

Approved: 4/14/09
Date

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Lance Kinzer at 3:30 p.m. on March 19, 2009, in Room 143-N of the Capitol.

All members were present except:

Representative Bob Brookens- excused

Committee staff present:

Melissa Doeblin, Office of the Revisor of Statutes

Matt Sterling, Office of the Revisor of Statutes

Jill Wolters, Office of the Revisor of Statutes

Athena Andaya, Kansas Legislative Research Department

Jerry Donaldson, Kansas Legislative Research Department

Sue VonFeldt, Committee Assistant

Conferees appearing before the Committee:

None

SB 158 - Allowing offenders in violation of a traffic citation to be issued a restricted driver's license.

Representative Whitham made the motion to report SB 158 favorably for passage.

Representative Pauls seconded the motion.

Representative Whitham made the substitute motion to amend on page 2, in line 3, before "In" by inserting "(A); in line 4, after "request" by inserting "for restricted driving privileges"; in line 6, by striking "restrictive" and inserting :restricted:: in line 7, after the period, by inserting: "The division shall remit restricted driving privilege application fees to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury t the credit of the division of vehicles operation fund. (Attachment 1)

Representative Pauls seconded the motion. Motion carries.

Representative Goyle made the motion to change Page 2, line 4 to read "after "a" where it appears for the last time, by inserting "non-refundable"; This was a request originally made by the Division of Vehicles, Department of Revenue.

Representative Watkins seconded the motion. Motion carried.

Representative Whitham made the motion to report SB158 favorably for passage as amended.

SB 154 - Civil procedure, habeas corpus, infectious disease.

Representative Pauls made the motion to report SB 154 favorably for passage.

Representative Whitham seconded the motion.

Representative Pauls made the substitute motion to amend the bill to change page 1, after line 23, by inserting the following: "(b) infectious diseases. When any person is restrained because of an alleged infectious or communicable disease, the judge shall appoint at least one competent physician to make an examination of such person and report findings to the judge." And, renumbering the remaining subsections accordingly.

Representative Talia seconded the motion. Motion carried.

Representative Patton made a motion to change the word "shall" to "may" in the above amendment. Seconded by Representative Watkins. Motion carried.

CONTINUATION SHEET

Minutes of the House Judiciary Committee at 3:30 p.m. on March 19, 2009, in Room 143-N of the Capitol.

Representative Crow made the motion to report **SB 154** favorably for passage as amended.
Representative Tietze seconded the motion. Motion carried.

HB 2315 - Restricting driving privileges for persons for refusal, failure or high BAC in test to driving with ignition interlock devices.

Representative Watkins made the motion to report **SB 95** favorably for passage.
Representative Whitham seconded the motion.

Representative Watkins made the substitute motion to strike the contents of **SB 95**. Representative Whitham seconded the motion. Motion carries.

Representative Watkins made the substitute motion to move the contents of **HB 2315** into **SB 95**. This would amend **SB 95** by substituting a new bill to be designated as "**House Substitute for Senate Bill 95**."
Representative Whitham seconded the motion. Motion carries.

Representative Jack made a motion and identified as "Balloon 6". (Attachment 2)
Representative Goyle seconded the motion.

It was decided to divide the "Jack amendment into three separate components for voting purposes, Part A, B and C.

Part A of Balloon 6, as shown on Page 1 of the attachments to the Balloon and Page 3, Sec. 5, (3), (4) and (5), covers a new provision to identify alcohol concentration less than .04 along with the current .08, and a phrase "impairs the person's ability to safely operate a vehicle to the slightest degree".
Motion failed.

Part B of Balloon 6, as shown on page 1 of the Balloon, changes the period of time for suspension of the person's driving privileges from the 30 days to one year.
Motioned failed.

Part C of Balloon 6, as shown on page 2 of the attachments to the Balloon, (b), (c) and (d) which basically adds "refusal to submit to testing may be used against the person in court and a fine for refusal."
Motion carried.

Representative King made the motion to strike Sub-Section (b) and change Sub-Section (a) to .08, page 1 of the Balloon 6 attachments and still keep the intent of "to the slightest degree".
Representative Jack seconded the motion. Motion failed.

Representative Watkins made the motion to report **H Sub SB 95** favorably for passage as amended.
Representative Jack seconded the motion. Motion carried.

This is the last meeting scheduled for this session.

The meeting was adjourned at 5:30 p.m.

JUDICIARY COMMITTEE GUEST LIST

DATE: 3-19-09

NAME	REPRESENTING
Jason Eberhard Phillips MD	KDHE
Deric S. Smith L	KDHE
Lance Wicks	Jud. Branch
Ed Kumpf	KACP KPOA
Richard Samaniego	Kenney & Assoc.
Martha Jean Smith	KMHA

SENATE BILL No. 158

By Committee on Judiciary

2-2

SB158-Balloon.pdf
RS - JThompson - 02/19/09

12 AN ACT concerning driver's licenses; relating to restrictions for certain
13 persons; amending K.S.A. 2008 Supp. 8-2110 and repealing the exist-
14 ing section.

