

MINUTES

KANSAS DUI COMMISSION

December 13, 2010
Room 346-S--State Capitol

Members Present

Senator Thomas C. (Tim) Owens, Chairperson
Representative Janice Pauls, Vice-chairperson
Representative Lance Kinzer
Greg Benefiel, Assistant District Attorney, Douglas County
Pete Bodyk, Kansas Department of Transportation
Major Mark Bruce, Kansas Highway Patrol
Leslie Moore, Kansas Bureau of Investigation
Honorable Jennifer Jones
Deborah Stidham, Kansas Department of Social and Rehabilitation Services
Retired Police Chief Ed Klumpp
Chris Mechler, Court Services Officer, Office of Judicial Administration
Helen Pedigo, Executive Director, Kansas Sentencing Commission
Marcy Ralston, Kansas Department of Revenue
Honorable Peter V. Ruddick, 10th Judicial District
Les Sperling, President, Kansas Association of Addiction Professionals
Doug Wells, Attorney, Kansas Bar Association
Karen Wittman, Attorney General's Office
Sheriff Ken McGovern, Douglas County

Staff Present

Jason Thompson, Office of the Revisor of Statutes
Doug Taylor, Office of the Revisor of Statutes
Sean Ostrow, Office of the Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Lauren Douglass, Kansas Legislative Research Department
Gary Deeter, Committee Assistant

Members Absent

Senator David Haley
Dalyn Schmitt, Substance Abuse Professionals
Roger Werholtz, Secretary, Kansas Department of Corrections

Jeremy Thomas, Parole Officer
Mary Ann Khoury, DUI Victim Center of Kansas

Others Attending

See attached list.

Morning Session

After calling the meeting to order at 9:10 a.m., Chairperson Tim Owens thanked members for the work accomplished to date and noted that the 155-page bill draft is indicative of the work accomplished by the Commission, distributed a memento of appreciation, and welcomed staff Jason Thompson, who was asked to review the provisions in Sections 24 to 35 of the proposed bill draft because these are the provisions the Commission was not able to review at its November 15, 2010 meeting (Attachments 1 and 2). Mr. Thompson advised he would review Sections 1 through 23 afterward.

Section 24 (page 94), in contrast with present law which allows expungement for certain crimes after three or more years after satisfaction of the sentence imposed or discharged from supervision, this provision in the bill draft would allow expungement after ten years for a municipal violation of a DUI ordinance. A similar provision regarding expungement of a DUI conviction from district court may be found in Section 30 of the draft bill. Greg Benefiel asked the Commission to extend the provision to include the new crime of refusing to submit to a test to determine the presence of alcohol or drugs for consistency found in New Section 2. Doug Wells commented that test refusal is a different crime from DUI and an individual should be able to expunge it in the three years that other crimes are authorized to be expunged. *Greg Benefiel moved and Karen Wittman seconded to make expungement under New Section 2 subject to the ten-year expungement rule. The motion failed. Doug Wells moved and Les Sperling seconded to include a commercial DUI under the ten-year expungement provision unless prohibited by federal law. The motion failed.* The Commission made no further changes to this provision in the bill draft.

Section 25 (page 102) provides for certain bond conditions for release prior to trial that may be imposed at the court's discretion for persons charged with the crime of commercial DUI, DUI, or the newly created crime of test refusal. The bond conditions include a prohibition on operating or attempting to operate a motor vehicle without a valid driver's license and insurance or proof of installation of an ignition interlock device. The Commission made no further changes to this provision in the bill draft.

Section 26 (page 106) provides, on an appeal from a municipal court conviction to the district court, the complaint shall be amended to reflect the proper number of prior convictions. *Doug Wells moved and Helen Pedigo seconded the motion to set a time limit of 20 days after charges are filed to amend a municipal court appeal in the district court (Section 26 subsection (c));* he noted that it is unfair to defense attorneys to amend charges immediately before a trial. Discussion focused on the variables that make a time limit too inflexible and limit a judge's discretion. *With the agreement of Ms. Pedigo, Mr. Wells moved to delete the 20-day requirement and changed the "shall be allowed to amend" to "may be allowed to amend."*

Further, he added that the words "to the district court's satisfaction" be stricken. The motion passed.

Section 27 (page 107) adds a requirement of 24 months post-release for convictions of commercial DUI, DUI, or test refusal. Additionally, the bill draft provides review by the Kansas Parole Board for early release for offenders who are convicted of felony commercial DUI, DUI, or test refusal and who complete the treatment programs and other items specified by the Secretary of Corrections. The Commission made no further changes to this provision in the bill draft.

Section 28 (page 121) provides for the culpability standard of strict liability for a violation of the new crime of test refusal. *Greg Benefiel moved and Ed Klumpp seconded to expand Section 28 to include a commercial DUI in the list of strict liability crimes. The motion passed.* Doug Wells was recorded as voting no.

Section 29 (page 122) creates a new crime of aggravated battery while DUI. The Commission made no further changes to this provision in the bill draft.

Section 30 (page 127) provides for an expungement of a conviction or diversion for a DUI in district court after ten years. Commercial DUI was not included in the bill draft. Under current law, there is no expungement for DUI or commercial DUI. The Commission made no further changes to this provision in the bill draft.

Section 31 (page 138) provides for changes in a felony DUI sentence to allow the sentencing court to retain jurisdiction to modify the sentence imposed. Additionally, the bill draft provides for the creation of special sentencing rules which would put felony DUIs on the Kansas Sentencing Guidelines nondrug grid as follows:

- Third and subsequent commercial DUI or test refusal so that a 3rd conviction is classified as a 7-G;
- A 4th conviction is classified as a 7-F;
- A 5th conviction is classified as a 7-E;
- A 6th conviction is classified as a 7-D;
- a 7th conviction is classified as a 7-C;
- An 8th conviction is classified as a 7-B; and
- A 9th or subsequent conviction is classified as a 7-A.

For felony DUI:

- A 4th conviction is classified as a 7-G;
- A 5th conviction is classified as a 7-F;

- A 6th conviction is classified as a 7-E;
- A 7th conviction is classified as a 7-D;
- An 8th conviction is classified as a 7-C;
- A 9th conviction is classified as a 7-B; and
- A 10th or subsequent conviction is classified as a 7-A.

The Commission made no further changes to this provision in the bill draft.

Section 32 (page 150) provides for the determination of an offender's criminal history classification when the current crime of conviction is committed after the effective date of the bill. The provision expands the rule that a conviction of a specified crime will count as one person felony for criminal history purposes by adding aggravated battery DUI to the list of crimes. The Commission made no further changes to this provision in the bill draft.

Section 33 (page 153) prohibits downward or dispositional departures for 3rd or subsequent test refusals, 3rd or subsequent commercial DUIs, or 4th or subsequent DUIs. The Commission made no further changes to this provision in the bill draft.

