Approved: May 22, 2009
Date

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Thomas C. (Tim) Owens at 9:37 a.m. on March 3, 2009, in Room 545-N of the Capitol.

All members were present.

Committee staff present:
Jason Thompson, Office of the Revisor of Statutes
Doug Taylor, Office of the Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Karen Clowers, Committee Assistant

Conferees appearing before the committee:
Tom Bartee, Kansas Association of Criminal Defense Lawyers
Kathy Porter, Office of Judicial Administration
Michelle Sweeney, Assoc. Community Mental Health Centers
John House, Staff Attorney, SRS
Rick Cagan, National Alliance on Mental Illness

Others attending:
See attached list.

The Chairman reopened the hearing on **SB 272 - Incompetent to stand trial; commitment, release procedures.**

Tom Bartee testified in opposition stating concerns that the bill may be unconstitutional. As written, the bill would subject incompetent defendants to burdensome release standards which could result in life-long commitments. A decision by the United States Supreme Court in *Jackson v. Indiana* barred the indefinite commitment of incompetent criminal defendants solely on the basis of their continued incompetence. Other decisions have found it is unconstitutional for a State to require an involuntarily committed person to bear the burden of proving that he is not a danger. Mr. Bartee feels enactment of **SB 272** would violate these decisions and would render unconstitutional our statutes governing the commitment and release of incompetent defendants. (Attachment 1)

Kathy Porter appeared in opposition requesting a change in language requiring hearings "at the institution." This requirement would be extremely costly and significantly reduce courtroom time for judges. Ms. Porter provided a proposed amendment where hearings could be conducted at the institution or by means of video telecommunications at the discretion of the trial court. (Attachment 2)

Michelle Sweeney spoke in opposition stating **SB 272** would significantly increase the time that an incompetent individual would be institutionalized. The bill would codify the inhuman treatment of individuals suffering from mental illness, dramatically increase costs to the State, and may be found unconstitutional. (Attachment 3)

John House spoke in opposition indicating several assumptions are made in **SB 272** including:
- the assumption that incompetency equates mental illness with dangerousness,
- the assumption that extended commitment equates a greater likelihood of restored competency,
- and the assumption that a state psychiatric institution is appropriate for indefinite detention.

The effects of these assumptions creates a new standard for initial and continued commitment of individuals without a determination of guilt at a significant cost to the State. Mr. House stated he is concerned the assumptions built into the bill would invite a strong challenge to the law on constitutional grounds. (Attachment 4)

Rick Cagan appeared in opposition stating **SB 272** represents bad public policy and ignores Supreme Court decisions regarding the indefinite commitment of persons deemed not competent to stand trial. Mr. Cagen recommended a program modeled on one from Oregon which may be a more appropriate solution to protecting public safety while fostering rehabilitation and recovery. (Attachment 5)

There being no further conferees, members of the Committee posed questions to the conferees. Senator Bruce acknowledged the current system of involuntary commitment die to one's incompetency to stand trial needs to be improved to protect the public. Senator Bruce expressed a willingness to work with conferees opposed to **SB 272** to provide necessary changes to pass constitutionality. Tom Bartee indicated he would assist Senator Bruce with this endeavor.

The hearing on **SB 272** was closed.

The Chairman called for final action on **SB 277 - Funding the recodification commission from judicial council funds; judicial performance commission not required to evaluate retired senior judges.**

Senator Donovan moved, Senator Schodorf seconded, to recommend **SB 277** favorably for passage. Motion carried.

The Chairman called for final action on **SB 278 - Creating the Kansas highway safety commission; penalties for driving under the influence; district magistrate judge jurisdiction for DUI cases.**

Jason Thompson, staff revisor, distributed and reviewed a draft substitute. (Attachment 6)

Senator Schmidt moved, Senator Lynn seconded, to amend **SB 278** by striking all language and substituting the language contained in the distributed substitute. Motion carried.

A proposed amendment to the substitute bill was distributed. (Attachment 7)

Senator Schmidt moved, Senator Bruce seconded, to amend **Sub SB 278** as proposed in the distributed amendment. Motion carried.

Senator Schmidt distributed a proposed balloon amendment of **SB 157 - Driver improvement clinics, fees, disposition thereof; correctional services special revenue fund.** (Attachment 8)

Senator Schmidt moved, Senator Haley seconded, to amend **Sub SB 278** by inserting the language found in the balloon version of **SB 157**. Motion carried.

Senator Schodorf moved, Senator Lynn seconded, to recommend **Sub SB 278** as amended, favorably for passage. Motion carried.

The next meeting is scheduled for March 4, 2009.

The meeting was adjourned at 10:28 a.m.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3-3-09

NAME	REPRESENTING
Ryan Eagleson	Capitol Lobby Group, LLC
ERIK SARTORIUS	City of Overland Park
Whitney Damron	KS Bar Assn.
Sean Miller	Capitol Strategies
Richard Samsioe	Kansas Assoc.
Barry W. Wilson	KCDAA
DARIAN DERNOVISH	KHP
Tom Bartee	KACDL
Katelyn Lutgen	KGC
Charles Bartlett	SRS
Melissa Underwood	Heartland Rehab.
KAREN WITHMAN	Traffic Safety/AG.
Judy Woodall	Judicial Council
John House	SRS
Rick Cagan	NAMI Kansas
Jennifer Hermann	KDOR-DMV
Marcia Balsters	KDOR
Kelly Bellew	KDOR-DMV

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3-3-09

NAME	REPRESENTING
Shelli Sweeney	ACM HCK
Kathy Porter	Judicial Branch
Joseph Molina	KS Bar Assn
Helen Pedigo	KSC
Brenda Harmon	KSC
Nancy Zogleman	Polsinelli
Juliene Maska	Gov office
Tracy Khounsavanh	" "
JEREMY S BARCLAY	KDOC
Terry Heidner	KDOT
Emily Pinkerton	Intern
Kelly DiPoccio	LCR

House Committee on Federal and State Affairs
March 2, 2009
Testimony of the Kansas Association of Criminal Defense Lawyers
Opponent of Senate Bill No. 272

Chairperson Neufeld and Members of the Committee:

Senate Bill No. 272 substantially changes the standards for detaining criminal defendants found to be incompetent to stand trial. The Kansas Association of Criminal Defense Lawyers opposes SB 272.

SB 272 would substantially change the procedures governing the extended involuntary commitment of incompetent criminal defendants, lengthening (1) the initial commitment; and (2) the time between the end of the initial commitment and the second competency review, from the current 90 days to 180 days. While these procedural changes raise serious questions of fairness, these concerns pale in comparison with the more substantive provisions of the bill, provisions which (1) shift the burden of proving dangerousness; and (2) allow the indefinite commitment of certain incompetent defendants who are not actually dangerous.

1. SB 272 would subject incompetent defendants to onerous release standards, which could result in the life-long commitment of incompetent defendants charged with certain crimes.

