

MINUTES OF THE HOUSE COMMITTEE ON CORRECTIONS AND JUVENILE JUSTICE.

The meeting was called to order by Chairperson Ward Loyd at 1:30 p.m. on March 25, 2003, in Room 526-S of the Capitol.

All members were present except:

Committee staff present:

Jill Wolters - Revisor of Statutes  
Mitch Rice - Revisor of Statutes  
Jerry Ann Donaldson - Legislative Research Department  
Bev Renner - Committee Secretary

Conferees appearing before the committee:

Others attending:

See Attached

**SB 123 - Drug convictions; possessions is a level D4 classification; mandatory drug treatment; border boxes on D4 replace with probation boxes.**

Discussion by the committee was opened regarding **SB 123**.

Ranking Minority Member Ward summarized his proposed amendment: 1) A punishment provision for those who go into treatment and get thrown out because of commitment of a person felony or by intentionally refusing treatment two times, on the third time the underlying sentence would be doubled; 2) Anyone who is convicted for the fourth time of possession would go directly to jail, no longer a treatment option; and, 3) A proviso would state that this bill would not take affect unless it is funded, no shifting of cost to local government.

Representative Kassebaum discussed the similarity of his amendment to **SB 123**. On the third conviction and the defendant has completed a certified drug treatment program or has been discharged, he will be sentenced to prison for twenty months.

Chairperson Loyd offered the additional option that enhancements not be added at this point and have those reviewed in the proposed request for an interim study by Interim Judiciary and, potentially, by the sentencing commission. Then, next January, we would have the enhancement language correct.

Barbara Tombs, Executive Director-Kansas Sentencing Commission offered the bed impacts from both amendments to **SB 123**. Under the Kassebaum amendment the bed savings would be 225 in 2004 and 525 in 2013 compared to current law. It would take approximately 51 months because of the stipulation for third conviction. Ranking Minority Member Ward's proposal would result in a savings of 207 beds in 2004 and 179 in 2013. Impact would take approximately 60 months because of the limitation of third failure of treatment.

The motion to amend **SB 123** with the Ward amendment failed on a vote of 5 - 11.

Representative Kassebaum made a motion to amend **SB 123** to add the balloon he proposed. Representative Dillmore seconded the motion. The motion was approved.

Ranking Minority Member Ward made a motion to amend **SB 123** to contain language that would cover individuals who come to our state from other locations with similar types of offenses. Representative Swenson seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON CORRECTIONS AND JUVENILE JUSTICE at 1:30 p.m. on March 25, 2003, in Room 526-S of the Capitol.

Representative Pauls made a motion to amend SB 123 to change the November 1<sup>st</sup> date to the time of sentencing rather than the date of commission. Representative Horst seconded the motion. The motion carried.

Representative Pauls made a motion to pass SB 123 favorable for passage as amended. Representative Betts seconded the motion.

Chairperson Loyd allowed Representative O'Mally to make a motion to reconsider yesterday's motion to strike the funding provision from SB 123. Representative Betts seconded the motion. The vote was 8 - 7. The Chairperson voted no. The motion failed.

Representative Pauls closed on her motion. The motion carried.

Representative Carter asked that his no vote be recorded.

**SB 67 - Open records after a child fatality.**

Chairperson Loyd distributed an amendment to **SB 67**. Clarification that in the event of a fatality or near fatality the presumption changes to open the records pursuant to the open records law. The procedures are put in place so that anyone who is concerned that any portion of the records should not be disclosed, the Secretary or any individual can file a motion with the court to request that the court prevent the disclosure of those records or a selected portion. Any privileged communication does not lose its privileged character. The records that law enforcement agencies receive would also be covered by this stipulation.

Representative Dillmore made a motion to amend SB 67 with this balloon. Representative Pauls seconded the motion. The motion carried.

Representative Dillmore offered a balloon to amend **SB 67 (Attachment 1)**. Extends additional protection to a child in need of care in the same manner as a fatality or near fatality regarding the open record clauses of this bill.