Sections 34 and 35 (page 154) repeal applicable statutes and designate the effective date of the proposed legislation. Marcy Ralston noted that the Kansas Department of Revenue's Division of Motor Vehicles (DMV) is building a new data system that will be completed July 2, 2012; implementing the proposed legislation in July 2011 will add complexity and cost to the new system. She recommended delaying implementation for a year. After discussion, it was the consensus of the members that the effective date should not be changed but the members agreed that the issue can be addressed during legislative debate on the bill. The Commission made no further changes to this provision in the bill draft.

Mr. Thompson began his review of Sections 1 through 23.

New Section 1 (page 1) was drafted to incorporate the changes requested at the November 15 meeting. It provides no professional licensing body shall sanction a professional licensee solely for a first-time DUI conviction or diversion for DUI; and provides that a due process hearing, in accordance with the Kansas Administrative Procedure Act, shall be conducted if requested by the licensee. Members accepted Greg Benefiel's recommendation, by consensus, that Section 1 be amended to include first time test refusal conviction within the protection of the new section. The Commission made no further changes to this provision in the bill draft.

New Section 2 (page 2), creating the crime of refusing to submit to a DUI test, prompted much discussion, especially whether the "look-back" provision extended only to July 1, 1996, or back an entire lifetime, and whether the look-back included conviction for any other kind of crime (Section 2, sub-section (m)). *Karen Wittman moved and Pete Bodyk seconded that a person is not eligible for diversion if he or she refused to submit to a test or has been convicted of any of the list of crimes in subsection (m) of New Section 2. Doug Wells moved and Les Sperling seconded a substitute motion that the lifetime look-back begins July 1, 2011. The substitute motion failed. The original motion passed.* Doug Wells was recorded as voting no.

In New Section 2 subsection (a), *Doug Wells moved to insert the word "unreasonably" in the phrase, "Refusing to submit unreasonably to a test. . . ." The motion died for lack of a second.*

Doug Wells moved to include language in New Section 2 to account for a person failing to complete the test due to a medical or physical condition. Mr. Wells restated the motion to clarify that it would not be a refusal to complete a test if the test was not completed due to medical reason unrelated to ingestion. Hon. Pete Ruddick seconded the motion.

Greg Benefiel made a substitute motion, seconded by Rep. Lance Kinzer to amend KSA 8-1001 so that if a person attempts to take the breath test but does not complete it, he or she be given the opportunity to take a blood test, and if he or she does not take the blood test, it is a refusal. The substitute motion failed.

The original motion was voted on and failed. The Commission made no further changes to this provision in the bill draft.

New Section 3 (page 8) provides a mechanism for early release from prison if a person convicted of felony DUI completes the treatment programs and other items specified by the Secretary of Corrections. The Commission made no further changes to this provision in the bill draft.

Section 4 (page 9) requires the Kansas Bureau of Investigation approve rules and regulations regarding a saliva-testing device by July 1, 2012. The Commission made no further changes to this provision in the bill draft.

Afternoon Session

Section 5 (page 9) amends KSA 8-235 to clarify that no person shall drive a motorized bicycle if such person has had their driving privilege suspended for a conviction of commercial DUI or a test refusal. The Commission made no further changes to this provision in the bill draft.

Section 6 (page 11) expands KSA 8-241, regarding when a driver's license examination must be taken, to include a conviction for test refusal. The Commission made no further changes to this provision in the bill draft.

Section 7 (page 13) expands KSA 8-262, driving with a suspended, canceled, or revoked driver's license to add commercial DUI or test refusal to the list of convictions that makes the person ineligible for suspension of sentence, probation, or parole until the person has served at least 90 days' imprisonment. The Commission made no further changes to this provision in the bill draft.

Section 8 (page 16) expands KSA 8-285 to include test refusal as one of the crimes that will qualify a person to be an habitual violator if convicted of three or more of the specified crimes within a five-year period. The Commission made no further changes to this provision in the bill draft.

Section 9 (page 18) expands KSA 8-2,142 to include the new crime of test refusal to the list of crimes disqualifying a person from driving a commercial vehicle. The Commission made no further changes to this provision in the bill draft.

Section 10 (page 23) amends the crime of commercial DUI and adds provisions on penalties; prior convictions or diversions for other related crimes to count as prior convictions for this crime; authorization for only one diversion; and authorization of a city ordinance or county resolution only if the city or county meets certain criteria. *Doug Wells moved to reinstate subsection (b) to require a person convicted of driving a commercial vehicle under the influence to serve at least 48 consecutive hours for a first offense and at least 5 days for a second offense. The motion failed for lack of a second.*

Members discussed what agencies, after an arrest, receive arrest and conviction records. Chris Mechler wanted to add the Kansas Criminal Justice Information System (KCJIS) to the list of agencies a prosecutor shall request and receive records from prior to filing a complaint alleging commercial DUI. Additionally, she wanted the court to receive the same records that the prosecutor received from the Division, KBI, and KCJIS. *Chris Mechler moved and Greg Benefiel seconded the motion that the language of subsection (h) mirror the language of subsection (g) and that commensurate changes be made to the DUI statute and the test refusal statute to require the court to request and receive records from the Division, KBI, and KCJIS prior to sentencing. The motion passed.*

By consensus, the Commission removed the provision on diversion for commercial DUI that was inadvertently included in this section.

Section 11 (page 32) establishes implied consent to submit to a DUI test if a person drives a motor vehicle on public streets. The Commission made no further changes to this provision in the bill draft.

Section 12 (page 40) requires a licensed provider to conduct a drug or alcohol evaluation and make recommendations. The Commission made no further changes to this provision in the bill draft.

Section 13 (page 47) adds provisions for a saliva test using a device approved by KBI as a preliminary screening test. There was a brief discussion of the stricken language regarding the purpose of the screening test, such as to test for the presence of drugs. The Commission decided it was not an issue. The Commission made no further changes to this provision in the bill draft.

Section 14 (page 48) redefines "alcohol or drug-related conviction" to be consistent with the definitions found in the test refusal, commercial DUI, and DUI sections of the draft bill. The bill draft adds a definition for "Department" to reflect the new Kansas Department of Health and Environment responsibilities regarding certification or approval of ignition interlock devices. *Doug Wells moved and Lance Kinzer seconded to strike the words "or other bodily substances" in Section 11 subsection (a) and Section 14 subsection (i). There was discussion that this language is current law. The motion failed.* The Commission made no further changes to this provision in the bill draft.

Section 15 (page 51) lists administrative penalties for test refusal, test failure, or conviction. The bill draft provides for a shorter suspension period, with the option for restricted driving privileges after 45 days, followed by increasing ignition interlock restriction periods. Any period of driver's license suspension or restriction is stayed during incarceration with the Kansas

Department of Corrections, with credit given for any time served on license suspension or restriction prior to incarceration. The Commission made no further changes to this provision in the bill draft.