15

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

17 Section 1. K.S.A. 2008 Supp. 8-2110 is hereby amended to read as
18 follows: 8-2110. (a) Failure to comply with a traffic citation means failure
19 either to (1) appear before any district or municipal court in response to
20 a traffic citation and pay in full any fine and court costs imposed or (2)
21 otherwise comply with a traffic citation as provided in K.S.A. 8-2118, and
22 amendments thereto. Failure to comply with a traffic citation is a mis-
23 demeanor, regardless of the disposition of the charge for which such
24 citation was originally issued.

25 (b) (1) In addition to penalties of law applicable under subsection
26 (a), when a person fails to comply with a traffic citation, except for illegal
27 parking, standing or stopping, the district or municipal court in which the
28 person should have complied with the citation shall mail notice to the
29 person that if the person does not appear in district or municipal court
30 or pay all fines, court costs and any penalties within 30 days from the date
31 of mailing notice, the division of vehicles will be notified to suspend the
32 person's driving privileges. The district or municipal court may charge an
33 additional fee of \$5 for mailing such notice. Upon the person's failure to
34 comply within such 30 days of mailing notice, the district or municipal
35 court shall electronically notify the division of vehicles. Upon receipt of
36 a report of a failure to comply with a traffic citation under this subsection,
37 pursuant to K.S.A. 8-255, and amendments thereto, the division of ve-
38 hicles shall notify the violator and suspend the license of the violator until
39 satisfactory evidence of compliance with the terms of the traffic citation
40 has been furnished to the informing court. When the court determines
41 the person has complied with the terms of the traffic citation, the court
42 shall immediately electronically notify the division of vehicles of such
43 compliance. Upon receipt of notification of such compliance from the

House Judiciary
Date 3-19-09
Attachment # 1

1-2

1 informing court, the division of vehicles shall terminate the suspension
2 or suspension action.

3 (2) [^]In lieu of suspension under paragraph (1), the driver may submit
4 **to the division of vehicles** a written request with a \$25 application fee,
5 ~~for restricted driving privileges~~ **[to be applied by the division of ve-**
6 **hicles for additional administrative costs to implement restrictive**
7 **driving privileges]** [^]Upon review and approval of the driver's eligibility,

8 the driving privileges will be restricted pursuant to K.S.A. 8-292, and
9 amendments thereto, **by the division of vehicles** for a period up to one
10 year or until the terms of the traffic citation have been complied with and
11 the court shall immediately electronically notify the division of vehicles of
12 such compliance. If the driver fails to comply with the traffic citation
13 within the one year restricted period, the driving privileges will be sus-
14 pended **by the division of vehicles** until the court determines the person
15 has complied with the terms of the traffic citation and the court shall
16 immediately electronically notify the division of vehicles of such compli-
17 ance. Upon receipt of notification of such compliance from the informing
18 court, the division of vehicles shall terminate the suspension action. **When**
19 **restricted driving privileges are approved pursuant to this section,**
20 **the person's driving privileges shall be restricted to driving only**
21 **under the following circumstances:** (1) [^]In going to or returning from
22 the person's place of employment or schooling; (2) [^]in the course of
23 the person's employment; (3) [^]during a medical emergency; (4) [^]in
24 going to and returning from probation or parole meetings, drug or
25 alcohol counseling or any place the person is required to go by a
26 court. The provisions of this paragraph shall expire on January 1, 2012.

27 (c) Except as provided in subsection (d), when the district or munic-
28 ipal court notifies the division of vehicles of a failure to comply with a
29 traffic citation pursuant to subsection (b), the court shall assess a rein-
30 statement fee of \$59 for each charge on which the person failed to make
31 satisfaction regardless of the disposition of the charge for which such
32 citation was originally issued **and regardless of any application for**
33 **restricted driving privileges.** Such reinstatement fee shall be in addi-
34 tion to any fine, ~~restricted license fee,~~ district or municipal court costs
35 and other penalties. The court shall remit all reinstatement fees to the
36 state treasurer in accordance with the provisions of K.S.A. 75-4215, and
37 amendments thereto. Upon receipt of each such remittance, the state
38 treasurer shall deposit the entire amount in the state treasury and shall
39 credit 42.37% of such moneys to the division of vehicles operating fund,
40 31.78% to the community alcoholism and intoxication programs fund cre-
41 ated by K.S.A. 41-1126, and amendments thereto, 10.59% to the juvenile
42 detention facilities fund created by K.S.A. 79-4803, and amendments
43 thereto, and 15.26% to the judicial branch nonjudicial salary adjustment

(A)

for restricted driving privileges

restricted

The division shall remit all restricted driving
privilege application fees to the state treasurer in
accordance with the provisions of K.S.A. 75-4215.
and amendments thereto. Upon receipt of each
such remittance, the state treasurer shall deposit the
entire amount in the state treasury to the credit of
the division of vehicles operating fund.