Under current law, a defendant who is charged with a felony and found incompetent is subject to an initial 90-day commitment to determine "whether the defendant has a substantial probability of attaining competency to stand trial in the foreseeable future." If such probability exists, the defendant remains at the institution until competent or until six months pass. If no such probability exists, the secretary of social and rehabilitation services is ordered to commence involuntary commitment proceedings.[1] If during the initial commitment, such a probability is found to exist, yet the defendant has still not regained competency after six months of detention, SRS is likewise ordered to institute involuntary commitment proceedings.[2] The defendant cannot not be civilly committed unless he is shown by clear and convincing proof to be a "mentally ill person subject to involuntary commitment for care and treatment,"[3] which in turn requires that he be "likely to cause harm to self or others."[4]

[1] K.S.A. 22-3303(1).
[2] K.S.A. 22-3303(2).
[3] K.S.A. 59-2966(a).
[4] K.S.A. 59-2946(f)(1).

Senate Judiciary
3-3-09
Attachment 1

SB 272 would drastically change the standards governing release of incompetent defendants. Under Section 1of the bill, no incompetent defendant charged with a felony could be released until a district court found, after a hearing at the institution, that the defendant does not present a danger to self or others. Furthermore, under Section 2, an incompetent defendant charged with a "person felony" would be presumed dangerous, and this presumption could only be overcome by a finding that if released, the defendant (1) will not be a danger to self or others, and (2) will not be likely to commit a person felony.

Section 3 would impose an even more onerous standard of release for any incompetent defendant charged with homicide, attempted homicide, "or any other inherently dangerous felony as described in K.S.A. 21-3436," the statute that lists the felonies deemed to support application of the felony murder rule. Despite the label "inherently dangerous felony," this statutory list includes such non-forcible crimes as felony drug possession and felony theft. Under Section 3, an incompetent defendant charged with such a crime would be subject to an irrebuttable presumption of dangerousness for so long as the defendant remains incompetent due to a mental disease or defect. Under this section, a defendant charged with felony drug possession, for example, who is incompetent due to an untreatable condition, such as dementia, could be detained until death, regardless of whether there is any reason to believe that such defendant is actually dangerous.

Lastly, Section 5 prohibits the release of any incompetent defendant who has pending criminal charges unless, after a hearing before the district judge presiding over those charges, the judge finds "by clear and convincing evidence" that the defendant is no longer dangerous to self or others due to the mental disease or defect that renders the defendant incompetent.

2. In *Jackson v. Indiana*, the United States Supreme Court barred the indefinite commitment of incompetent criminal defendants solely on the basis of their continued incompetence.

In *Jackson v. Indiana*, the United State Supreme Court held that a State cannot constitutionally confine a defendant "for an indefinite period simply on account of his incompetency to stand trial on the charges filed against him."[5]

Under the Indiana law at issue in *Jackson*, a criminal defendant could be held until he became competent, regardless of whether he constituted a danger to self or others. For the petitioner in *Jackson*, described as a "mentally defective deaf

[5] 406 U.S. 715, 720, 92 S.Ct. 1845, 1849 (1972).

mute with a mental level of a pre-school child,"[6] who had been charged in two robberies, the fact that he was unlikely to ever become competent meant that he was subject to potentially permanent confinement. However, had he not been charged with crimes, the *Jackson* petitioner could only have been committed under Indiana's civil commitment statutes, which required release in the absence of a showing of dangerousness to self or others.[7] *Jackson* held that

> by subjecting Jackson to a more lenient commitment standard and to a more stringent standard of release than those generally applicable to all others not charged with offenses, and by thus condemning him in effect to permanent institutionalization without the showing required for commitment or the opportunity for release afforded by [the Indiana civil commitment statutes], Indiana deprived petitioner of equal protection of the laws under the Fourteenth Amendment.[8]

The *Jackson* Court went on to consider the due process implications of holding an incompetent defendant in the absence of any showing of dangerousness, holding that

> a person charged by a State with a criminal offense who is committed solely on account of his incapacity to proceed to trial cannot be held more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future. If it is determined that this is not the case, then the State must either institute the customary civil commitment proceeding that would be required to commit indefinitely any other citizen, or release the defendant.[9]

Our current competency statute contains such a "substantial probability of attaining competency" inquiry,[10] but SB 272 would strike this language from the statute.

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[6] 406 U.S. at 717, 92 S.Ct. at 1847.
[7] 406 U.S. at 728-29, 92 S.Ct. at 1853.
[8] 406 U.S. at 730, 92 S.Ct. at 1854.
[9] 406 U.S. at 738, 92 S.Ct. at 1858.
[10] K.S.A. 22-3303(1), (2).

3. The Constitution prohibits a State from requiring an involuntarily committed person to bear the burden of proving that he is not a danger.

In *Addington v. Texas*, the United States Supreme Court considered the constitutionality of a Texas civil commitment scheme permitting hospitalization upon a finding by "clear, unequivocal and convincing evidence" that a person is mentally ill and requires hospitalization "for his own welfare and protection or the protection of others."[11] The Court held that the Due Process Clause of the Fourteenth Amendment requires that in a civil commitment proceeding, the State must bear the burden of proving by "clear and convincing evidence" that "an individual is both mentally ill and likely to be dangerous."[12] The Court specifically stated that "the preponderance standard falls short of meeting the demands of due process," although "the reasonable-doubt standard is not required...."[13]

Addington's requirement that the State bear the burden of justifying civil commitment by clear and convincing proof cannot be circumvented by labeling the involuntary commitment of incompetent defendants as something other than a "civil commitment proceeding." As noted above, the Supreme Court in *Jackson* ruled that the Equal Protection Clause does not allow a State to impose "a more lenient commitment standard and ... a more lenient standard of release than those generally applicable to all other not charged with offenses...."[14] Thus, the core constitutional requirements regarding the commitment and release standards are the same regardless of whether the commitment is labeled "civil."

This proposition is illustrated by a recent federal case, *Revels v. Sanders*,[15] in which the Eighth Circuit Court of Appeals examined the Missouri statutes governing the release of insanity acquittees. Under Missouri law, in order to be released, such an acquittee bore the burden of showing, by clear and convincing evidence, that he is not presently mentally ill and is not likely to be dangerous to himself or others if released.[16] The federal court held that "[r]equiring an insanity acquittee to prove both a lack of present mental illness and dangerousness ... violates the substantive protections of the Due Process Clause as defined by the United States."[17] *Revels* involved a petitioner who had been found not guilty by reason of insanity of two counts of first degree murder and one count of second

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[11] 441 U.S. 418, 421, 99 S.Ct. 1804, 1807 (1979).
[12] 441 U.S. at 429, 433, 99 S.Ct. at 1811, 1813.
[13] 441 U.S. at 431, 99 S.Ct. at 1812.
[14] 406 U.S. at 730, 92 S.Ct. at 1854.
[15] 519 F.3d 734 (8th Cir. 2008).
[16] 519 F.3d at 742.
[17] *Id.*

degree murder, among other crimes.[18] If the Due Process Clause does not permit a State to impose upon such an insanity acquittee the burden of proving a lack of dangerousness, surely an incompetent defendant, who has merely been charged with a crime but not found to be factually responsible for it, cannot be subjected to a more onerous standard of release.

The United States Supreme Court has shown no sign that it is retreating from the core requirements of *Jackson* and *Addington*. In a 2002 case upholding the Kansas Sexually Violent Predator Act, the Court stated that it has "consistently upheld such involuntary commitment statutes when (1) the confinement takes place pursuant to proper procedures and evidentiary standards, (2) there is a finding of dangerousness either to one's self or to others, and (3) proof of dangerousness is coupled ... with the proof of some additional factor, such as a 'mental illness' or 'mental abnormality.'"[19] Because SB 272 would violate both *Jackson*'s requirement of a finding of dangerousness and *Addington*'s requirement that the State bear the burden of proving dangerousness by clear and convincing evidence, the bill would render unconstitutional our statutes governing the commitment and release of incompetent defendants. Thus, KACDL opposes this bill.