Section 16 (page 57) provides details on suspension or revocation of driving privileges. Subsection (a) authorizes restricted driving privileges during suspension period, in accordance with federal law. The remaining subsections provide for ignition interlock, reinstatement of driving privileges, and retroactive application, if requested. Without objection, members accepted Marcy Ralston's recommendation to amend the wording of (a)(2) to read, ". . . unless such person's driving privileges have been suspended, revoked, canceled, or disqualified. . . ."

Marcy Ralston was concerned that subsection (a)(2) only required a violation of the driving restriction for the Department to suspend the person's driver's license for an additional year. Ms. Ralston asked the language be changed to require a conviction for a violation of the driving restriction. *Marcy Ralston moved and Sheriff Ken McGovern seconded to amend subsection (a)(2) to read, "If such person is convicted of violating the restrictions," The motion passed.*

Doug Wells moved and Hon. Pete Ruddick seconded the motion to allow a person restricted because of a first offense conviction to drive during the course of work. A substitute motion was made by Marcy Ralston and seconded by Ed Klumpp to allow a person restricted because of a first offense conviction to drive a vehicle with an ignition interlock device to and from work and during the course of employment. The motion passed. The Commission made no further changes to this provision in the bill draft.

Section 17 (page 60) removes the responsibility of developing rules and regulations regarding the approval of ignition interlock devices and manufacturer requirements from the Kansas Department of Revenue, Division of Vehicles, and places the responsibility with the Kansas Department of Health and Environment. The responsibility of developing rules and regulations regarding maintenance and reporting requirements is retained by the Division of Vehicles. Also included in this section is a provision providing that the current rules and regulations will remain in effect until the Secretary of Health and Environment adopts rules and regulations.

Section 18 (page 63) amends KSA 8-1017, which provides for the crime of circumvention of an ignition interlock device and the penalties for such a violation. *Greg Benefiel moved and Karen Wittman seconded the motion to add operating a vehicle not equipped with an ignition interlock device during the restricted period as a violation that would be penalized as follows:*

- *On a first conviction, the Division shall extend the ignition interlock period on the person's driving privileges for an additional 90 days; and*
- *On a second or subsequent conviction, the Division shall restart the original ignition interlock restriction period on the person's driving privileges. The motion passed.*
Doug Wells was recorded as voting no.

Representative Pauls moved and Greg Benefiel seconded the motion to restore the stricken language in subsection (c), which required the Division to suspend the person's driving privileges for a period of two years, for a person convicted of blowing into or starting a motor

vehicle equipped with an ignition interlock device. The motion was modified to provide for a two-year restriction with authority to drive to and from work or during the course of employment. The motion passed. Doug Wells was recorded as voting no.

After much discussion of the phrase, “for the purpose of” unintentionally confusing the issue of culpability, Ed Klumpp moved and Karen Wittman seconded the motion to strike the phrase “for the purpose of” in subsection (a)(2) (request or solicit another to blow into an ignition interlock device), and (a)(3)(blow into an ignition interlock device). The motion passed. The Commission made no further changes to this provision in the bill draft.

Section 19 (page 64) incorporates the Commission’s directive from the last meeting to create a flat fee of \$50 for all administrative hearings, with no differentiation for in-person or telephone hearings. The funds are credited to the Division of Vehicles operating fund. Doug Wells moved and Chris Mechler seconded the motion to require language be added to subsections (h)(1), (h)(2) and (h)(3) to require that the officer’s stop must be valid. During the discussion of the motion, *Martin v. Kansas Department of Revenue* was mentioned. It held that the constitutional issue of the validity of the stop may not be decided by an administrative agency but the driver is not precluded from raising the issue at the administrative hearing. The motion failed. The Commission made no further changes to this provision in the bill draft.

Section 20 amends KSA 8-1501, relating to the operation of vehicles, to add the newly created crime of test refusal to the list of crimes that apply upon highways and elsewhere throughout the state.

Doug Wells moved to amend Section 20 to state that the section relating to the crimes of reckless driving, fleeing or eluding a police officer, and test refusal do not apply to the operation of a vehicle driven on private property owned or leased by the operator. The motion died for lack of a second. The Commission made no further changes to this provision in the bill draft.

Section 21 (page 73) amends KSA 8-1567, the crime of DUI, to incorporate the changes requested by the Commission at the last meeting. Greg Benefiel, addressing the penalties in subsection (a)(1)(A), moved and Karen Wittman seconded the motion to strike the amounts “nor more than six months’ imprisonment” and “nor more than \$1000” and replace with the amounts “nor more than 12 months’ imprisonment” and “nor more than \$2500” to make it consistent with a class “A” misdemeanor. Likewise, in subsection (a)(1)(B) to strike the amount “nor more than \$1500” and replace with “nor more than \$2500.” The motion passed. Doug Wells voted no on the motion and requested his vote be recorded. The Commission made no further changes to this provision in the bill draft.

Section 22 (page 92), amends KSA 12-4104, dealing with municipal court jurisdiction, by removing the municipal court’s concurrent jurisdiction for felony DUIs. The Commission made no further changes to this provision in the bill draft.

Section 23 (page 92) amends KSA 12-4106, dealing with municipal judge powers and duties. Specifically, in all cases alleging a violation of a city ordinance prohibiting commercial DUI, DUI, or test refusal, the municipal judge is required to ensure utilization of a standardized risk assessment instrument approved by the Kansas Sentencing Commission; utilization of a standardized substance abuse evaluation approved by the Secretary of Social and Rehabilitation Services; utilization of the results of such assessment and such evaluation to determine the disposition of the case; capability to supervise the offender accordingly; and reporting of the disposition of the case to the KBI. Additionally, the municipal judge is required

to ensure electronic reporting of the disposition of such case to the KBI on and after July 1, 2012. The Commission made no further changes to this provision in the bill draft.

The Chairperson commended Jason Thompson for his expertise in drafting the proposed legislation.

Greg Benefiel made a motion, seconded by Pete Bodyk, to approve the proposed legislation as amended. The motion passed. Doug Wells voted no and wished to be recorded as voting no.

Representative Lance Kinzer made a motion, seconded by Chris Mechler, to approve the minutes for November 15, 2010. The motion passed.

Ed Klumpp recommended reflecting in the final report, in a direct manner, the importance of the central repository as the place where all DUI information will be stored; and that KBI and CJIS be given the tools necessary to ensure compliance with the statutes on reporting arrests and dispositions.

Greg Benefiel suggested the Legislature consider requiring training for prosecutors who prosecute DUIs. Chairperson Owens wanted to obtain a grant to train judges, or whoever wants or needs to be trained on the changes recommended by the Commission and adopted by the Legislature. Pete Bodyk offered assistance obtaining funding for such training.