Representative Dillmore made a motion to amend SB 67 with this balloon. Representative Carlin seconded the motion. The motion carried.

Representative Goering proposed an amendment to **SB 67**, requiring Social and Rehabilitation Services, upon receiving a records request, to notify the affected individuals within 7 days of receiving the request; and, to allow affected individuals to file objections to disclosure with the court within 7 days after they receive notification from SRS. It would prohibit SRS from releasing public records until the time frame had expired.

Representative Goering made a motion to amend SB 67 by adoption of this balloon. Vice-Chairperson Owens seconded the motion. The motion carried.

Vice-Chairperson Owens made a motion to report SB 67 out favorably as amended. Representative Goering seconded the motion. The motion carried.

**SB 33 - Authorizing the impoundment or immobilization of vehicles of person convicted of D.U.I. offenses.**

Representative Goering offered an amendment to **SB 33 (Attachment 2)** to allow multiple vehicles owned by the defendant to be impounded or immobilized by the court with a time limit of one year. If the vehicle is leased and the leasing period is less than one year, the time of impoundment or immobilization will be the remaining time of the lease.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON CORRECTIONS AND JUVENILE JUSTICE at 1:30 p.m. on March 25, 2003, in Room 526-S of the Capitol.

Representative Goering made a motion to adopt the balloon for SB 33. Representative Swenson seconded the motion. The motion carried.

Representative Pauls proposed an amendment to SB 33 (Attachment 3) Regarding the use of an interlock device. Before a person could get a surrendered drivers license back, an affidavit would be signed insuring that they had not driven for a year or that they drove only a motor vehicle equipped with an ignition interlock device provided by an approved interlock company.

Representative Pauls made a motion to amend SB 33 with the proposed amendment. Representative Betts seconded the motion. The motion failed with a 4 - 6 vote.

Representative Betts made a motion to pass out SB 33 favorably as amended. Representative Carter seconded the motion. The motion carried.

The Chairperson thanked the committee for their dialogue, endurance and the good work completed this year.

The meeting was adjourned at 3:40 p.m.

**HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE  
GUEST LIST**

DATE 3/25/03

NAME	REPRESENTING
Mark Gleeson	Judicial Branch
Keith Bradshaw	Budget
Linda BEAVER	SB33
John Peterson	Ks Governmental Consulting
Rachel Piceering	Kc Law Clerk for Rep Pauls
Sean Harrington	Rep Gordon Office
Chucks Bartlett	SRS/MAPS
Roger Werholtz	KDOC
Chris Mo...	Top Cap Team
Theresa Barget	Ks. Cath. Conference
Michael White	KCDAA
Paul Tombs	KSC
Brenda Harmon	KSC
Debi Hatfield	KDHE
Dan Hermes	KADSPA
TUCK DUNCAN	Ks wine/spirts wholesalers Assoc
SCOTT SCHNEIDER	GBBA

3  
4 **SENATE BILL No. 67**

5  
6 By Senator Adkins

7  
8 1-27

9  
10 AN ACT relating to children and minors; concerning open records in the  
11 event of a child fatality; amending K.S.A. 38-1508 and K.S.A. 2002  
12 Supp. 38-1507 and repealing the existing sections.

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

14 Section 1. K.S.A. 2002 Supp. 38-1507 is hereby amended to read as  
15 follows: 38-1507. (a) Except as otherwise provided, in order to protect  
16 the privacy of children who are the subject of a child in need of care  
17 record or report, all records and reports concerning children in need of  
18 care, including the juvenile intake and assessment report, received by the  
19 department of social and rehabilitation services, a law enforcement  
20 agency or any juvenile intake and assessment worker shall be kept con-  
21 fidential except: (1) To those persons or entities with a need for infor-  
22 mation that is directly related to achieving the purposes of this code, or  
23 (2) upon an order of a court of competent jurisdiction pursuant to a  
24 determination by the court that disclosure of the reports and records is  
25 in the best interests of the child or are necessary for the proceedings  
26 before the court, or both, and are otherwise admissible in evidence. Such  
27 access shall be limited to in camera inspection unless the court otherwise  
28 issues an order specifying the terms of disclosure.