(B)

(i)

(ii)

(iii)

(iv)

driving privilege application

1 fund created by K.S.A. 2008 Supp. 20-1a15, and amendments thereto.

2 (d) The district court or municipal court shall waive the reinstatement
3 fee provided for in subsection (c), if the failure to comply with a traffic
4 citation was the result of such person enlisting in or being drafted into
5 the armed services of the United States, being called into service as a
6 member of a reserve component of the military service of the United
7 States, or volunteering for such active duty, or being called into service
8 as a member of the state of Kansas national guard, or volunteering for
9 such active duty, and being absent from Kansas because of such military
10 service. In any case of a failure to comply with a traffic citation which
11 occurred on or after August 1, 1990, and prior to the effective date of
12 this act, in which a person was assessed and paid a reinstatement fee and
13 the person failed to comply with a traffic citation because the person was
14 absent from Kansas because of any such military service, the reinstatement
15 fee shall be reimbursed to such person upon application therefor.
16 The state treasurer and the director of accounts and reports shall pre-
17 scribe procedures for all such reimbursement payments and shall create
18 appropriate accounts, make appropriate accounting entries and issue such
19 appropriate vouchers and warrants as may be required to make such re-
20 imbursement payments.

21 (e) The reinstatement fee established in this section shall be the only
22 fee collected or moneys in the nature of a fee collected for such rein-
23 statement. Such fee shall only be established by an act of the legislature
24 and no other authority is established by law or otherwise to collect a fee.

25 Sec. 2. K.S.A. 2008 Supp. 8-2110 is hereby repealed.

26 Sec. 3. This act shall take effect and be in force from and after its
27 publication in the statute book.

1-3

HOUSE BILL No. 2315

Balloon 6

By Committee on Judiciary

2-6

House Judiciary
Date 3-19-09
Attachment # 2

9 AN ACT concerning crimes and punishment; relating to driving under
10 the influence; amending K.S.A. 2008 Supp. 8-1001, 8-1014 and 8-1015
11 and repealing the existing sections.

K.S.A. 8-1005 and

8-1012,

and 8-1567

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

14 Section 1. K.S.A. 2008 Supp. 8-1014 is hereby amended to read as
15 follows: 8-1014. (a) Except as provided by subsection (e) and K.S.A. 8-
16 2,142, and amendments thereto, if a person refuses a test, the division,
17 pursuant to K.S.A. 8-1002, and amendments thereto, shall:

[Insert K.S.A. 8-1005.]
Sec. 2. [Insert K.S.A. 2008 Supp. 8-1012.]
Sec. 3.
[Renumber remaining sections.]

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

one year

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

two years

26 (3) on the person's third occurrence, suspend the person's driving
27 privileges for three years ~~one year~~ and at the end of the suspension, re-
28 strict the person's driving privileges for four years to driving only a motor
29 vehicle equipped with an ignition interlock device;

three years

30 (4) on the person's fourth occurrence, suspend the person's driving
31 privileges for 10 years ~~one year~~ and at the end of the suspension, restrict
32 the person's driving privileges for five years to driving only a motor ve-
33 hicle equipped with an ignition interlock device; and

10 years

34 (5) on the person's fifth or subsequent occurrence, revoke ~~suspend~~
35 ~~the person's driving privileges for one year and at the end of the suspen-~~
36 ~~sion, restrict~~ the person's driving privileges permanently ~~to driving only~~
37 ~~a motor vehicle equipped with an ignition interlock device.~~

revoke

38 (b) (1) Except as provided by subsections (c) and (e) and K.S.A. 8-
39 2,142, and amendments thereto, if a person fails a test or has an alcohol
40 or drug-related conviction in this state, the division shall:

41 (A) On the person's first occurrence, suspend the person's driving
42 privileges for 30 days, then restrict the person's driving privileges as pro-
43 vided by K.S.A. 8-1015, and amendments thereto, for an additional 330

1 ~~days~~ 45 days and at the end of the suspension, restrict the person's driving
2 privileges for one year to driving only a motor vehicle equipped with an
3 ignition interlock device;

30 days

4 (B) on the person's second, ~~third or fourth~~ occurrence, suspend the
5 person's driving privileges for one year and at the end of the suspension,
6 restrict the person's driving privileges for ~~one year~~ two years to driving
7 only a motor vehicle equipped with an ignition interlock device; and

8 (C) on the person's third occurrence, suspend the person's driving
9 privileges for one year and at the end of the suspension, restrict the per-
10 son's driving privileges for three years to driving only a motor vehicle
11 equipped with an ignition interlock device;

12 (D) on the person's fourth occurrence, suspend the person's driving
13 privileges for one year and at the end of the suspension, restrict the per-
14 son's driving privileges for four years to driving only a motor vehicle
15 equipped with an ignition interlock device; and