The meeting was adjourned at 3:53 p.m. No further meeting was scheduled.

Prepared by Gary Deeter
Edited by Athena Andaya

Approved by Commission on:

December 28, 2010

(Date)

KANSAS DUI COMMISSION

GUEST LIST

DATE: December 13, 2010

NAME	REPRESENTING
Karin Barlow	Cap Lobby Group LLC
DARIAN DEANWILL	KIP
Tracy Russell	Value Options
Patrick Vogelblay	Kearney and Assoc
SEAN MILLER	CAPITOL STRATEGIES
Amy Campbell	KS MH Coalition
Sabrina Hansen	KS Assoc Health Prof

MEMORANDUM

To: Chairman Owens and Members of the DUI Commission
From: Jason Thompson, Senior Assistant Revisor
Date: December 13, 2010
Subject: DUI Commission Bill Draft, 1rs0028 (PDF version)

New Section 1. (page 1) No automatic professional license consequence solely because of a first DUI conviction or diversion. Add that hearings will be conducted in accordance with the Kansas administrative procedure act.

New Sec. 2. (p. 2) Creating the crime of "refusing to submit to a test to determine the presence of alcohol or drugs." Recodified criminal code format, language consistent with K.S.A. 8-2,144 and 8-1567. Prior convictions or diversion for other related crimes count as prior convictions for this crime, city ordinance or county resolution authorized only if the city or county meets certain criteria, only one diversion for any of the related crimes in the person's lifetime.

New Sec. 3. (p. 8) Provides a mechanism for early release from prison if person convicted of DUI completes treatment programs and other items specified by the secretary of corrections (used K.S.A. 75-5210a as a model). Companion amendment in K.S.A. 22-3717, see below, to require parole board decision on release.

New Sec. 4. (p. 9) KBI authority to approve saliva testing device (used K.S.A. 65-5,107 as a model). Companion amendment in K.S.A. 8-1012, see below, for use of the device.

Sec. 5. (p. 9) K.S.A. 8-235, driver's licenses. K.S.A. 8-1567 reference, added K.S.A. 8-2,144 and section 2.

Sec. 6. (p. 11) K.S.A. 8-241, license examinations. K.S.A. 8-1567 reference, added section 2.

Sec. 7. (p. 13) K.S.A. 8-262, driving while license canceled, suspended or revoked. K.S.A. 8-1567 references, added K.S.A. 8-2,144 and section 2, other cleanup.

Sec. 8. (p. 16) K.S.A. 8-285, habitual violator. K.S.A. 8-1567 reference, added section 2, other cleanup.

Attachment 1
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Sec. 9. (p. 18) K.S.A. 8-2,142, disqualification from driving commercial vehicle. K.S.A. 8-1567 reference, added section 2, other cleanup.

Sec. 10. (p. 23) K.S.A. 8-2,144, "Driving a commercial motor vehicle under the influence." Recodified criminal code format, language consistent with section 2 and K.S.A. 8-1567, Revised penalties, prior convictions or diversion for other related crimes count as prior convictions for this crime, city ordinance or county resolution authorized only if the city or county meets certain criteria, only one diversion for any of the related crimes in the person's lifetime.

Sec. 11. (p. 32) K.S.A. 8-1001, implied consent. Updated the advisory in subsection (k) to reflect section 2 and the administrative penalty changes in K.S.A. 8-1014. Updated subsection (n) to reflect section 2.

Sec. 12. (p. 40) K.S.A. 8-1008, alcohol and drug evaluations. Evaluations by licensed providers with a DUI specialty, licensed by SRS, evaluations prior to diversion or prior to sentencing for violators of section 2 and K.S.A. 8-2,144 and 8-1567.

Sec. 13. (p. 47) K.S.A. 8-1012, preliminary testing. Added provisions for test of saliva using device approved by KBI (see section 4).

Sec. 14. (p. 48) K.S.A. 8-1013, definitions for article 10 of chapter 8. "Alcohol or drug-related conviction" definition changed to be consistent with definition in section 2 and K.S.A. 8-2,144 and 8-1567. "Department" definition added to reflect new KDHE responsibilities in K.S.A. 8-1016.

Sec. 15. (p. 51) K.S.A. 8-1014, administrative penalties for test refusal, test failure or conviction. Penalties use shorter suspension period, with option for restricted privileges after 45 days (see K.S.A. 8-1015), followed by increasing ignition interlock restriction periods. Any period of suspension or restriction is stayed during incarceration with the department of corrections, credit given for any time before incarceration.

Sec. 16. (p. 57) K.S.A. 8-1015, details on driving privilege suspension and revocation. Subsection (a) authorizes restricted driving privileges during suspension period, in accordance with federal law. Remaining subsections deal with ignition interlock details, reinstatement of driving privileges, retroactive application if requested.

Sec. 17. (p. 60) K.S.A. 8-1016, rules and regulations on ignition interlock devices. Places rule and regulation responsibility for approval of devices with KDHE, rather than

division of vehicles, but keeps rules and regulations on maintenance and reporting requirements with the division.

Sec. 18. (p. 63) K.S.A. 8-1017, ignition interlock violations. Certain violations get extended interlock, rather than license suspension.

Sec. 19. (p. 64) K.S.A. 8-1020, administrative hearings. Fee of \$50 for hearings, no difference for in-person or telephone hearings, with the funds going to the division of vehicles operating fund.

Sec. 20. (p. 73) K.S.A. 8-1501, application of sections in article 15. Add section 2 reference.

Sec. 21. (p. 73) K.S.A. 8-1567, "driving under the influence." Recodified criminal code format, language consistent with section 2 and K.S.A. 8-2,144. Revised penalties, prior convictions or diversion for other related crimes count as prior convictions for this crime, city ordinance or county resolution authorized only if the city or county meets certain criteria, only one diversion for any of the related crimes in the person's lifetime.

Sec. 22. (p. 92) K.S.A. 12-4104, municipal court jurisdiction. Removes concurrent jurisdiction for DUI violations when they would be punished as a felony if charged in district court.

Sec. 23. (p. 92) K.S.A. 12-4106, municipal judge powers and duties. In subsection (f), add responsibilities for municipal judge in ordinance violations of K.S.A. 8-2,144 or 8-1567 or section 2, including electronic reporting of dispositions to KBI by July 1, 2012.

* **Sec. 24.** (p. 94) K.S.A. 12-4516, expungement, municipal offenses. Ten year rule for expungement of violation of a DUI ordinance, current law allows no expungement.

Sec. 25. (p. 102) K.S.A. 22-2802, release prior to trial, bond. Adds special bond provisions for DUI cases, not mandatory.