Thank you for your time and consideration.

Sincerely,

Tom Bartee
on behalf of the Kansas Association of Criminal Defense Lawyers

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[18] 519 F.3d at 735.

[19] *Kansas v. Crane*, 534 U.S. 407, 409-10, 122 S.Ct. 867, 869 (2002) (internal quotations omitted).

State of Kansas
Office of Judicial Administration
Kansas Judicial Center
301 SW 10th
Topeka, Kansas 66612-1507 (785) 296-2256

Senate Judiciary Committee
Monday, March 2, 2009

Testimony in Opposition to SB 272

Kathy Porter

SB 272 would require that defendants charged with a felony who are committed for evaluation and treatment shall not be released until a district judge finds, after a hearing **at the institution,** that the defendant does not present a danger to the defendant or others. The phrase, "at the institution" creates a large fiscal note for the Judicial Branch. Because all of these evaluations are done at Larned State Hospital, judges from across the state would be required to travel to Larned each time a defendant committed for evaluation and treatment is considered for release, and at each hearing held at 180 day intervals for those found incompetent to stand trial.

According to Larned State Hospital, approximately 88 individuals are admitted each year for evaluation and treatment under this statute. With an average estimated round trip mileage cost of $213 (based on mileage from Topeka), in FY 2010 the fiscal impact to the Judicial Branch for mileage costs alone would be $18,744. This does not include any costs for *per diem* or lodging.

The most significant impact, of course, is in the time it would take for judges to travel to Larned, and the resulting loss of time during which they will not be available to hear other matters. In those districts in which judicial resources are already stretched to a maximum, SB 272 has the potential to create a need for additional district court judges and associated staff. The 10th Judicial District (Johnson County) is a prime example of where SB 272, if passed, would create the need for a new judge and staff, as both the civil and criminal caseloads in this district continue to grow substantially. In fact, two judges are requested for the 10th Judicial District in the Judicial Branch's FY 2010 budget. The FY 2010 cost of a district court judge, administrative assistant, and official court reporter is $257,326.

I propose that the attached balloon amendment be adopted as an alternative. Under the balloon amendment, hearings could be conducted at the institution, in the originating judicial district, or by means of video telecommunications, at the discretion of the trial court. I believe that this would accomplish the objectives of the proponents of this bill without the cost to the state and the counties that this bill would impose.

Thank you for the opportunity to testify on SB 272.

Senate Judiciary
3-3-09
Attachment 2

Session of 2009

SENATE BILL No. 272

By Committee on Federal and State Affairs

2-12

AN ACT concerning criminal procedure; relating to persons incompetent to stand trial; amending K.S.A. 22-3303 and 22-3305 and repealing the existing sections.

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

Section 1. K.S.A. 22-3303 is hereby amended to read as follows: 22-3303. (1) ~~A defendant who is charged with a felony and is found to be incompetent to stand trial shall be committed for evaluation and treatment to the state security hospital or any appropriate county or private institution.~~ A defendant who is charged with a ~~misdemeanor~~ *felony* and is found to be incompetent to stand trial shall be committed for evaluation and treatment to any appropriate state~~, county or private~~ institution *and shall not be released until a district court judge finds, after a hearing at the institution, that the defendant does not present a danger to such defendant or others. When making that determination, the district court shall consider at least the clinical information presented by the state institution which has been generated regarding the competency and mental status of the defendant.* Any such commitment shall be for ~~a~~ *an initial* period of not to exceed ~~90~~ *180* days. Within ~~90~~ *180* days after the defendant's commitment to such institution, the chief medical officer of such institution shall certify to the *district* court *in a hearing at the institution* whether the defendant ~~has a substantial probability of attaining competency~~ *is competent* to stand trial ~~in the foreseeable future. If such probability does exist, the court shall order the defendant to remain in an appropriate state, county or private institution until the defendant attains competency to stand trial or for a period of six months from the date of the original commitment, whichever occurs first. If such probability does not exist, the court shall order the secretary of social and rehabilitation services to commence involuntary commitment proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated, and any amendments thereto. When a defendant is charged with any off-grid felony, any nondrug severity level 1 through 3 felony, or a violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-3603 or 21-3719, and amendments thereto, and commitment proceedings have commenced, for such proceeding, "mentally ill person subject to involuntary commitment for~~

The hearing may be conducted at the institution, in the originating judicial district, or by means of video telecommunications, at the discretion of the trial court.

~~care and treatment" means a mentally ill person, as defined in subsection (e) of K.S.A. 59-2946, and amendments thereto, who is likely to cause harm to self and others, as defined in subsection (f)(3) of K.S.A. 59-2946, and amendments thereto. The other provisions of subsection (f) of K.S.A. 59-2946, and amendments thereto, shall not apply~~ *If the defendant is found to remain incompetent to stand trial, such defendant shall be committed for evaluation and treatment to any appropriate state institution and shall not be released until a district court judge finds, after a hearing ~~at the institution~~, that the defendant does not present a danger to such defendant or others. The foregoing process shall take place every following 180 days, until, after a hearing ~~at the institution,~~ the defendant is either found by the district court to be competent to stand trial, or found incompetent to stand trial but to not present a danger to such defendant or others. If the defendant is found by the district court, after a hearing ~~at the institution~~, to be incompetent to stand trial but to not present a danger to such defendant or others, the district court shall order the defendant released from the state institution. ~~A~~ precondition of any such release by the district court shall be that the state institution shall provide proof satisfactory to the court of actual written notice, 30 days in advance of the defendant's release, to the county or district attorney where the defendant was charged, the head of the law enforcement agency in such county, and the victim of the crime with which the defendant was charged.*

(2) If a defendant ~~who was found to have had a substantial probability of attaining competency to stand trial, as provided in subsection (1),~~ has not attained competency to stand trial, *or has not been released by the district court as provided in subsection (1),* within ~~six~~ *12* months from the date of the original commitment, the court shall order the secretary of social and rehabilitation services to commence involuntary commitment proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated, and any amendments thereto. When a defendant is charged with any off-grid felony, any nondrug severity level 1 through 3 felony, or a violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-3603 or 21-3719, and amendments thereto, and commitment proceedings have commenced, for such proceeding, "mentally ill person subject to involuntary commitment for care and treatment" means a mentally ill person, as defined in subsection (e) of K.S.A. 59-2946, and amendments thereto, who is likely to cause harm to self and others, as defined in subsection (f)(3) of K.S.A. 59-2946, and amendments thereto. The other provisions of subsection (f) of K.S.A. 59-2946, and amendments thereto, shall not apply.

(3) Under subsection (1) and (2), if a committed defendant was charged with a person felony and is found incompetent to stand trial, there shall be a presumption such defendant is a danger to such defendant or others, and such presumption may only be overcome if the district

The hearing may be conducted at the institution, in the originating judicial district, or by means of video telecommunications, at the discretion of the trial court.

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court finds the defendant, if released without continuing involuntary treatment, will not present a danger to such defendant or others and will not be likely to commit a person felony.