16 (E) on the person's fifth or subsequent occurrence, ~~suspend the per-
17 son's driving privileges for one year and at the end of the suspension,
18 restrict~~ the person's driving privileges shall be permanently revoked to
19 ~~driving only a motor vehicle equipped with an ignition interlock device.~~

revoke

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

24 (A) On the person's first occurrence, suspend the person's driving
25 privileges for ~~one year~~ 45 days and at the end of the suspension, restrict
26 the person's driving privileges for ~~one year~~ two years to driving only a
27 motor vehicle equipped with an ignition interlock device;

one year

28 (B) on the person's second occurrence, suspend the person's driving
29 privileges for one year and at the end of the suspension, restrict the
30 person's driving privileges for ~~two~~ three years to driving only a motor
31 vehicle equipped with an ignition interlock device;

32 (C) on the person's third occurrence, suspend the person's driving
33 privileges for one year and at the end of the suspension restrict the per-
34 son's driving privileges for ~~three~~ four years to driving only a motor vehicle
35 equipped with an ignition interlock device;

36 (D) on the person's fourth occurrence, suspend the person's driving
37 privileges for one year and at the end of the suspension, restrict the
38 person's driving privileges for ~~four~~ five years to driving only a motor ve-
39 hicle equipped with an ignition interlock device; and

40 (E) on the person's fifth or subsequent occurrence, ~~suspend the per-
41 son's driving privileges for one year and at the end of the suspension,
42 restrict~~ the person's driving privileges shall be permanently revoked to
43 ~~driving only a motor vehicle equipped with an ignition interlock device.~~

revoke

2-2

2-3

1 (3) Whenever a person's driving privileges have been restricted to
2 driving only a motor vehicle equipped with an ignition interlock device,
3 proof of the installation of such device, for the entire restriction period,
4 shall be provided to the division before the person's driving privileges are
5 fully reinstated.

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

10 (1) On the person's first occurrence, suspend the person's driving
11 privileges for one year. If the person's blood or breath alcohol concen-
12 tration is .15 or greater, the division shall at the end of the suspension,
13 restrict the person's driving privileges for one year to driving only a motor
14 vehicle equipped with an ignition interlock device;

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

17 (d) Whenever the division is notified by an alcohol and drug safety
18 action program that a person has failed to complete any alcohol and drug
19 safety action education or treatment program ordered by a court for a
20 conviction of a violation of K.S.A. 8-1567, and amendments thereto, the
21 division shall suspend the person's driving privileges until the division
22 receives notice of the person's completion of such program.

23 (e) Except as provided in K.S.A. 8-2,142, and amendments thereto,
24 if a person's driving privileges are subject to suspension pursuant to this
25 section for a test refusal, test failure or alcohol or drug-related conviction
26 arising from the same arrest, the period of such suspension shall not
27 exceed the longest applicable period authorized by subsection (a), (b) or
28 (c), and such suspension periods shall not be added together or otherwise
29 imposed consecutively. In addition, in determining the period of such
30 suspension as authorized by subsection (a), (b) or (c), such person shall
31 receive credit for any period of time for which such person's driving
32 privileges were suspended while awaiting any hearing or final order au-
33 thorized by this act.

34 If a person's driving privileges are subject to restriction pursuant to
35 this section for a test failure or alcohol or drug-related conviction arising
36 from the same arrest, the restriction periods shall not be added together
37 or otherwise imposed consecutively. In addition, in determining the pe-
38 riod of restriction, the person shall receive credit for any period of sus-
39 pension imposed for a test refusal arising from the same arrest.

40 (f) If the division has taken action under subsection (a) for a test
41 refusal or under subsection (b) or (c) for a test failure and such action is
42 stayed pursuant to K.S.A. 8-259, and amendments thereto, or if tempo-
43 rary driving privileges are issued pursuant to K.S.A. 8-1020, and amend-

1 ments thereto, the stay or temporary driving privileges shall not prevent
2 the division from taking the action required by subsection (b) or (c) for
3 an alcohol or drug-related conviction.

4 (g) Upon restricting a person's driving privileges pursuant to this sec-
5 tion, the division shall issue a copy of the order imposing the restrictions
6 which is required to be carried by the person at any time the person is
7 operating a motor vehicle on the highways of this state.

8 (h) Any person whose license is restricted to operating only a motor
9 vehicle with an ignition interlock device installed may operate an em-
10 ployer's vehicle without an ignition interlock device installed during nor-
11 mal business activities, provided that the person does not partly or entirely
12 own or control the employer's vehicle or business.