Sec. 26. (p. 106) K.S.A. 22-3610, appeals from municipal court. New subsection (c) to allow amendment of complaint in district court.

Sec. 27. (p. 107) K.S.A. 22-3717, parole and postrelease. Subsection (d)(1)(H) adds requirement of 24 months postrelease for a violation of K.S.A. 8-2,144 or 8-1567 or section 2. Subsection (w) adds parole board review for early release pursuant to section 3.

Sec. 28. (p. 121) Section 14 of chapter 136 of the 2010 Session Laws of Kansas, recodified criminal code, culpability. Adds new crime of test refusal (section 2) to allow guilt without culpable mental state (note that 8-1567 is listed here currently).

Sec. 29. (p. 122) Section 48 of chapter 136 of the 2010 Session Laws of Kansas, recodified criminal code, battery. Subsection (g) creates new crime of aggravated battery while DUI.

Sec. 30. (p. 127) Section 254 of chapter 136 of the 2010 Session Laws of Kansas, recodified criminal code, expungement. Ten year rule for expungement of DUIs, current law allows no expungement.

Sec. 31. (p. 138) Section 285 of chapter 136 of the 2010 Session Laws of Kansas, recodified criminal code, non-drug sentencing grid. Special rule in subsection (i)(4) to retain jurisdiction in 3rd DUI cases. New subsection (s), special sentencing rule for 3rd and subsequent test refusal (section 2) or commercial DUI (8-2,144). New subsection (t), special sentencing rule for 4th and subsequent DUI (8-1567).

Sec. 32. (p. 150) Section 292 of chapter 136 of the 2010 Session Laws of Kansas, recodified criminal code, criminal history classification. New subsection (c)(3) criminal history provision for involuntary manslaughter while DUI and aggravated battery while DUI.

Sec. 33. (p. 153) Section 299 of chapter 136 of the 2010 Session Laws of Kansas, recodified criminal code, departure sentences. Prohibits dispositional or durational departure for 3rd or subsequent test refusal (section 2) or commercial DUI (8-2,144), and 4th or subsequent DUI (8-1567).

Sec. 34. (p. 154) Repealer section.

Sec. 35. (p. 154) Effective date ("publication in the statute book" = July 1, 2011).

PROPOSED BILL NO. _____

By

AN ACT concerning driving under the influence; creating the crime of refusing to submit to a test to determine the presence of alcohol or drugs; relating to testing; administrative penalties; crimes, punishment and criminal procedure; amending K.S.A. 8-241, 8-285, 8-1008, 8-1016, 8-1017, 8-1501, 22-3610 and K.S.A. 2009 Supp. 8-1567, as amended by section 3 of chapter 153 of the 2010 Session Laws of Kansas, and K.S.A. 2010 Supp. 8-235, 8-262, 8-2,142, 8-2,144, 8-1001, 8-1012, 8-1013, 8-1014, 8-1015, 8-1020, 12-4104, 12-4106, 12-4516, 22-2802, 22-3717, sections 14, 48, 254, 285, 292 and 299 of chapter 136 of the 2010 Session Laws of Kansas and repealing the existing sections; also repealing K.S.A. 2010 Supp. 8-1567.

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

New Section 1. (a) Notwithstanding any other provision of law, no professional licensing body shall suspend, restrict, deny, terminate, or fail to renew the professional license of a licensee solely because such licensee has:

(1) Been convicted of a first violation of K.S.A. 8-1567, and amendments thereto, or an ordinance of a city in this state, a resolution of a county in this state or any law of another state, which ordinance, resolution or law prohibits the acts prohibited by that statute; or

(2) entered into a diversion agreement in lieu of further criminal proceedings, or pleaded guilty or nolo contendere, on a complaint, indictment, information, citation or notice to appear alleging a first violation of K.S.A. 8-1567, and amendments thereto, or an ordinance of a city in this state, a resolution of a county in this state or any law of another state, which ordinance or law prohibits the acts prohibited by that statute.

(b) If requested by the licensee, the professional licensing body shall conduct a due process hearing, in accordance with the Kansas administrative procedure act, to determine how the violation

Attachment 2
DUI 12-13-10

described in subsection (a) will affect the licensee's professional license. After such hearing, the licensing body may take any action authorized by law, including, but not limited to, alternative corrective measures in lieu of suspension, restriction, denial, termination, or failure to renew the professional license of the licensee.

(c) Nothing in this section shall be construed to limit the authority of the division of vehicles of the department of revenue to restrict, revoke, suspend or deny a driver's license or commercial driver's license.

(d) As used in this section:

(1) "Licensee" means an individual who is or may be authorized to practice a profession in this state; and

(2) "professional licensing body" means an official, agency, board or other entity of the state which authorizes individuals to practice a profession in this state and issues a license, certificate, permit or other authorization to an individual so authorized.

New Sec. 2. (a) Refusing to submit to a test to determine the presence of alcohol or drugs is refusing to submit to or complete a test or tests deemed consented to under subsection (a) of K.S.A. 8-1001, and amendments thereto.

(b) (1) Refusing to submit to a test to determine the presence of alcohol or drugs is:

(A) On a first conviction a class A, nonperson misdemeanor. The person convicted shall be 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 shall 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 consecutive days' imprisonment mandated by this subsection may

be served by completing: (i) Six days 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; or (ii) 10 days under a house arrest program pursuant to section 249 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, only after such person has served 48 consecutive hours' imprisonment;

(B) on a second conviction a class A, nonperson misdemeanor. The person convicted shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined \$2,500. The person convicted shall serve at least 10 consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. The 10 consecutive days' imprisonment mandated by this subsection may be served by completing: (i) 12 days in a work release program only after such person has served 96 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; or (ii) 20 days under a house arrest program pursuant to section 249 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, only after such person has served 96 consecutive hours' imprisonment;

(C) on a third or subsequent conviction a severity level 7, nonperson felony.

(2) In addition, prior to sentencing for any conviction, the court shall order the person to participate in an alcohol and drug evaluation conducted by a licensed provider with a DUI specialty as provided in K.S.A. 8-1008, and amendments thereto. The person shall be required to follow any recommendation made by the provider after such evaluation, unless otherwise ordered by the court.

(c) 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.

(d) 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.

(e) Prior to filing a complaint alleging a violation of this section, a prosecutor shall request and shall receive from the: (1) Division of vehicles a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state; and (2) Kansas bureau of investigation central repository all criminal history record information concerning such person.

(f) 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 on 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.

(g) 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.

(h) Except as provided in subsection (i), 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 section as unlawful or prohibited in such city or county and prescribing penalties for violation thereof. The minimum penalty prescribed by any such ordinance or resolution shall not be less than the minimum penalty prescribed by this section 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.