29  
30 (b) The provisions of subsection (a) shall not prevent disclosure of  
31 information to an educational institution or to individual educators about  
32 a pupil specified in subsection (a) of K.S.A. 72-89b03 and amendments  
33 thereto.

34 (c) When a report is received by the department of social and reha-  
35 bilitation services, a law enforcement agency or any juvenile intake and  
36 assessment worker which indicates a child may be in need of care, the  
37 following persons and entities shall have a free exchange of information  
38 between and among them:

- 39 (1) The department of social and rehabilitation services;  
40 (2) the commissioner of juvenile justice;  
41 (3) the law enforcement agency receiving such report;  
42 (4) members of a court appointed multidisciplinary team;  
43 (5) an entity mandated by federal law or an agency of any state au-

Proposed amendment  
Representative Dillmore  
March 18, 2003

H. Corr & J.J.  
3-25-03  
Attachment 1



1-2

1 placement and as such information becomes available to the secretary.

2 (6) A coroner or medical examiner when such person is determining  
3 the cause of death of a child.

4 (7) The state child death review board established under K.S.A. 22a-  
5 243, and amendments thereto.

6 (8) A prospective adoptive parent prior to placing a child in their care.

7 (9) The department of health and environment or person authorized  
8 by the department of health and environment pursuant to K.S.A. 65-512,  
9 and amendments thereto, for the purpose of carrying out responsibilities  
10 relating to licensure or registration of child care providers as required by  
11 article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments  
12 thereto.

13 (10) The state protection and advocacy agency as provided by sub-  
14 section (a)(10) of K.S.A. 65-5603 or subsection (a)(2)(A) and (B) of K.S.A.  
15 74-5515, and amendments thereto.

16 (11) Any educational institution to the extent necessary to enable the  
17 educational institution to provide the safest possible environment for its  
18 pupils and employees.

19 (12) Any educator to the extent necessary to enable the educator to  
20 protect the personal safety of the educator and the educator's pupils.

21 (13) The secretary of social and rehabilitation services.

22 (14) A law enforcement agency.

23 (15) A juvenile intake and assessment worker.

24 (16) The commissioner of juvenile justice.

25 (e) Information from a record or report of a child in need of care  
26 shall be available to members of the standing house or senate committee  
27 on judiciary, house committee on appropriations, senate committee on  
28 ways and means, legislative post audit committee and joint committee on  
29 children and families, carrying out such member's or committee's official  
30 functions in accordance with K.S.A. 75-4319 and amendments thereto,  
31 in a closed or executive meeting. Except in limited conditions established  
32 by 2/3 of the members of such committee, records and reports received  
33 by the committee shall not be further disclosed. Unauthorized disclosure  
34 may subject such member to discipline or censure from the house of  
35 representatives or senate.

received by the department of social and rehabilitation services, a law  
enforcement agency or any juvenile intake and assessment worker

36 ~~(f) Nothing in this section shall be interpreted to prohibit the secre-~~  
37 ~~tary of social and rehabilitation services from summarizing the outcome~~  
38 ~~of department actions regarding a child alleged to be a child in need of~~  
39 ~~care to a person having made such report.~~

Re-lettering the remaining subsections accordingly.

40 (g) Disclosure of information from reports or records of a child in  
41 need of care to the public shall be limited to confirmation of factual details  
42 with respect to how the case was handled that do not violate the privacy  
43 of the child, if living, or the child's siblings, parents or guardians. Further,

1 [As Amended by Senate Committee of the Whole]

2  
3 As Amended by Senate Committee

4 *Session of 2003*

5  
6 **SENATE BILL No. 33**

7  
8 By Committee on Federal and State Affairs

9  
10 1-21

11  
12 AN ACT concerning driving under the influence of alcohol or drugs;  
13 relating to penalties therefor; amending K.S.A. 2002 Supp. 8-1567 and  
14 repealing the existing section.