~~(3)~~ *(4)* When reasonable grounds exist to believe that a defendant who has been adjudged incompetent to stand trial is competent, the court in which the criminal case is pending shall conduct a hearing in accordance with K.S.A. 22-3302 and amendments thereto to determine the person's present mental condition. Reasonable notice of such hearings shall be given to the prosecuting attorney, the defendant and the defendant's attorney of record, if any. If the court, following such hearing, finds the defendant to be competent, the proceedings pending against the defendant shall be resumed.

~~(4)~~ *(5)* A defendant committed to a ~~public~~ *state* institution under the provisions of this section who is thereafter sentenced for the crime charged at the time of commitment may be credited with all or any part of the time during which the defendant was committed and confined in such ~~public~~ *state* institution.

Sec. 2. K.S.A. 22-3305 is hereby amended to read as follows: 22-3305. (1) Whenever involuntary commitment proceedings have been commenced by the secretary of social and rehabilitation services as required by K.S.A. 22-3303 and amendments thereto, and the defendant is not committed to a treatment facility as a patient, the defendant shall remain in the institution where committed pursuant to K.S.A. 22-3303 and amendments thereto, and the secretary shall promptly notify the court and the county or district attorney of the county in which the criminal proceedings are pending of the result of the involuntary commitment proceeding.

(2) Whenever involuntary commitment proceedings have been commenced by the secretary of social and rehabilitation services as required by K.S.A. 22-3303 and amendments thereto, and the defendant is committed to a treatment facility as a patient but thereafter is to be discharged pursuant to the care and treatment act for mentally ill persons, the defendant shall remain in the institution where committed pursuant to K.S.A. 22-3303 and amendments thereto, and the head of the treatment facility shall promptly notify the court and the county or district attorney of the county in which the criminal proceedings are pending that the defendant is to be discharged *subject to provisions of subsection (3).*

~~When giving notification to the court and the county or district attorney pursuant to subsection (1) or (2), the treatment facility shall include in such notification an opinion from the head of the treatment facility as to whether or not the defendant is now competent to stand trial. Upon request of the county or district attorney, the court may set a hearing on the issue of whether or not the defendant has been restored to compe-~~

~~tency. If no such request is made within 10 days after receipt of notice pursuant to subsection (1) or (2), the court shall order the defendant to be discharged from commitment and shall dismiss without prejudice the charges against the defendant, and the period of limitation for the prosecution for the crime charged shall not continue to run until the defendant has been determined to have attained competency in accordance with K.S.A. 22-3302 and amendments thereto.~~

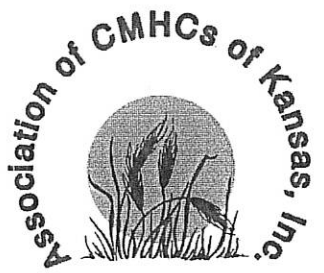
(3) A defendant charged with committing any of the following: capital murder as defined in K.S.A. 21-3439, and amendments thereto, an attempt to commit capital murder, murder in the first degree, as defined by K.S.A. 21-3401, and amendments thereto, or an attempt to commit murder in the first degree, murder in the second degree as defined by K.S.A. 21-3402, and amendments thereto, an attempt to commit murder in the second degree, voluntary manslaughter as defined by K.S.A. 21-3403, and amendments thereto, or an attempt to commit voluntary manslaughter, involuntary manslaughter, as defined by K.S.A. 21-3404, and amendments thereto, or any other inherently dangerous felony as described in K.S.A. 21-3436, and amendments thereto, shall not be eligible for release from a state mental health treatment facility and is deemed to remain a danger to such defendant or others as defined by the code for the care and treatment for mentally ill persons so long as the defendant continues to remain incompetent to stand trial based upon a mental disease or defect which interferes with such person's ability to be competent to stand trial.

(4) A defendant who is committed and charged with the crimes as set forth in subsection (3) shall be entitled to a hearing every 12 months to determine if the defendant continues to suffer from an underlying mental disease or defect which prohibits the defendant from obtaining competency.

(5) Under no circumstances shall a doctor, director or superintendent of a state mental health treatment facility discharge a defendant who has pending criminal charges, until a hearing is held before the district judge presiding over the criminal proceedings has authorized the release of said defendant. At the hearing, notice will be given to the county or district attorney, the victim or victim's family and the court must determine by clear and convincing evidence that the defendant will not pose a danger to such defendant or others on the basis of such mental disease or defect which prohibits the defendant from being competent to stand trial.

Sec. 3. K.S.A. 22-3303 and 22-3305 are hereby repealed.

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



Association of Community Mental Health Centers of Kansas, Inc
720 SW Jackson, Suite 203, Topeka, Kansas 66603
Telephone: 785-234-4773 / Fax: 785-234-3189
Web Site: www.acmhck.org

Senate Judiciary Committee

Testimony on
Senate Bill 272

March 2, 2009

Presented by:

Michelle Sweeney, Policy Analyst
Association of CMHCs of Kansas, Inc.

Senate Judiciary
3-3-09
Attachment 3

Mister Chairman and members of the Committee, my name is Michelle Sweeney, I am the Policy Analyst for the Association Community Mental Health Centers of Kansas, Inc. The Association represents the 27 licensed Community Mental Health Centers (CMHCs) in Kansas who provide home and community-based, as well as outpatient mental health services in all 105 counties in Kansas, 24-hours a day, seven days a week. In Kansas, CMHCs are the local Mental Health Authorities coordinating the delivery of publicly funded community-based mental health services. The CMHC system is state and county funded and locally administered. Consequently, service delivery decisions are made at the community level, closest to the residents that require mental health treatment. Each CMHC has a defined and discrete geographical service area. With a collective staff of over 4,500 professionals, the CMHCs provide services to Kansans of all ages with a diverse range of presenting problems.

Together, this system of 27 licensed CMHCs form an integral part of the total mental health system in Kansas. As part of licensing regulations, CMHCs are required to provide services to all Kansans needing them, regardless of their ability to pay. This makes the community mental health system the "safety net" for Kansans with mental health needs, collectively serving over 123,000 Kansans with mental illness. I stand before you today to discuss Senate Bill 272.

It is important to note that one in four adults—approximately 57.7 million Americans—experience a mental health disorder in a given year.[1] Five of the top ten leading causes of disability world wide are mental disorders--such as depression, schizophrenia, bipolar disorders, alcohol use and obsessive compulsive disorders.[2]

Kansas has always been a leader among states in supporting care and treatment for those with mental illness. In 1990, Kansas was one of the first states to initiate, under Governor Michael Hayden, a program of Mental Health Reform. This Reform package included de-institutionalization for those with mental illness who had been "warehoused" in state psychiatric hospitals for years—because there wasn't adequate community based treatment to allow them to remain in their homes and communities.

At its' highest stage, Kansas had nearly 5,000 State Psychiatric Hospital beds, and since the 1990 Kansas Mental Health Reform Act, Kansas now has only 347 state psychiatric beds, not including the beds at the state security hospital.[3] The point is, Mental Health Reform and community based treatment work. Kansas was a national leader in supporting individuals with mental illness in their homes, schools, and communities rather than in institutions. Senate Bill 272 appears to be a step backwards from the success of Mental Health Reform.