(i) Notwithstanding any other law to the contrary, no city shall enact an ordinance declaring the acts prohibited by this section as unlawful or prohibited in such city and prescribing penalties for violation thereof unless:

(1) The municipal law enforcement in such city reports arrests to the Kansas bureau of investigation as required by law;

(2) the municipal court in such city utilizes a standardized risk assessment instrument approved by the Kansas sentencing commission, utilizes a standardized substance abuse evaluation approved by the secretary of social and rehabilitation services, utilizes the results of such assessment and such evaluation in determining disposition of the case, has the capability to supervise the offender accordingly and reports the disposition of such case to the Kansas bureau of investigation central repository; and

(3) the municipal court in such city, on and after July 1, 2012, reports the disposition of such case electronically to the Kansas bureau of investigation central repository.

(j) (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: (A) Division of vehicles a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state; and (B) Kansas bureau of investigation central repository all criminal history record information concerning such person.

(2) 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. The county or district attorney shall accept such referral and pursue a disposition of such violation, and shall not refer any such violation back to the city attorney.

(k) (1) Except as provided further, 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 or resolution.

(2) 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.

(3) The provisions of this subsection shall not apply to a plea bargaining agreement entered into for a violation of K.S.A. 8-1567, and amendments thereto, or a violation of any ordinance of a city or resolution of any county in this state which prohibits the acts prohibited by such section.

(l) (1) A person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section, or a violation of an ordinance of any city or resolution of any county

which prohibits the acts that this section prohibits, only once during the person's lifetime.

(2) Any person whom the prosecutor considers for eligibility or finds eligible to enter a diversion agreement in lieu of further criminal proceedings for a violation of this section, or a violation of an ordinance of any city or resolution of any county which prohibits the acts that this section prohibits, shall participate in an alcohol and drug evaluation conducted by a licensed provider with a DUI specialty as provided in K.S.A. 8-1008, and amendments thereto. Any diversion agreement entered shall require such person to follow any recommendation made by the provider after such evaluation, unless otherwise ordered by the court.

(m) When determining whether a conviction is a first, second, third or subsequent conviction of a violation of this section:

(1) Convictions for a violation of K.S.A. 8-1567, and amendments thereto, or a violation of an ordinance of any city or resolution of any county which prohibits the acts that such section prohibits, or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging any such violations, shall be taken into account, but only convictions or diversions occurring on or after July 1, 1996. Nothing in this provision shall be construed as preventing any court from considering any convictions or diversions occurring during the person's lifetime in determining the sentence to be imposed within the limits provided for a first, second, third or subsequent offender;

(2) any convictions for a violation of the following sections occurring during a person's lifetime shall be taken into account: (A) This section; (B) K.S.A. 8-2,144, and amendments thereto; (C) K.S.A. 32-1131, and amendments thereto; (D) subsection (a)(3) of section 40 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; (E) subsection (g) of section 48 of

chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; and (F) aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was committed while committing a violation of K.S.A. 8-1567, and amendments thereto;

(3) "conviction" includes: (A) Entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of a crime described in subsection (m)(2); (B) conviction of a violation of an ordinance of a city in this state, a resolution of a county in this state or any law of another state which would constitute a crime described in subsection (m)(1) or (m)(2); and (C) receiving punishment under the uniform code of military justice or Kansas code of military justice for an act which was committed on a military reservation and which would constitute a crime described in subsection (m)(1) or (m)(2) if committed off a military reservation in this state;

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

(5) multiple convictions of any crime described in subsection (m)(1) or (m)(2) arising from the same arrest shall only be counted as one conviction.

New Sec. 3. (a) (1) Within a reasonable amount of time after a person is committed to the custody of the secretary of corrections for service of a sentence for a violation of K.S.A. 8-2,144 or 8-1567 or section 2, and amendments thereto, the secretary of corrections shall enter into a written agreement with the inmate specifying treatment programs and other programs which the secretary determines the inmate shall satisfactorily complete in order to be prepared for early release pursuant to this section and K.S.A. 22-3717, and amendments thereto.

(2) The agreement shall be conditioned on the inmate's satisfactory conduct and attitude

while incarcerated. If the secretary determines that the inmate's conduct, attitude or needs require modifications or additions to those programs which are set forth in the agreement, the secretary shall revise the agreement.

(3) The secretary shall agree that when the inmate satisfactorily completes the programs required by the agreement, or any revision thereof, the secretary shall report that fact in writing to the Kansas parole board.

(b) A copy of any agreement and any revisions thereof shall be entered into the inmate's record.

New Sec. 4. On or before July 1, 2012, the director of the Kansas bureau of investigation shall adopt rules and regulations establishing:

(a) Criteria for preliminary screening devices for testing of saliva for law enforcement purposes, based on health and performance considerations; and

(b) a list of preliminary screening devices which are approved for testing of saliva for law enforcement purposes and which law enforcement agencies may purchase and train officers to use as aids in determining probable cause to arrest and grounds for requiring testing pursuant to K.S.A. 8-1001, and amendments thereto.

Sec. 5. K.S.A. 2010 Supp. 8-235 is hereby amended to read as follows: 8-235. (a) No person, except those expressly exempted, shall drive any motor vehicle upon a highway in this state unless such person has a valid driver's license. No person shall receive a driver's license unless and until such person surrenders or with the approval of the division, lists to the division all valid licenses in such person's possession issued to such person by any other jurisdiction. All surrendered licenses or the information listed on foreign licenses shall be returned by the division to the issuing department,

together with information that the licensee is now licensed in a new jurisdiction. No person shall be permitted to have more than one valid license at any time.

(b) Any person licensed under the motor vehicle drivers' license act may exercise the privilege granted upon all streets and highways in this state and shall not be required to obtain any other license to exercise such privilege by any local authority. Nothing herein shall prevent cities from requiring licenses of persons who drive taxicabs or municipally franchised transit systems for hire upon city streets, to protect the public from drivers whose character or habits make them unfit to transport the public. If a license is denied, the applicant may appeal such decision to the district court of the county in which such city is located by filing within 14 days after such denial, a notice of appeal with the clerk of the district court and by filing a copy of such notice with the city clerk of the involved city. The city clerk shall certify a copy of such decision of the city governing body to the clerk of the district court and the matter shall be docketed as any other cause and the applicant shall be granted a trial of such person's character and habits. The matter shall be heard by the court *de novo* in accordance with the code of civil procedure. The cost of such appeal shall be assessed in such manner as the court may direct.

(c) Any person operating in this state a motor vehicle, except a motorcycle, which is registered in this state other than under a temporary thirty-day permit shall be the holder of a driver's license which is classified for the operation of such motor vehicle, and any person operating in this state a motorcycle which is registered in this state shall be the holder of a class M driver's license, except that any person operating in this state a motorcycle which is registered under a temporary thirty-day permit shall be the holder of a driver's license for any class of motor vehicles.