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

16 Section 1. K.S.A. 2002 Supp. 8-1567 is hereby amended to read as  
17 follows: 8-1567. (a) No person shall operate or attempt to operate any  
18 vehicle within this state while:

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

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

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

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

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

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

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

40 (d) Upon a first conviction of a violation of this section, a person shall  
41 be guilty of a class B, nonperson misdemeanor and sentenced to not less  
42 than 48 consecutive hours nor more than six months' imprisonment, or  
43

Proposed amendment  
Representative Goering  
March 23, 2003

H. Corr & J.J.  
3-25-03  
Attachment 2

1 in the court's discretion 100 hours of public service, and fined not less  
2 than \$500 nor more than \$1,000. The person convicted must serve at  
3 least 48 consecutive hours' imprisonment or 100 hours of public service  
4 either before or as a condition of any grant of probation or suspension,  
5 reduction of sentence or parole. In addition, the court shall enter an order  
6 which requires that the person enroll in and successfully complete an  
7 alcohol and drug safety action education program or treatment program  
8 as provided in K.S.A. 8-1008, and amendments thereto, or both the ed-  
9 ucation and treatment programs.

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

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



1 imprisonment.

2 (g) On the fourth or subsequent conviction of a violation of this sec-  
3 tion, a person shall be guilty of a nonperson felony and sentenced to not  
4 less than 90 days nor more than one year's imprisonment and fined  
5 \$2,500. The person convicted shall not be eligible for release on proba-  
6 tion, suspension or reduction of sentence or parole until the person has  
7 served at least 90 days' imprisonment. The 90 days' imprisonment man-  
8 dated by this subsection may be served in a work release program only  
9 after such person has served 72 consecutive hours' imprisonment, pro-  
10 vided such work release program requires such person to return to con-  
11 finement at the end of each day in the work release program. At the time  
12 of the filing of the judgment form or journal entry as required by K.S.A.  
13 21-4620 or 22-3426, and amendments thereto, the court shall cause a  
14 certified copy to be sent to the officer having the offender in charge. The  
15 law enforcement agency maintaining custody and control of a defendant  
16 for imprisonment shall cause a certified copy of the judgment form or  
17 journal entry to be sent to the secretary of corrections within three busi-  
18 ness days of receipt of the judgment form or journal entry from the court  
19 and notify the secretary of corrections when the term of imprisonment  
20 expires and upon expiration of the term of imprisonment shall deliver the  
21 defendant to a location designated by the secretary. After the term of  
22 imprisonment imposed by the court, the person shall be placed in the  
23 custody of the secretary of corrections for a mandatory one-year period  
24 of postrelease supervision, which such period of postrelease supervision  
25 shall not be reduced. During such postrelease supervision, the person  
26 shall be required to participate in an inpatient or outpatient program for  
27 alcohol and drug abuse, including, but not limited to, an approved after-  
28 care plan or mental health counseling, as determined by the secretary  
29 and satisfy conditions imposed by the Kansas parole board as provided  
30 by K.S.A. 22-3717, and amendments thereto. Any violation of the con-  
31 ditions of such postrelease supervision may subject such person to revo-  
32 cation of postrelease supervision pursuant to K.S.A. 75-5217 *et seq.*, and  
33 amendments thereto and as otherwise provided by law.

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

43 (i) The court may establish the terms and time for payment of any

2.4

1 fines, fees, assessments and costs imposed pursuant to this section. Any  
2 assessment and costs shall be required to be paid not later than 90 days  
3 after imposed, and any remainder of the fine shall be paid prior to the  
4 final release of the defendant by the court.