13 Sec. ~~2~~ K.S.A. 2008 Supp. 8-1015 is hereby amended to read as fol-
14 lows: 8-1015. (a) ~~When subsection (b)(1) of K.S.A. 8-1014, and amend-~~
15 ~~ments thereto, requires or authorizes the division to place restrictions on~~
16 ~~a person's driving privileges, the division shall restrict the person's driving~~
17 ~~privileges to driving only under the circumstances provided by subsec-~~
18 ~~tions (a)(1), (2), (3) and (4) of K.S.A. 8-202 and amendments thereto.~~

19 ~~—(b) In lieu of the restrictions set out in subsection (a), the division,~~
20 ~~upon request of the person whose driving privileges are to be restricted,~~
21 ~~may restrict the person's driving privileges to driving only a motor vehicle~~
22 ~~equipped with an ignition interlock device, approved by the division and~~
23 ~~obtained, installed and maintained at the person's expense. Prior to is-~~
24 ~~suing such restricted license, the division shall receive proof of the in-~~
25 ~~stallation of such device.~~

26 ~~—(c) When a person has completed the one-year suspension pursuant~~
27 ~~to subsection (b)(2) of K.S.A. 8-1014, and amendments thereto, the di-~~
28 ~~vision shall restrict the person's driving privileges for one year pursuant~~
29 ~~to K.S.A. 8-1014, and amendments thereto, to driving only a motor vehicle~~
30 ~~equipped with an ignition interlock device; that is approved by the di-~~
31 ~~vision and maintained at the person's expense. Proof of the installation of~~
32 ~~such device, for the full year of the restricted period, shall be provided~~
33 ~~to the division before the person's driving privileges are fully reinstated.~~

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

42 Sec. ~~3~~ K.S.A. 2008 Supp. 8-1001 is hereby amended to read as fol-
43 lows: 8-1001. (a) Any person who operates or attempts to operate a vehicle

[Insert K.S.A. 2008 Supp. 8-1567.]
Sec. 6.
[Renumber remaining sections.]

7-2

1 within this state is deemed to have given consent, subject to the provisions
2 of this act, to submit to one or more tests of the person's blood, breath,
3 urine or other bodily substance to determine the presence of alcohol or
4 drugs. The testing deemed consented to herein shall include all quanti-
5 tative and qualitative tests for alcohol and drugs. A person who is dead
6 or unconscious shall be deemed not to have withdrawn the person's con-
7 sent to such test or tests, which shall be administered in the manner
8 provided by this section.

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

38 (c) If a law enforcement officer requests a person to submit to a test
39 of blood under this section, the withdrawal of blood at the direction of
40 the officer may be performed only by: (1) A person licensed to practice
41 medicine and surgery, licensed as a physician's assistant, or a person act-
42 ing under the direction of any such licensed person; (2) a registered nurse
43 or a licensed practical nurse; (3) any qualified medical technician, includ-

1 ing, but not limited to, an emergency medical technician-intermediate or
2 mobile intensive care technician, as those terms are defined in K.S.A. 65-
3 6112, and amendments thereto, authorized by medical protocol or (4) a
4 phlebotomist.

5 (d) A law enforcement officer may direct a medical professional de-
6 scribed in this section to draw a sample of blood from a person

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

9 (2) if medically unable to consent, if the person meets the require-
10 ments of paragraph (2) of subsection (b); or

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

13 (e) When so directed by a law enforcement officer through a written
14 statement, the medical professional shall withdraw the sample as soon as
15 practical and shall deliver the sample to the law enforcement officer or
16 another law enforcement officer as directed by the requesting law en-
17 forcement officer as soon as practical, provided the collection of the sam-
18 ple does not jeopardize the person's life, cause serious injury to the person
19 or seriously impede the person's medical assessment, care or treatment.
20 The medical professional authorized herein to withdraw the blood and
21 the medical care facility where the blood is drawn may act on good faith
22 that the requirements have been met for directing the withdrawing of
23 blood once presented with the written statement provided for under this
24 subsection. The medical professional shall not require the person to sign
25 any additional consent or waiver form. In such a case, the person au-
26 thorized to withdraw blood and the medical care facility shall not be liable
27 in any action alleging lack of consent or lack of informed consent.

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

32 (g) If a person must be restrained to collect the sample pursuant to
33 this section, law enforcement shall be responsible for applying any such
34 restraint utilizing acceptable law enforcement restraint practices. The re-
35 straint shall be effective in controlling the person in a manner not to
36 jeopardize the person's safety or that of the medical professional or at-
37 tending medical or health care staff during the drawing of the sample and
38 without interfering with medical treatment.

39 (h) A law enforcement officer may request a urine sample upon meet-
40 ing the requirements of paragraph (1) of subsection (b) and shall request
41 a urine sample upon meeting the requirements of paragraph (2) of sub-
42 section (b).

43 (i) If a law enforcement officer requests a person to submit to a test

27-2

5-8

1 of urine under this section, the collection of the urine sample shall be
2 supervised by persons of the same sex as the person being tested and
3 shall be conducted out of the view of any person other than the persons
4 supervising the collection of the sample and the person being tested,
5 unless the right to privacy is waived by the person being tested. When
6 possible, the supervising person shall be a law enforcement officer. The
7 results of qualitative testing for drug presence shall be admissible in ev-
8 idence and questions of accuracy or reliability shall go to the weight rather
9 than the admissibility of the evidence. If the person is medically unable
10 to provide a urine sample in such manner due to the injuries or treatment
11 of the injuries, the same authorization and procedure as used for the
12 collection of blood in subsections (d) and (e) shall apply to the collection
13 of a urine sample.