(d) No person shall drive any motorized bicycle upon a highway of this state unless: (1) Such

person has a valid driver's license which entitles the licensee to drive a motor vehicle in any class or classes; (2) such person is at least 15 years of age and has passed the written and visual examinations required for obtaining a class C driver's license, in which case the division shall issue to such person a class C license which clearly indicates such license is valid only for the operation of motorized bicycles; or (3) such person has had their driving privileges suspended, for a violation other than a violation of K.S.A. 8-2,144, 8-1567 or 8-1567a or section 2, and amendments thereto, and has made application to the division for the issuance of a class C license for the operation of motorized bicycles, in accordance with paragraph (2), in which case the division shall issue to such person a class C license which clearly indicates such license is valid only for the operation of motorized bicycles.

(e) Violation of this section shall constitute a class B misdemeanor.

Sec. 6. K.S.A. 8-241 is hereby amended to read as follows: 8-241. (a) Except as provided in K.S.A. 8-2,125 through 8-2,142, and amendments thereto, any person licensed to operate a motor vehicle in this state shall submit to an examination whenever: (1) The division of vehicles has good cause to believe that such person is incompetent or otherwise not qualified to be licensed; or (2) the division of vehicles has suspended such person's license pursuant to K.S.A. 8-1014, and amendments thereto, as the result of a test refusal, test failure or conviction for a violation of K.S.A. 8-1567 or section 2, and amendments thereto, or a violation of a city ordinance or county resolution prohibiting the acts prohibited by K.S.A. 8-1567 or section 2, and amendments thereto, except that no person shall have to submit to and successfully complete an examination more than once as the result of separate suspensions arising out of the same occurrence.

(b) When a person is required to submit to an examination pursuant to subsection (a)(1), the

fee for such examination shall be in the amount provided by K.S.A 8-240, and amendments thereto. When a person is required to submit to an examination pursuant to subsection (a)(2), the fee for such examination shall be \$25. In addition, any person required to submit to an examination pursuant to subsection (a)(2): (1) As the result of a test failure, a conviction for a violation of K.S.A. 8-1567, and amendments thereto, or a violation of a city ordinance or county resolution prohibiting the acts prohibited by K.S.A. 8-1567, and amendments thereto, shall be required, at the time of examination, to pay a reinstatement fee of \$100 after the first occurrence, \$200 after the second occurrence, \$300 after the third occurrence and \$400 after the fourth occurrence; and (2) as a result of a test refusal, a conviction for a violation of section 2, and amendments thereto, or a violation of a city ordinance or county resolution prohibiting the acts prohibited by section 2, and amendments thereto, shall be required, at the time of examination, to pay a reinstatement fee of \$400 after the first occurrence, \$600 after the second occurrence, \$800 after the third occurrence and \$1,000 after the fourth occurrence. No reinstatement shall be allowed after the fifth or subsequent occurrence under either subsection (b)(1) or (b)(2). All examination fees collected pursuant to this section shall be remitted to the state treasurer, in accordance with the provisions of K.S.A. 75-4215, and amendments thereto, who shall deposit the entire amount in the state treasury and credit 80% to the state highway fund and 20% shall be disposed of as provided in K.S.A. 8-267, and amendments thereto. All reinstatement fees collected pursuant to this section shall be remitted to the state treasurer, in accordance with the provisions of K.S.A. 75-4215, and amendments thereto, who shall deposit the entire amount in the state treasury and credit 50% to the community alcoholism and intoxication programs fund created pursuant to K.S.A. 41-1126, and amendments thereto, 20% to the juvenile detention facilities fund created by K.S.A. 79-4803, and amendments thereto, 20% to the forensic

laboratory and materials fee fund cited in K.S.A. 28-176, and amendments thereto, and 10% to the driving under the influence equipment fund created by K.S.A. 75-5660, and amendments thereto. Moneys credited to the forensic laboratory and materials fee fund as provided herein shall be used to supplement existing appropriations and shall not be used to supplant general fund appropriations to the Kansas bureau of investigation.

(c) When an examination is required pursuant to subsection (a), at least five days' written notice of the examination shall be given to the licensee. The examination administered hereunder shall be at least equivalent to the examination required by subsection (e) of K.S.A. 8-247, and amendments thereto, with such additional tests as the division deems necessary. Upon the conclusion of such examination, the division shall take action as may be appropriate and may suspend or revoke the license of such person or permit the licensee to retain such license, or may issue a license subject to restrictions as permitted under K.S.A. 8-245, and amendments thereto.

(d) Refusal or neglect of the licensee to submit to an examination as required by this section shall be grounds for suspension or revocation of the license.

Sec. 7. K.S.A. 2010 Supp. 8-262 is hereby amended to read as follows: 8-262. (a) (1) Any person who drives a motor vehicle on any highway of this state at a time when such person's privilege so to do is canceled, suspended or revoked or while such person's privilege to obtain a driver's license is suspended or revoked pursuant to K.S.A. 8-252a, and amendments thereto, shall be guilty of a class B nonperson misdemeanor on the first conviction and a class A nonperson misdemeanor on the second or subsequent conviction.

(2) No person shall be convicted under this section if such person was entitled at the time of arrest under K.S.A. 8-257, and amendments thereto, to the return of such person's driver's license.

(3) Except as otherwise provided by subsection (a)(4) or (c), every person convicted under this section shall be sentenced to at least five days' imprisonment and fined at least \$100 and upon a second conviction shall not be eligible for parole until completion of five days' imprisonment.

(4) Except as otherwise provided by subsection (c), if a person: (A) Is convicted of a violation of this section, committed while the person's privilege to drive or privilege to obtain a driver's license was suspended or revoked for a violation of K.S.A. 8-2,144 or 8-1567 or section 2, and amendments thereto, or any ordinance of any city or resolution of any county or a law of another state, which ordinance or resolution or law prohibits the acts prohibited by ~~that statute~~ those statutes; and (B) is or has been also convicted of a violation of K.S.A. 8-2,144 or 8-1567 or section 2, and amendments thereto, or ~~of a municipal~~ any ordinance of any city or resolution of any county or law of another state, which ordinance or resolution or law prohibits the acts prohibited by ~~that statute~~ those statutes, committed while the person's privilege to drive or privilege to obtain a driver's license was so suspended or revoked, the person shall not be eligible for suspension of sentence, probation or parole until the person has served at least 90 days' imprisonment, and any fine imposed on such person shall be in addition to such a term of imprisonment.

(b) The division, upon receiving a record of the conviction of any person under this section, or any ordinance of any city or resolution of any county or a law of another state which is in substantial conformity with this section, upon a charge of driving a vehicle while the license of such person is revoked or suspended, shall extend the period of such suspension or revocation for an additional period of 90 days.