The Association does not support SB 272 and the amendments to K.S.A. 22-3303 and K.S.A. 22-3305. If passed, this bill would dramatically increase the time that an individual with a mental illness would be institutionalized upon arrest for a crime and while being evaluated for competency to stand trial. The bill doubles the time for initial institutionalization from 90 to 180 days.

If after 12 months, the individual cannot be determined to be competent to stand trial but is not a danger to self or others, the judge may release them, with 30 days notice to county attorney, and head of county law enforcement and victim. The bill also allows that if, after 12 months, the individual cannot be determined to be competent to stand trial, the court shall order the Secretary of SRS to proceed with involuntary commitment of the person to a state psychiatric institution.

If the felony was a person-related felony, the person shall be presumed to be a danger to self and others and shall remain institutionalized, unless it can be shown to the judge that they if released, they would not be a danger to self or others and not likely to commit a person felony. This means

that the individual may be institutionalized indefinitely or for the rest of their lives.

If the felony was murder or manslaughter related, the individual is not eligible for release and assumed to be a danger to self and others indefinitely or for the rest of their lives.

The United States Supreme Court has termed involuntary commitment to a psychiatric hospital "a massive curtailment of liberty."[4] Many states have laws that deal with remanding individuals to state institutions for evaluation for competency--but the passage of this law would make Kansas one of the highest in length of time an individual may be institutionalized under these circumstances.

A case in point is Massachusetts. Massachusetts law (Massachusetts General Laws Chapter 123, Section 15) requires that initial review for competency last not more than 20 days, or 20 more days if need. The initial review hospitalization shall not last more than 40 days total. The hospital during the review may request an involuntary commitment if warranted, but person has a right to a commitment hearing, with attorney present. The judge must find beyond reasonable doubt that person is a danger to self and others by virtue of mental illness and that no less restrictive alternative is available or appropriate.[5]

In addition, Oklahoma law presumes that a criminal defendant is competent to stand trial unless he proves his incompetence by clear and convincing evidence. Applying that standard, a judge found a petitioner competent on separate occasions before and during his trial for first-degree murder--despite his bizarre behavior and conflicting expert testimony on the issue. In affirming his conviction and death sentence, the Court of Criminal Appeals rejected his argument that the State's presumption of competence, combined with its clear and convincing evidence standard, placed such an onerous burden on him as to violate due process.

However, when the case was appealed to the U.S. Supreme Court, the Court held that because Oklahoma's procedural rule allows the State to try a defendant who is more likely than not incompetent, it violates due process.[6]

There are a number of reasons why this bill makes for bad public policy. First, it would codify the inhumane treatment of individuals in our state who suffer from mental illness. Second, it would dramatically increase costs to the state just in the number of beds that would need to be added to the State Security Hospital to house, feed, and treat the individuals institutionalized for extensive periods of time in order to determine their competency to stand trial. Third, the Constitution of the United States provides the right to a speedy trial, under the Sixth Amendment, part of the Bill of Rights.[7] This bill may well violate that protection for those with mental illness.

In your deliberations, please consider the inhumane treatment of those with mental illness, the cost that would be incurred by the state, and the protection of the right to a speedy trial with the passage of this bill. Thank you for your continued support of mental health care for all Kansans. Thank you for allowing me to appear before you today.

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[1] U.S. Department of Health and Human Services. *Mental Health: A Report of the Surgeon General.* Rockville, MD: U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Mental Health Services, 1999, pp. 408, 409, 411.

[2] *Regional Strategy for Mental Health*, World Health Organization Western Pacific Region, 7 August 2001; Read at http://www.wpro.who.int/NR/rdonlyres/02421D66-3336-4C76-8D59-6ADA8B53D208/0/RC5214.pdf on 2-2-09.

[3] Kansas Statutes Annotated 39-1601 and following; History: L. 1990, ch. 92, § 1; July 1. Read at http://www.kslegislature.org/legsrv-statutes/getStatuteInfo.do .

[4] *Humphrey v. Cady*, 405 U.S. 504, 509 (1972).

[5] *Hospitalization in Connection With a Criminal Case; M-Power, Boston, MA; 2008; Read at http://www.m-power.org/hospitalization_in_connetion_with_a_criminal_case*

[6] *COOPER v. OKLAHOMA, ___ U.S. ___ (1996); Pages 5-22. Read at http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=000&invol=U10193 .*

[7] U.S. Constitution, Sixth Amendment in the Bill of Rights; 1791; read at http://www.usconstitution.net/const.html#Am6 .

KANSAS

DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES

Don Jordan, Secretary

Senate Judiciary Committee
March 2, 2009

SB 272 – Persons Incompetent to Stand Trial

SRS Legal Department
John House, Attorney

For Additional Information Contact:
Katy Belot, Director of Public Policy
Docking State Office Building, 6th Floor North
(785) 296-3271

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KANSAS
DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES

SB 272 – Persons Incompetent to Stand Trial

Senate Judiciary Committee
March 2, 2009

Chairman Owens and members of the Committee, I am John House, an attorney with SRS. I thank you for the opportunity to appear before you today to discuss SB 272.

While we understand the concerns and risks associated with the release of some individuals who have allegedly committed serious offenses, SRS has concerns about the construct of this bill and some of the apparent assumptions contained within it, and also about the operational and resource impact that the terms of this bill, if enacted and implemented, would likely create over time.

To begin with, the first and most critical assumption that this bill appears to be based on is that incompetency to stand trial somehow equates with mental illness, which then equates with dangerousness. In fact, those conditions are actually quite different, both clinically and legally. In addition, there appears to be an assumption that the more time someone is held for treatment in a state institution, the greater the likelihood is of that person being restored to competency, which is not true. Finally, there is an assumption that a state psychiatric institution is an appropriate place to detain someone indefinitely, based upon "presumed" or "deemed" dangerousness.

The effect of those assumptions is seen in some of the key terms of this bill, including the creation of a new (and different) standard for initial commitment: A person is presumed to be a danger to self or others if charged with certain felony crimes; and then found incompetent to stand trial. That presumption can be overcome only if a court finds both no possibility of the person being a future danger to self/others and no future likelihood to commit another person felony. Those are very high burdens which are not likely to be overcome by the obviously necessary medical determinations. In addition, the bill creates an additional new (and different) standard for ultimate release: A person is deemed to remain a danger to self or others if they had been charged with a serious or inherently dangerous felony; and continues to be incompetent to stand trial.

The net effect of these changes is that people who are found to be not competent to stand trial (i.e., who either cannot understand the nature of the charges against them or cannot effectively assist in their defense, or both), under the terms of this bill, would be held indefinitely – having had no actual determination of guilt, and regardless of their actual need for mental health treatment – in a state institution and at significant cost. This would include people with cognitive deficits who cannot be restored to competency, no matter the efforts made to do so, and who could and should be better served in other manners.

We are concerned that these assumptions, built into the terms of this bill, would invite a strong challenge to the law on constitutional grounds. The terms of this bill seem to be in clear opposition to

U.S. Supreme Court holdings that mere presumed or perceived dangerousness alone is not a valid reason to hold someone in a psychiatric hospital. Those rulings, as well as other due process issues, drove the enactment of our current law. In fact, some of the terms of this bill would seem to be taking us backward to revive many of the same, specific concerns which resulted in the enactments the Legislature adopted in 1992 and that constitute our current law.