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

Except as provided in paragraph (5),

15 (k) (1) ~~In addition to any other penalty which may be imposed upon~~  
16 ~~a person convicted of a violation of this section, the court may order that~~  
17 ~~the convicted person's motor vehicle be impounded or immobilized and~~  
18 ~~that the convicted person pay all towing, impoundment and storage fees~~  
19 ~~or other immobilization costs.~~

or vehicles

for a period of one year

20 (2) The court shall not order the impoundment or immobiliza-  
21 tion of a motor vehicle ~~owned or~~ driven by a person convicted of a  
22 violation of this section if:

23 ~~(A) the [The] motor vehicle had been stolen or converted at the~~  
24 ~~time it was driven in violation of this section;~~

25 ~~(B) the owner of the motor vehicle did not know, and could not~~  
26 ~~have been expected to know, that the person convicted of violating~~  
27 ~~this section was driving such vehicle in violation of this section; or~~

28 ~~(C) the owner of the motor vehicle took all reasonable steps to~~  
29 ~~stop the person convicted of violating this section from driving such~~  
30 ~~vehicle.~~

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

or vehicles

35 (A) Whether the impoundment or immobilization of the motor  
36 vehicle would result in the loss of employment by the convicted  
37 person or a member of such person's family; and

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

41 (4) Any personal property in a vehicle impounded [or immobi-  
42 lized] pursuant to this subsection may be retrieved prior to or dur-  
43 ing the period of such impoundment or immobilization.

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

1 ~~(l)~~ (l) The court shall report every conviction of a violation of this  
2 section and every diversion agreement entered into in lieu of further  
3 criminal proceedings or a complaint alleging a violation of this section to  
4 the division. Prior to sentencing under the provisions of this section, the  
5 court shall request and shall receive from the division a record of all prior  
6 convictions obtained against such person for any violations of any of the  
7 motor vehicle laws of this state.

8 ~~(m)~~ (m) For the purpose of determining whether a conviction is a first,  
9 second, third, fourth or subsequent conviction in sentencing under this  
10 section:

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

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

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

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

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

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

33 ~~(o)~~ (o) (1) Nothing contained in this section shall be construed as  
34 preventing any city from enacting ordinances, or any county from adopt-  
35 ing resolutions, declaring acts prohibited or made unlawful by this act as  
36 unlawful or prohibited in such city or county and prescribing penalties  
37 for violation thereof, ~~but~~ *Except as specifically provided by this subsec-*  
38 *tion*, the minimum penalty prescribed by any such ordinance or resolution  
39 shall not be less than the minimum penalty prescribed by this act for the  
40 same violation, and the maximum penalty in any such ordinance or res-  
41 olution shall not exceed the maximum penalty prescribed for the same  
42 violation.

43 ~~In addition~~. Any such ordinance or resolution shall authorize the court

2-6

1 to order that the convicted person pay restitution to any victim who suf-  
2 fered loss due to the violation for which the person was convicted. ~~Any~~  
3 ~~such ordinance or resolution may require or authorize the court to order~~  
4 ~~that the convicted person's motor vehicle be impounded or immobilized~~  
5 ~~and that the convicted person pay all towing, impoundment and storage~~  
6 ~~fees or other immobilization costs.~~

Except as provided in paragraph (5),

or vehicles

for a period of one year

7 (2) The court shall not order the impoundment or immobiliza-  
8 tion of a motor vehicle ~~owned or~~ driven by a person convicted of a  
9 violation of this section if ~~—~~

10 ~~—(A) the [the] motor vehicle had been stolen or converted at the~~  
11 ~~time it was driven in violation of this section; or~~

12 ~~—(B) the owner of the motor vehicle did not know, and could not~~  
13 ~~have been expected to know, that the person convicted of violating~~  
14 ~~this section was driving such vehicle in violation of this section; or~~

15 ~~(C) the owner of the motor vehicle took all reasonable steps to~~  
16 ~~stop the person convicted of violating this section from driving such~~  
17 ~~vehicle.~~

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

or vehicles

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

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

28 (4) Any personal property in a vehicle impounded [or immobi-  
29 lized] pursuant to this subsection may be retrieved prior to or dur-  
30 ing the period of such impoundment or immobilization.