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

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

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

24 (3) there is no constitutional right to consult with an attorney regard-
25 ing whether to submit to testing;

26 (4) if the person refuses to submit to and complete any test of breath,
27 blood or urine hereafter requested by a law enforcement officer, the
28 person's driving privileges will be suspended for one year ~~30 days~~ for the
29 first occurrence, two years ~~and one year~~ for the second occurrence, three
30 years for the third occurrence, 10 years for the fourth occurrence and
31 permanently revoked for a fifth ~~or subsequent occurrence~~;

[Balloon amendment on K.S.A. 8-1001 would be restored to current law, so the statute would not need to be included. I have included the balloon here for viewing purposes.]

one year

, two years

occurrence, three years for the third occurrence, 10 years for the fourth occurrence and permanently revoked for a fifth

32 (5) if the person submits to and completes the test or tests and the
33 test results show ~~for the first occurrence~~;

for the first occurrence

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

37 (B) an alcohol concentration of .15 or greater, the person's driving
38 privileges will be suspended for one year ~~for the first or subsequent~~
39 ~~occurrence~~.

40 (6) if the person submits to and completes the test or tests and the
41 test results show an alcohol concentration of .08 or greater, the person's
42 driving privileges will be suspended for one year for the second, third or
43 fourth occurrence and permanently revoked for a fifth or subsequent

1 occurrence.

2 ~~(7)~~ (6) if the person is less than 21 years of age at the time of the test
3 request and submits to and completes the tests and the test results show
4 an alcohol concentration of .08 or greater, the person's driving privileges
5 will be suspended for one year except the person's driving privileges will
6 be permanently revoked for a fifth or subsequent occurrence;

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

10 ~~(9)~~ (8) the results of the testing may be used against the person at
11 any trial on a charge arising out of the operation or attempted operation
12 of a vehicle while under the influence of alcohol or drugs, or both; and

13 ~~(10)~~ (9) after the completion of the testing, the person has the right
14 to consult with an attorney and may secure additional testing, which, if
15 desired, should be done as soon as possible and is customarily available
16 from medical care facilities willing to conduct such testing.

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

32 (m) After giving the foregoing information, a law enforcement officer
33 shall request the person to submit to testing. The selection of the test or
34 tests shall be made by the officer. If the test results show a blood or
35 breath alcohol concentration of .08 or greater, the person's driving priv-
36 ileges shall be subject to suspension, or suspension and restriction, as
37 provided in K.S.A. 8-1002 and 8-1014, and amendments thereto.

38 (n) The person's refusal shall be admissible in evidence against the
39 person at any trial on a charge arising out of the alleged operation or
40 attempted operation of a vehicle while under the influence of alcohol or
41 drugs, or both.

42 (o) If a law enforcement officer had reasonable grounds to believe
43 the person had been driving a commercial motor vehicle, as defined in

(6) if the person submits to and completes the test or tests and the test results show an alcohol concentration of .08 or greater, the person's driving privileges will be suspended for one year for the second, third or fourth occurrence and permanently revoked for a fifth or subsequent occurrence;
[Renumber remaining paragraphs.]

2
2

b-9

1 K.S.A. 8-2,128, and amendments thereto, and the test results show a
2 blood or breath alcohol concentration of .04 or greater, the person shall
3 be disqualified from driving a commercial motor vehicle, pursuant to
4 K.S.A. 8-2,142, and amendments thereto. If a law enforcement officer
5 had reasonable grounds to believe the person had been driving a com-
6 mercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments
7 thereto, and the test results show a blood or breath alcohol concentration
8 of .08 or greater, or the person refuses a test, the person's driving privi-
9 leges shall be subject to suspension, or suspension and restriction, pur-
10 suant to this section, in addition to being disqualified from driving a com-
11 mercial motor vehicle pursuant to K.S.A. 8-2,142, and amendments
12 thereto.

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

20 (q) Failure of a person to provide an adequate breath sample or sam-
21 ples as directed shall constitute a refusal unless the person shows that the
22 failure was due to physical inability caused by a medical condition unre-
23 lated to any ingested alcohol or drugs.

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

26 (s) No test results shall be suppressed because of technical irregular-
27 ities in the consent or notice required pursuant to this act.

28 (t) Nothing in this section shall be construed to limit the admissibility
29 at any trial of alcohol or drug concentration testing results obtained pur-
30 suant to a search warrant.

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

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

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

39 (1) Disabling a person from the physical capacity to remove them-
40 selves from the scene;

41 (2) renders a person unconscious;

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

1 (4) an injury determined by a physician to require surgery; or
2 (5) otherwise indicates the person may die or be permanently disa-
3 bled by the injury.

4 Sec. 4. [^]K.S.A. 2008 Supp. 8-1001, 8-1014 ~~and~~ 8-1015 are hereby
5 repealed.

K.S.A. 8-1005 and

and 8-1567

6 Sec. 5. This act shall take effect and be in force from and after its
7 publication in the statute book.

8-1012,

8-10

Section 1. K.S.A. 8-1005 is hereby amended to read as follows: 8-1005.