In addition, the operational and resource impact of this bill on the state psychiatric hospitals could potentially be quite significant. It is likely that, if implemented as written, the terms of this bill would require a significant expansion of state psychiatric hospital services, or would result in a much longer waiting list for people in need of those services. Already, today there are 37 people awaiting admission for state psychiatric hospital forensic evaluations or services. Some have been waiting for months. That level of unmet need would be exacerbated by the inevitable increase in the length of stay for people who are committed to a state hospital for competency evaluation and treatment, with little likelihood of timely release, under the terms of this bill.

Now, there are many potential variables driving the resources impact of this bill, including the number of people evaluated, the number of those who can be restored to competency, and the actual decisions of the many courts who would be committing defendants to the state institutions for competency treatment. To develop an estimate of the potential impact, we assumed that the practice of courts and of the parties involved in these cases would be similar to the cases where defendants have been found not guilty based upon reasons of mental disease or defect, a statutory construct similar to what is proposed in this bill.

The estimate starts with the 108 people who were committed for competency evaluation and treatment in FY08. It then assumes that those people would be held for periods of time closely resembling the periods of time to which people committed after being found not guilty based upon a reason of mental disease or defect are held (which is over 3,100 days for those currently in this status). The estimate builds from that base and increases the number of people continuing to be admitted, but then not being timely discharged, over the four years of the estimated period. The estimate uses a cost of $390.50 per day (times 365 days a year) which was the average daily rate for the two state psychiatric hospitals in FY08. Finally, the estimate assumes that the people already in place for competency treatment will essentially cycle out, and that there will be no increase in the number of people committed for competency evaluation and treatment.

The following chart reflects the estimated increase in the number of people receiving competency-related treatment when all of the assumptions are applied in full; then when applied at 50% and 25% of the estimated impact:

KANSAS
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State Fiscal Year	FY10	FY11	FY12	FY13	Total for all four FYs
Increase in people – 25% estimate	27	54	81	108	270
Increase in costs – 25% estimate	$3,848,377	$7,696,755	$11,545,132	$15,393,510	$38,483,775
Increase in people – 50% estimate	54	108	162	216	540
Increase in costs – 50% estimate	$7,696,755	$15,393,510	$23,090,265	$30,787,020	$76,967,550
Increase in people – full estimate	108	216	324	432	1080
Increase in costs – full estimate	$15,393,510	$30,787,020	$46,180,530	$61,574,040	$153,935,100

Some additional factors to consider when anticipating the operational and resource impact of this bill on the state psychiatric hospitals: The current physical capacity of the hospitals would be able to accommodate an expansion of only 30 people. Any increase beyond 30 people would require new construction to accommodate the capacity growth.

Again, we do appreciate the opportunity to present this information to the Committee for its consideration. I would be happy to answer any questions you may have at this time.

NAMI Kansas
National Alliance on Mental Illness

Senate Judiciary Committee

Testimony on Senate Bill 272

March 2, 2009

Presented by:
Rick Cagan
Executive Director

Mr. Chairman and members of the Committee, my name is Rick Cagan. I am the Executive Director of NAMI Kansas, the state organization of the National Alliance on Mental Illness. NAMI Kansas is a statewide grassroots membership organization dedicated to improving the lives of individuals with mental illness. We provide peer support, education and advocacy for our members who are individuals living with mental illnesses as well as their family members who provide care and support.

Notwithstanding the genuine concerns about public safety which may have prompted the drafting and introduction of this bill, SB 272 represents bad public policy and some provisions of the bill may in fact be unconstitutional.

The context in which this bill has been introduced says a great deal about the failure of our mental health systems to provide adequate care and treatment for persons with serious mental illness. As reflected in the testimony from the Association of Community Mental Health Centers of Kansas, the attrition in psychiatric inpatient capacity has placed the state of Kansas in jeopardy. Furthermore, both prior reductions in funding and current budget constraints further threaten the ability of our Community Mental Health Centers to provide adequate community-based care to the one in seventeen adults who lives with a serious mental illness such as schizophrenia, bi-polar disorder, or major depression.

To a large extent we have failed to develop suitable community-based treatment programs for the most seriously ill individuals in our state and as a result have shifted costs to our heavily burdened state hospitals and to the criminal justice system. Kansas is among a minority of states that has not developed a program of Assertive Community Treatment for the most seriously ill patients. ACT is recognized by the federal Substance Abuse and Mental Health Services Administration as an evidence-based practice which is effective in reducing hospitalizations and in enabling some of the most challenged individuals to live stable lives in the community.

112 SW 6th Street, PO Box 675, Topeka, KS 66601
785-233-0755 – 785-233-4804 (fax) – 800-539-2660
namikansas@nami.org – www.namikansas.org

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The fall-out from deinstitutionalizing persons with serious mental illness and not providing adequate community-based treatment includes an increase in routine encounters between mental health consumers and law enforcement personnel, unnecessary arrests and detentions, occasional tragic outcomes for mental health consumers, law enforcement personnel, and bystanders, a lack of continuity in treatment between the community and correctional facilities, inconsistent to substandard care for individuals with mental illnesses in county jails, and repeated detentions and hospitalizations for offenders who are released from the criminal justice system. We have from four to five times as many individuals with serious mental illness in our jails and prisons in Kansas than we have the licensed capacity to treat in our state mental health hospitals.

While the language of SB 272 is intended to protect the public safety, it is actually contrary to public safety because it ignores the reality that people with severe mental illnesses, with treatment, can recover and that their dangerousness can be alleviated. There are models in place for closely supervising people charged with violent crimes, found not guilty by reason of insanity, or even convicted after they return to the community. We believe that Oregon's Psychiatric Security Review Board, a version of which has also been adopted in Connecticut and Arizona, may be a more appropriate solution and more likely to achieve the goal of protecting public safety while fostering rehabilitation and recovery.

Specifically, the provision in SB 272l which increases from 90 to 180 days the initial period of commitment will only exacerbate the budget pressures on limited facilities without contributing to improved recovery for those who are seriously ill.

The bill before this committee would preclude individuals charged with violent felonies and deemed incompetent to stand trial for an indefinite period from being released from forensic hospitals until they are found competent and brought to trial. A Supreme Court case in the early 1970's (*Jackson v. Indiana*) held that people deemed not competent to stand trial must within a "reasonable period of time" either attain competency, be civilly committed, or be released. We cannot simply keep people in limbo for years and years. While the Supreme Court never defined what is meant by a "reasonable period of time", SB 272 seems to ignore this Supreme Court precedent.

We would welcome a chance to provide additional information about the Oregon program to the committee in lieu of the draconian approach taken in this bill. We also urge members of this committee to more closely examine the genuine needs for inpatient and community-based treatment resources as part of the legislature's larger agenda during this legislative session. Our failure to adequately fund the treatment system will only heighten the involvement of and the problems faced by our law enforcement, courts and corrections agencies.

Thank you for the opportunity to register our comments on SB 272.

Summary of changes in Proposed Substitute for Senate Bill 278 (9rs0886)

Office of Revisor of Statutes - March 2, 2009

(1) Page 1, New Section 1(b)(3) - added "enforcement strategies and penalty structure" as requested by Dept. of Corrections and Dept. of Transportation.

(2) Page 2, New Section 1(c)(9) - changed to "Kansas association of addiction professionals" as requested by that association.

(3) Page 3, New Section 1(c)(12) - added secretary of revenue, or designee, to the commission to add input from the Division of Motor Vehicles.