31 ~~(p)~~ (p) No plea bargaining agreement shall be entered into nor shall  
32 any judge approve a plea bargaining agreement entered into for the pur-  
33 pose of permitting a person charged with a violation of this section, or a  
34 violation of any ordinance of a city or resolution of any county in this state  
35 which prohibits the acts prohibited by this section, to avoid the mandatory  
36 penalties established by this section or by the ordinance. For the purpose  
37 of this subsection, entering into a diversion agreement pursuant to K.S.A.  
38 12-4413 *et seq.* or 22-2906 *et seq.*, and amendments thereto, shall not  
39 constitute plea bargaining.

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

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

27

1 ~~(r)~~ Upon a fourth or subsequent conviction, the judge of any court  
2 in which any person is convicted of violating this section, may revoke the  
3 person's license plate or temporary registration certificate of the motor  
4 vehicle driven during the violation of this section for a period of one year.  
5 Upon revoking any license plate or temporary registration certificate pur-  
6 suant to this subsection, the court shall require that such license plate or  
7 temporary registration certificate be surrendered to the court.

8 ~~(s)~~ For the purpose of this section: (1) "Alcohol concentration"  
9 means the number of grams of alcohol per 100 milliliters of blood or per  
10 210 liters of breath.

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

15 (3) "Drug" includes toxic vapors as such term is defined in K.S.A. 65-  
16 4165, and amendments thereto.

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

26 New Sec. 2. ~~(u)~~ If the owner of a motor vehicle which has been  
27 impounded pursuant to K.S.A. 8-1567, and amendments thereto, refuses  
28 to pay any towing, impoundment, storage or other fees relating to the  
29 impoundment or immobilization of such vehicle or fails to take possession  
30 of such vehicle within 30 days following the date of the expiration of the  
31 impoundment period, such vehicle shall be deemed abandoned and the  
32 vehicle may be disposed of by the person having possession of such ve-  
33 hicle. If the person having possession of such vehicle is a public agency,  
34 disposition of such vehicle shall be in compliance with the procedures for  
35 notice and public auction provided by paragraph (2) of subsection (a) of  
36 K.S.A. 8-1102, and amendments thereto. If the person having possession  
37 of such vehicle is not a public agency, disposition of such vehicle shall be  
38 in compliance with K.S.A. 8-1103 through 8-1108, and amendments  
39 thereto.

40 Sec. 3. K.S.A. 2002 Supp. 8-1567 is hereby repealed.

41 Sec. 4. This act shall take effect and be in force from and after its  
42 publication in the statute book.

or section 3

New Sec. 3. (a) It shall be unlawful for the owner of a motor vehicle to allow a person to drive such vehicle when such owner knows or reasonably should have known such person was driving in violation of K.S.A. 8-1014, and amendments thereto.

(b) Violation of this section is an unclassified misdemeanor punishable by a fine of not less than \$500 nor more than \$1,000. In addition to the fine imposed upon a person convicted of a violation of this section, the court may order that the convicted person's motor vehicle or vehicles be impounded or immobilized for a period not to exceed one year and that the convicted person pay all towing, impoundment and storage fees or other immobilization costs. Prior to ordering the impoundment or immobilization of any such motor vehicle, the court shall consider the factors established in subsection (k)(3) of K.S.A. 8-1567, and amendments thereto. Any personal property in a vehicle impounded or immobilized pursuant to this section may be retrieved prior to or during the period of such impoundment or immobilization.

Renumber remaining sections accordingly.