Except as provided by K.S.A. 8-1012 and amendments thereto, in any criminal prosecution for violation of the laws of this state relating to operating or attempting to operate a vehicle while under the influence of alcohol or drugs, or both, or the commission of vehicular homicide or manslaughter while under the influence of alcohol or drugs, or both, or in any prosecution for a violation of a city ordinance relating to the operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both, evidence of the concentration of alcohol or drugs in the defendant's blood, urine, breath or other bodily substance may be admitted and shall give rise to the following:

(a) *If the alcohol concentration is less than .04, it shall be presumed that the defendant was not under the influence of alcohol to a degree that impaired the defendant's ability to operate a vehicle, except that this fact may be considered with other competent evidence to determine if the defendant was under the influence of both alcohol and drugs to a degree that impaired the defendant's ability to safely operate a vehicle.*

(b) If the alcohol concentration is less than .08, that fact may be considered with other competent evidence to determine if the defendant was under the influence of alcohol, or both alcohol and drugs.

(b) (c) If the alcohol concentration is .08 or more, it shall be prima facie evidence that the defendant was under the influence of alcohol to a degree that ~~renders the person incapable of driving safely~~ *impaired the defendant's ability to safely operate a vehicle.*

(e) (d) If there was present in the defendant's bodily substance any narcotic, hypnotic, somnifacient, stimulating or other drug which has the capacity to ~~render~~ *impair* the ~~defendant incapable of safely driving~~ *defendant's ability to safely operate* a vehicle, that fact may be considered to determine if the defendant was under the influence of drugs, or both alcohol and drugs, to a degree that ~~renders the defendant incapable of driving safely~~ *impaired the defendant's ability to safely operate a vehicle to the slightest degree.*

(e) *If there was present in the defendant's blood any drug defined in K.S.A. 65-4105, 65-4107, 65-4109 and 65-4111, and amendments thereto, or any metabolite of such drug, it shall be prima facie evidence that the defendant was under the influence of drugs to a degree that impaired the defendant's ability to safely operate a vehicle.*

"Jack's Part A"

Sec. 2. K.S.A. 2008 Supp. 8-1012 is hereby amended to read as follows: 8-1012.

(a) Any person who operates or attempts to operate a vehicle within this state is deemed to have given consent to submit to a preliminary screening test of the person's breath subject to the provisions set out in subsection (b).

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

(c) At the time the test is requested, the person shall be given oral notice that: (1) There is no right to consult with an attorney regarding whether to submit to testing; (2) refusal to submit to testing is a traffic infraction; ~~and~~ (3) **refusal to submit to testing may be used against the person in court; and** (4) further testing may be required after the preliminary screening test. Failure to provide the notice shall not be an issue or defense in any action. The law enforcement officer then shall request the person to submit to the test.

Part C
of
// Jack
amendment

(d) Refusal to take and complete the test as requested is a traffic infraction. ***A person convicted of a violation of this section shall be fined not less than \$250 nor more than \$500.*** If the person submits to the test, the results shall be used for the purpose of assisting law enforcement officers in determining whether an arrest should be made and whether to request the tests authorized by K.S.A. 8-1001, and amendments thereto. ***Refusing to submit to the test may be used against a person at any trial on a charge arising out of the operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both.*** A law enforcement officer may arrest a person based in whole or in part upon the results of a preliminary screening test. Such results shall not be admissible in any civil or criminal action concerning the operation of or attempted operation of a vehicle except to aid the court or hearing officer in determining a challenge to the validity of the arrest or the validity of the request to submit to a test pursuant to K.S.A. 8-1001, and amendments thereto. Following the preliminary screening test, additional tests may be requested pursuant to K.S.A. 8-1001, and amendments thereto.

//
//

Sec. 5. K.S.A. 2008 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:

(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~~ **impairs the person's ability to safely operate a vehicle to the slightest degree;**

(4) under the influence of any drug or combination of drugs to a degree that ~~renders the person incapable of safely driving a vehicle~~ **impairs the person's ability to safely operate a vehicle to the slightest degree;** 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~~ **impairs the person's ability to safely operate a vehicle to the slightest degree.**

// Jack's Part A
//
//

(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 in the court's discretion 100 hours of public service, and fined not less than \$500 nor more than \$1,000. The person convicted must serve at least 48 consecutive hours' imprisonment or 100 hours of public service either before or as a condition of any grant of probation or suspension, reduction of sentence or parole.