(4) Page 3, New Section 1(c)(13) - changed to secretary of transportation, or designee, as requested by Dept. of Transportation.

(5) Page 3, New Section 1(c)(17) - changed from appointment by the governor to appointment by the attorney general.

(6) Page 3, New Section 1(c)(18) - added one municipal law enforcement officer to the commission as requested by Kansas Association of Chiefs of Police.

[Note: Total membership now 23]

(7) Page 4, New Section 1(g) - added assistance by office of the revisor of statutes.

(8) Page 4, Section 2 - Effective July 1, 2009, amends K.S.A. 2008 Supp. 8-1567 by adding subsections (m) and (r).

(9) Page 18, Section 2 - changed (r) from filing of a complaint to "filing of a complaint, citation or notice to appear" (language from K.S.A. 8-1009) to be consistent with how municipal courts operate.

(10) Page 20-21, Section 3 - Effective July 1, 2010, further amends K.S.A. 2008 Supp. 8-1567, as amended by Section 2, by moving current penalties for 4th and subsequent convictions to 3rd convictions, and creating new penalties for 4th and subsequent convictions.

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2009 9rs0886

PROPOSED Substitute for SENATE BILL NO. 278

By

AN ACT concerning driving under the influence; creating the Kansas DUI commission; relating to penalties for driving under the influence of alcohol or drugs; information sent to the Kansas bureau of investigation central repository; amending K.S.A. 12-4517 and K.S.A. 2008 Supp. 8-1567, 8-1567, as amended by section 2 of this act, and 12-4106 and repealing the existing sections.

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

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

(b) The commission shall:

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

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

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

(4) develop a balanced and comprehensive legislative proposal that centralizes recordkeeping so that offenders are held accountable, assures highway safety by changing the behavior of driving under the influence offenders at the earliest possible time and provides for significant restriction on personal liberty at some level of frequency and quantity of offenses; and

(5) assess and gather information on all groups and committees working on issues related to driving under the

influence and determine if any results or conclusions have been found to address the issues.

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

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

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

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

(4) a district judge, a district magistrate judge and a municipal court judge who exercise regular jurisdiction in driving under the influence cases, each appointed by the chief justice of the supreme court;

(5) the attorney general, or the attorney general's designee;

(6) one prosecuting attorney who regularly prosecutes driving under the influence cases, appointed by the Kansas county and district attorneys association;

(7) one defense attorney who regularly represents defendants in driving under the influence cases, appointed by the Kansas bar association;

(8) one victim advocate, appointed by the governor;

(9) two persons appointed by the Kansas association of addiction professionals;

(10) the secretary of corrections;

(11) the secretary of social and rehabilitation services;

(12) the secretary of revenue, or the secretary's designee;

(13) the secretary of transportation, or the secretary's designee;

(14) the chairperson of the Kansas sentencing commission, or the chairperson's designee;

(15) the superintendent of the Kansas highway patrol, or the superintendent's designee;

(16) the director of the Kansas bureau of investigation, or the director's designee;

(17) one sheriff, appointed by the attorney general who shall consider, but not be limited to, a list of three nominees submitted therefor by the Kansas sheriffs' association;

(18) one municipal law enforcement officer, appointed by the attorney general who shall consider, but not be limited to, a list of three nominees submitted therefor by the Kansas association of chiefs of police;

(19) one court services officer, appointed by the chief justice of the supreme court; and

(20) one parole officer, appointed by the secretary of corrections.

(d) The members of the commission shall elect officers from among its members necessary to discharge its duties.

(e) Each member of the commission shall receive compensation, subsistence allowances, mileage and other expenses

as provided for in K.S.A. 75-3223, and amendments thereto, except that the public members of the commission shall receive compensation in the amount provided for legislators pursuant to K.S.A. 75-3212, and amendments thereto, for each day or part thereof actually spent on commission activities. No per diem compensation shall be paid under this subsection to salaried state, county or city officers or employees, except that the legislative members shall receive compensation as provided in K.S.A. 75-3212, and amendments thereto.

(f) The commission shall prepare and submit a report and recommendations on or before the first day of the 2010 legislative session and submit a final report and recommendations on or before the first day of the 2011 legislative session.

(g) The staff of the office of the revisor of statutes and legislative research department shall provide such assistance as may be requested by the commission and to the extent authorized by the legislative coordinating council.

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

Sec. 2. 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;

(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 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) (1) Prior to filing a complaint alleging a violation of this section, a prosecutor 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.

(2) Prior to filing a complaint alleging a violation of this section, a prosecutor shall request and shall receive from the Kansas bureau of investigation central repository all criminal history record information concerning such person.

~~(m)~~ (n) The court shall electronically 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)~~ (o) 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)~~ (p) 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)-(t)~~ (q) (1) (A) 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.

(B) 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.

(C) 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.

(r) (1) Upon the filing of a complaint, citation or notice to appear alleging a person has violated a city ordinance prohibiting the acts prohibited by this section, and prior to conviction thereof, a city attorney 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.

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

(3) If 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, the city attorney shall refer the violation to the appropriate county or district

attorney for prosecution.

~~(q)~~ (s) 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)~~ (t) 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)~~ (u) 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)~~ (v) 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)~~ (w) 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)~~ (x) 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.

Sec. 3. On and after July 1, 2010, K.S.A. 2008 Supp. 8-1567,

as amended by section 2 of this act, 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;

(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 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~~

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~~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~~ (f) (1) On a 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 $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.

(g) 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 180 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 180 days' imprisonment. The 180 days' imprisonment mandated by this paragraph may be served in a work release program only after such person has served 144 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.

(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) (1) Prior to filing a complaint alleging a violation of this section, a prosecutor 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.

(2) Prior to filing a complaint alleging a violation of this section, a prosecutor shall request and shall receive from the Kansas bureau of investigation central repository all criminal history record information concerning such person.

(n) The court shall electronically 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.

(o) 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.

(p) 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.

(q) (1) (A) 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.

(B) 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.

(C) 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.

(r) (1) Prior to filing a complaint alleging a violation of a city ordinance prohibiting the acts prohibited by this section, a city attorney 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.

(2) Prior to filing a complaint alleging a violation of a city ordinance prohibiting the acts prohibited by this section, a city attorney shall request and shall receive from the Kansas bureau of investigation central repository all criminal history record information concerning such person.

(3) If 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, the city attorney shall refer the violation to the appropriate county or district attorney for prosecution.

(s) 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.

(t) 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.

(u) Upon a ~~fourth~~ third 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.

(v) 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.

(w) 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.

(x) 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.

Sec. 4. K.S.A. 2008 Supp. 12-4106 is hereby amended to read as follows: 12-4106. (a) The municipal judge shall have the power to administer the oaths and enforce all orders, rules and judgments made by such municipal judge, and may fine or imprison for contempt in the same manner and to the same extent as a judge of the district court.

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

persons.

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

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

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

(f) The municipal court judge shall ensure that information concerning persons arrested or charged with a violation of a city ordinance prohibiting the acts prohibited by K.S.A. 8-1567, and amendments thereto, is forwarded to the Kansas bureau of investigation central repository.