[As Amended by Senate Committee of the Whole]

As Amended by Senate Committee

Session of 2003

SENATE BILL No. 33

By Committee on Federal and State Affairs

1-21

AN ACT concerning driving under the influence of alcohol or drugs; relating to penalties therefor; amending K.S.A. 2002 Supp. 8-1567 and repealing the existing section

K.S.A. 8-1015 and

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

Section 1. K.S.A. 2002 Supp. 8-1567 is hereby amended to read as follows: 8-1567. (a) No person shall operate or attempt to operate any vehicle within this state while:

sections

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

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

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

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

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

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

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

(d) Upon a first conviction of a violation of this section, a person shall be guilty of a class B, nonperson misdemeanor and sentenced to not less than 48 consecutive hours nor more than six months' imprisonment, or

H. Corr's J.J.  
3-25-03  
Attachment 3



1 ~~(r)~~ Upon a fourth or subsequent conviction, the judge of any court  
 2 in which any person is convicted of violating this section, may revoke the  
 3 person's license plate or temporary registration certificate of the motor  
 4 vehicle driven during the violation of this section for a period of one year.  
 5 Upon revoking any license plate or temporary registration certificate pur-  
 6 suant to this subsection, the court shall require that such license plate or  
 7 temporary registration certificate be surrendered to the court.

8 ~~(s)~~ For the purpose of this section: (1) "Alcohol concentration"  
 9 means the number of grams of alcohol per 100 milliliters of blood or per  
 10 210 liters of breath.

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

15 (3) "Drug" includes toxic vapors as such term is defined in K.S.A. 65-  
 16 4165, and amendments thereto.

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

26 New Sec. 2. ~~(a)~~ If the owner of a motor vehicle which has been  
 27 impounded pursuant to K.S.A. 8-1567, and amendments thereto, refuses  
 28 to pay any towing, impoundment, storage or other fees relating to the  
 29 impoundment or immobilization of such vehicle or fails to take possession  
 30 of such vehicle within 30 days following the date of the expiration of the  
 31 impoundment period, such vehicle shall be deemed abandoned and the  
 32 vehicle may be disposed of by the person having possession of such ve-  
 33 hicle. If the person having possession of such vehicle is a public agency,  
 34 disposition of such vehicle shall be in compliance with the procedures for  
 35 notice and public auction provided by paragraph (2) of subsection (a) of  
 36 K.S.A. 8-1102, and amendments thereto. If the person having possession  
 37 of such vehicle is not a public agency, disposition of such vehicle shall be  
 38 in compliance with K.S.A. 8-1103 through 8-1108, and amendments  
 39 thereto.

insert attached as Sec. 3.

40 Sec. 3. ~~K.S.A. 2002 Supp. 8-1567 [is] hereby repealed~~ are

41 Sec. 4. This act shall take effect and be in force from and after its  
 42 publication in the statute book.

K.S.A. 8-1015 and

Renumber remaining sections accordingly

Sec. \_\_. K.S.A. 8-1015 is hereby amended read as follows: 8-1015. (a) When subsection (b)(1) of K.S.A. 8-1014, and amendments thereto, requires or authorizes the division to place restrictions on a person's driving privileges, the division shall restrict the person's driving privileges to driving only under the circumstances provided by subsections (a)(1), (2), (3) and (4) of K.S.A. 8-292 and amendments thereto.

(b) In lieu of the restrictions set out in subsection (a), the division, upon request of the person whose driving privileges are to be restricted, may restrict the person's driving privileges to driving only a motor vehicle equipped with an ignition interlock device, approved by the division and obtained, installed and maintained at the person's expense.

(c) When a person has completed the one-year suspension pursuant to subsection (b)(2) of K.S.A. 8-1014, and amendments thereto, the division shall restrict the person's driving privileges for one year to driving only a motor vehicle equipped with an ignition interlock device, approved by the division and maintained at the person's expense.

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

(1)

, or the licensee has not met the requirements of this subsection.

(2) Prior to applying to the division for the return of any license previously surrendered by the licensee pursuant to this section, the licensee shall sign an affidavit, under penalty of perjury, stating that such person did not drive any motor vehicle or was driving only a motor vehicle equipped with an ignition interlock device provided by an approved interlock company following the one-year suspension pursuant to subsection (b)(2) of K.S.A. 8-1014, and amendments thereto.