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

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

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

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

(2) The court may order that the term of imprisonment imposed pursuant to paragraph (1) be served in a state facility in the custody of the secretary of corrections in a facility designated by the secretary for the provision of substance abuse treatment pursuant to the provisions of K.S.A. 21-4704, and amendments thereto. The person shall remain imprisoned at the state facility only while participating in the substance abuse treatment program designated by the secretary and shall be returned to the custody of the sheriff for execution of the balance of the term of imprisonment upon completion of or the person's discharge from the substance abuse treatment program. Custody of the person shall be returned to the sheriff for execution of the sentence imposed in the event the secretary of corrections determines: (A) That substance abuse treatment resources or the capacity of the facility designated by the secretary for the incarceration and treatment of the person is not available; (B) the person fails to meaningfully participate in the treatment program of the designated facility; (C) the person is disruptive to the security or operation of the designated facility; or (D) the medical or mental health condition of the person renders the person unsuitable for confinement at the designated facility. The determination by the secretary that the person either is not to be admitted into the designated facility or is to be transferred from the designated facility is not subject to review. The sheriff shall be responsible for all transportation expenses to and from the state correctional facility. The court shall also require as a condition of parole that such person enter into and complete a treatment program for alcohol and drug abuse as provided by K.S.A. 8-1008, and amendments thereto.

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

(2) The court may order that the term of imprisonment imposed pursuant to paragraph (1) be served in a state facility in the custody of the secretary of corrections in a facility designated by

the secretary for the provision of substance abuse treatment pursuant to the provisions of K.S.A. 21-4704, and amendments thereto. The person shall remain imprisoned at the state facility only while participating in the substance abuse treatment program designated by the secretary and shall be returned to the custody of the sheriff for execution of the balance of the term of imprisonment upon completion of or the person's discharge from the substance abuse treatment program. Custody of the person shall be returned to the sheriff for execution of the sentence imposed in the event the secretary of corrections determines: (A) That substance abuse treatment resources or the capacity of the facility designated by the secretary for the incarceration and treatment of the person is not available; (B) the person fails to meaningfully participate in the treatment program of the designated facility; (C) the person is disruptive to the security or operation of the designated facility; or (D) the medical or mental health condition of the person renders the person unsuitable for confinement at the designated facility. The determination by the secretary that the person either is not to be admitted into the designated facility or is to be transferred from the designated facility is not subject to review. The sheriff shall be responsible for all transportation expenses to and from the state correctional facility. At the time of the filing of the judgment form or journal entry as required by K.S.A. 21-4620 or 22-3426, and amendments thereto, the court shall cause a certified copy to be sent to the officer having the offender in charge. The law enforcement agency maintaining custody and control of a defendant for imprisonment shall cause a certified copy of the judgment form or journal entry to be sent to the secretary of corrections within three business days of receipt of the judgment form or journal entry from the court and notify the secretary of corrections when the term of imprisonment expires and upon expiration of the term of imprisonment shall deliver the defendant to a location designated by the secretary. After the term of imprisonment imposed by the court, the person shall be placed in the custody of the secretary of corrections for a mandatory one-year period of postrelease supervision, which such period of postrelease supervision shall not be reduced. During such postrelease supervision, the person shall be required to participate in an inpatient or outpatient program for alcohol and drug abuse, including, but not limited to, an approved aftercare plan or mental health counseling, as determined by the secretary and satisfy conditions imposed by the Kansas parole board as provided by K.S.A. 22-3717, and amendments thereto. Any violation of the conditions of such postrelease supervision may subject such person to revocation of postrelease supervision pursuant to K.S.A. 75-5217 et seq., and amendments thereto and as otherwise provided by law.

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

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

later than 90 days after imposed, and any remainder of the fine shall be paid prior to the final release of the defendant by the court.

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

(k) (1) Except as provided in paragraph (5), in addition to any other penalty which may be imposed upon a first conviction 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.

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

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

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

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

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

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

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

(3) 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 two years 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.

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

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

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

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

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

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

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

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

(p) (1) Nothing contained in this section shall be construed as preventing any city from enacting ordinances, or any county from adopting resolutions, declaring acts prohibited or made unlawful by this act as unlawful or prohibited in such city or county and prescribing penalties for violation thereof. Except as specifically provided by this subsection, the minimum penalty prescribed by any such ordinance or resolution shall not be less than the minimum penalty prescribed by this act for the same violation, and the maximum penalty in any such ordinance or resolution shall not exceed the maximum penalty prescribed for the same violation. On and after July 1, 2007, and retroactive for ordinance violations committed on or after July 1, 2006, an ordinance may grant to a municipal court jurisdiction over a violation of such ordinance which is concurrent with the jurisdiction of the district court over a violation of this section, notwithstanding that the elements of such ordinance violation are the same as the elements of a violation of this section

that would constitute, and be punished as, a felony. Any such ordinance or resolution shall authorize the court to order that the convicted person pay restitution to any victim who suffered loss due to the violation for which the person was convicted. Except as provided in paragraph (5), any such ordinance or resolution may require or authorize the court to 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.

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

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

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

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

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

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

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

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

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

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

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

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

(v) Upon every conviction of a violation of this section, the court shall order such person to submit to a pre-sentence alcohol and drug abuse evaluation pursuant to K.S.A. 8-1008, and amendments thereto. Such pre-sentence evaluation shall be made available, and shall be considered by the sentencing court.