Sec. 5. K.S.A. 12-4517 is hereby amended to read as follows: 12-4517. (a) (1) The municipal court judge shall ensure that all persons convicted of violating municipal ordinance provisions that prohibit conduct comparable to a class A or B misdemeanor or assault as defined in K.S.A. 21-3408 and amendments thereto under a Kansas criminal statute are fingerprinted and processed.

(2) The municipal court judge shall ensure that all persons arrested or charged with a violation of a city ordinance prohibiting the acts prohibited by K.S.A. 8-1567, and amendments thereto, are fingerprinted and processed at the time of booking.

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

Sec. 6. K.S.A. 12-4517 and K.S.A. 2008 Supp. 8-1567 and 12-4106 are hereby repealed.

Sec. 7. On and after July 1, 2010, K.S.A. 2008 Supp. 8-1567, as amended by section 2 of this act, is hereby repealed.

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

Amendment to Proposed Substitute for Senate Bill 278 (9rs0886)
Senator Owens (RS - JThompson - 03/03/09)

Page 27 of draft - Insert "(1)" after "(g)"

After "program." insert the following (language from (f)(2)):

(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.

Senate Judiciary
3-3-09
Attachment 7

Session of 2009

SENATE BILL No. 157

By Committee on Judiciary

2-2

~~AN ACT relating to drivers' licenses; concerning driver improvement clinics; providing for the disposition of certain moneys; amending K.S.A. 2008 Supp. 8-255 and 8-267 and repealing the existing sections.~~

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

New Section ~~1.~~ There is hereby created in the state treasury the correctional services special revenue fund. All moneys credited to the correctional services special revenue fund shall be used by the department of corrections only for the purpose of ~~funding community corrections~~. All expenditures from the correctional services special revenue fund shall be made in accordance with appropriation acts, upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of corrections.

Sec. ~~2.~~ K.S.A. 2008 Supp. 8-255 is hereby amended to read as follows: 8-255. (a) The division is authorized to restrict, suspend or revoke a person's driving privileges upon a showing by its records or other sufficient evidence the person:

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

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

(3) is incompetent to drive a motor vehicle;

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

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

Proposed Amendment - Senator D. Schmidt
(RS - JThompson - 03/03/09)

Add provisions of SB 157 to Proposed Sub for SB 278 (9rs0886)

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

2. On and after January 1, 2010,

providing substance abuse treatment in department of corrections facilities

3. On and after January 1, 2010,

(b) The division shall suspend a person's driving privileges when required by K.S.A. 8-262, 8-1014, 21-3765 or 41-727, and amendments thereto, and shall disqualify a person's privilege to drive commercial motor vehicles when required by K.S.A. 8-2,142, and amendments thereto. The division shall restrict a person's driving privileges when required by K.S.A. 2008 Supp. 39-7,155, and amendments thereto.

(c) When the action by the division restricting, suspending, revoking or disqualifying a person's driving privileges is based upon a report of a conviction or convictions from a convicting court, the person may not request a hearing but, within 30 days after notice of restriction, suspension, revocation or disqualification is mailed, may submit a written request for administrative review and provide evidence to the division to show the person whose driving privileges have been restricted, suspended, revoked or disqualified by the division was not convicted of the offense upon which the restriction, suspension, revocation or disqualification is based. Within 30 days of its receipt of the request for administrative review, the division shall notify the person whether the restriction, suspension, revocation or disqualification has been affirmed or set aside. The request for administrative review shall not stay any action taken by the division.

(d) Upon restricting, suspending, revoking or disqualifying the driving privileges of any person as authorized by this act, the division shall immediately notify the person in writing. Except as provided by K.S.A. 8-1002 and 8-2,145, and amendments thereto, and subsections (c) and (g), if the person makes a written request for hearing within 30 days after such notice of restriction, suspension or revocation is mailed, the division shall afford the person an opportunity for a hearing as early as practical not sooner than five days nor more than 30 days after such request is mailed. If the division has not revoked or suspended the person's driving privileges or vehicle registration prior to the hearing, the hearing may be held within not to exceed 45 days. Except as provided by K.S.A. 8-1002 and 8-2,145, and amendments thereto, the hearing shall be held in the person's county of residence or a county adjacent thereto, unless the division and the person agree that the hearing may be held in some other county. Upon the hearing, the director or the director's duly authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require an examination or reexamination of the person. When the action proposed or taken by the division is authorized but not required, the division, upon the hearing, shall either rescind or affirm its order of restriction, suspension or revocation or, good cause appearing therefor, extend the restriction or suspension of the person's driving privileges, modify the terms of the restriction or suspension or revoke the person's driving

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privileges. When the action proposed or taken by the division is required, the division, upon the hearing, shall either affirm its order of restriction, suspension, revocation or disqualification, or, good cause appearing therefor, dismiss the administrative action. If the person fails to request a hearing within the time prescribed or if, after a hearing, the order of restriction, suspension, revocation or disqualification is upheld, the person shall surrender to the division, upon proper demand, any driver's license in the person's possession.

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

(f) ~~The division, in the interest of traffic and safety, may establish driver improvement clinics throughout the state and, upon reviewing the driving record of a person whose driving privileges are subject to suspension under subsection (a)(2), may permit the person to retain such person's driving privileges by attending a driver improvement clinic. A person who is required to attend a driver improvement clinic shall pay a fee of $15. Amounts received under this subsection shall be remitted 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 same in the state treasury to the credit of the division of vehicles operating fund.~~ *The division, in the interest of traffic and safety, may establish or contract with a private individual, corporation, partnership or association for the services of driver improvement clinics throughout the state and, upon reviewing the driving record of a person whose driving privileges are subject to suspension under subsection (a)(2), may permit the person to retain such person's driving privileges by attending a driver improvement clinic. Any person other than a person issued a commercial driver's license under K.S.A. 8-2,125 et seq., and amendments thereto, desiring to attend a driver improvement clinic shall make application to the division and such application shall be accompanied by the required fee. The secretary of revenue shall adopt rules and regulations prescribing a driver's improvement clinic fee which shall*

not exceed $500 and such rules and regulations deemed necessary for carrying out the provisions of this section, including the development of standards and criteria to be utilized by such driver improvement clinics. Amounts received under this subsection shall be remitted 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 same in the state treasury as prescribed by subsection (f) of K.S.A. 8-267, and amendments thereto.

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

4. On and after January 1, 2010,

Sec. ~~3.~~ K.S.A. 2008 Supp. 8-267 is hereby amended to read as follows: 8-267. All moneys received under this act shall be remitted by the secretary of revenue 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 and shall:

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

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

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

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

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

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

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

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

Moneys in the state safety fund and in the motorcycle safety fund shall be distributed to provide funds for driver training courses in the schools in Kansas and for the administration of this act, as the legislature shall provide. In addition, moneys in the motorcycle safety fund shall be distributed to provide funds for courses in motorcycle safety in community colleges in Kansas. Moneys in the truck driver training fund shall be distributed to provide funds for courses in truck driver training in community colleges, area vocational schools and area vocational-technical schools in Kansas. Except as otherwise provided by K.S.A. 8-241, and amendments thereto, the state treasurer shall credit the balance of all moneys received under this act, including all moneys received from commercial driver's license endorsements to the state highway fund.

Sec. 4. K.S.A. 2008 Supp. 8-255 and 8-267 are hereby repealed.

~~Sec. 5. This act shall take effect and be in force from and after January 1, 2010, and its publication in the statute book.~~

10. On and after January 1, 2010,

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