration certificate be surrendered to the court.

34 (r) For the purpose of this section: (1) "Alcohol concentration" means
35 the number of grams of alcohol per 100 milliliters of blood or per 210
36 liters of breath.

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

41 (s) The amount of the increase in fines as specified in this section
42 shall be remitted by the clerk of the district court to the state treasurer
43 in accordance with the provisions of K.S.A. 75-4215, and amendments

1 thereto. Upon receipt of remittance of the increase provided in this act,
 2 the state treasurer shall deposit the entire amount in the state treasury
 3 and the state treasurer shall credit 50% to the community alcoholism and
 4 intoxication programs fund and 50% to the department of corrections
 5 alcohol and drug abuse treatment fund, which is hereby created in the
 6 state treasury.

7 ~~Sec. 2. K.S.A. 8-1567 is hereby repealed.~~

8 ~~Sec. 3. This act shall take effect and be in force from and after its~~
 9 ~~publication in the statute book.~~

Sec. 4.

Section 2. K.S.A. 75-5218 is hereby amended to read as follows: 75-5218. (a) When any person is sentenced to the custody of the secretary of corrections pursuant to the provisions of K.S.A. 21-4609 and amendments thereto, the clerk of the court which imposed such sentence shall ~~within three days following the order of the commitment to the secretary notify the secretary of corrections. The clerk shall not notify the secretary if the sentence is suspended or the defendant placed on probation or any other disposition which will not result in transfer of the defendant to the secretary of corrections.~~

(b) ~~Together with the order of commitment to the custody of the secretary of corrections as required by K.S.A. 21-4621 and amendments thereto, the clerk shall deliver to the officer having the offender in charge the judgment form or journal entry as required by K.S.A. 21-4620, and 22- 3426, and 8-1567 and amendments thereto together with the order of commitment to the custody of the secretary of corrections as required by K.S.A. 21-4621, and amendments thereto. Within three days of receipt of the order of commitment and the judgment form or journal entry, the officer having the offender in charge shall notify the secretary of corrections.~~ These materials shall be delivered to the officers conveying the offender to the Topeka correctional facility department of corrections reception and diagnostic unit or such other correctional institution prescribed by K.S.A.75-5220 and amendments thereto, or by the secretary of corrections in accordance with such statute.

Sec. 3. K.S.A. 8-1567 and 75-5218 are hereby repealed.

8/12