(c) (1) The person found guilty of a class A nonperson misdemeanor on a third or subsequent conviction of this section shall be sentenced to not less than 90 days imprisonment and fined not less

than \$1,500 if such person's privilege to drive a motor vehicle is canceled, suspended or revoked because such person:

(A) Refused to submit and complete any test of blood, breath or urine requested by law enforcement excluding the preliminary screening test as set forth in K.S.A. 8-1012, and amendments thereto;

(B) was convicted of violating the provisions of K.S.A. 40-3104, and amendments thereto, relating to motor vehicle liability insurance coverage;

(C) was convicted of vehicular homicide, K.S.A. 21-3405, and amendments thereto, involuntary manslaughter while driving under the influence of alcohol or drugs, K.S.A. 21-3442, and amendments thereto, or any other murder or manslaughter crime resulting from the operation of a motor vehicle; or

(D) was convicted of being a habitual violator, K.S.A. 8-287, and amendments thereto.

(2) 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 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, or any municipal ordinance to serve the remainder of the minimum sentence only after such person has served 48 consecutive hours' imprisonment.

(d) For the purposes of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section, "conviction" includes a conviction of a

violation of any ordinance of any city or resolution of any county or a law of another state which is in substantial conformity with this section.

Sec. 8. K.S.A. 8-285 is hereby amended to read as follows: 8-285. Except as otherwise provided in this section, as used in this act, the words and phrases defined in K.S.A. 8-234a, and amendments thereto, shall have the meanings ascribed to them therein. The term "habitual violator" means any resident or nonresident person who, within the immediately preceding five years, has been convicted in this or any other state:

(a) Three or more times of:

(1) Vehicular homicide, as defined by K.S.A. 21-3405, and amendments thereto, or as prohibited by any ordinance of any city in this state, any resolution of any county in this state or any law of another state which is in substantial conformity with that statute;

(2) violating K.S.A. 8-1567, and amendments thereto, or violating an ordinance of any city in this state, any resolution of any county in this state or any law of another state, which ordinance, resolution or law declares to be unlawful the acts prohibited by that statute;

(3) driving while the privilege to operate a motor vehicle on the public highways of this state has been canceled, suspended or revoked, as prohibited by K.S.A. 8-262, and amendments thereto, or while such person's privilege to obtain a driver's license is suspended or revoked pursuant to K.S.A. 8-252a, and amendments thereto, or, as prohibited by any ordinance of any city in this state, any resolution of any county in this state or any law of another state which is in substantial conformity with those statutes;

(4) perjury resulting from a violation of K.S.A. 8-261a, and amendments thereto, or resulting from the violation of a law of another state which is in substantial conformity with that statute;

(5) violating the provisions of the fifth clause of K.S.A. 8-142, and amendments thereto, relating to fraudulent applications, or violating the provisions of a law of another state which is in substantial conformity with that statute;

(6) any crime punishable as a felony, if a motor vehicle was used in the perpetration of the crime;

(7) failing to stop at the scene of an accident and perform the duties required by K.S.A. 8-1602 through 8-1604, and amendments thereto, or required by any ordinance of any city in this state, any resolution of any county of this state or a law of another state which is in substantial conformity with those statutes; ~~or~~

(8) violating the provisions of K.S.A. 40-3104, and amendments thereto, relating to motor vehicle liability insurance coverage, or an ordinance of any city in this state; or a resolution of any county in this state which is in substantial conformity with such statute; or

(9) violating section 2, and amendments thereto, or violating an ordinance of any city in this state, a resolution of any county in this state or any law of another state which ordinance, resolution or law declares to be unlawful the acts prohibited by that statute.

(b) Three or more times, either singly or in combination, of any of the offenses enumerated in subsection (a).

For the purpose of ~~subsection~~ subsections (a)(2) and (a)(9), in addition to the definition of "conviction" otherwise provided by law, conviction includes, but is not limited to, a diversion agreement entered into in lieu of further criminal proceedings, or a plea of *nolo contendere*, on a complaint, indictment, information, citation or notice to appear alleging a violation of K.S.A. 8-1567 or section 2, and amendments thereto, or an ordinance of a city in this state, a resolution of a county

in this state or law of another state, which ordinance or law prohibits the acts prohibited by ~~that~~ statute those statutes.

Sec. 9. K.S.A. 2010 Supp. 8-2,142 is hereby amended to read as follows: 8-2,142. (a) A person is disqualified from driving a commercial motor vehicle for a period of not less than one year upon a first occurrence of any one of the following:

(1) While operating a commercial motor vehicle:

(A) The person is convicted of violating K.S.A. 8-2,144, and amendments thereto;

(B) the person is convicted of violating subsection (b) of K.S.A. 8-2,132, and amendments thereto;

(C) the person is convicted of causing a fatality through the negligent operation of a commercial motor vehicle; ~~or~~

(D) the person's test refusal or test failure, as defined in subsection (m); or

(E) the person is convicted of a violation identified in subsection (a)(2)(A) or (a)(2)(B); or

(2) while operating a noncommercial motor vehicle:

(A) The person is convicted of a violation of K.S.A. 8-1567, and amendments thereto, or of a violation of an ordinance of any city in this state, a resolution of any county in this state or any law of another state; which ordinance or law declares to be unlawful the acts prohibited by that statute; ~~or~~

(B) the person is convicted of a violation of section 2, and amendments thereto, or of a violation of an ordinance of any city in this state, a resolution of any county in this state or any law of another state which ordinance or law declares to be unlawful the acts prohibited by that statute;
or

~~(B)~~ (C) the person's test refusal or test failure, as defined in K.S.A. 8-1013, and amendments thereto; or

(3) while operating any motor vehicle:

(A) The person is convicted of leaving the scene of an accident; or

(B) the person is convicted of a felony, other than a felony described in subsection (e), while using a motor vehicle to commit such felony.

(b) If any offenses, test refusal or test failure specified in subsection (a) occurred in a commercial motor vehicle while transporting a hazardous material required to be placarded, the person is disqualified for a period of not less than three years.

(c) A person shall be disqualified for life upon the second or a subsequent occurrence of any offense, test refusal or test failure specified in subsection (a), or any combination thereof, arising from two or more separate incidents.

(d) The secretary of revenue may adopt rules and regulations establishing guidelines, including conditions, under which a disqualification for life under subsection (c) may be reduced to a period of not less than 10 years.

(e) A person is disqualified from driving a commercial motor vehicle for life who uses a commercial motor vehicle or noncommercial motor vehicle in the commission of any felony involving the manufacture, distribution or dispensing of a controlled substance, or possession with intent to manufacture, distribute or dispense a controlled substance.

(f) A person is disqualified from driving a commercial motor vehicle for a period of not less than 60 days if convicted of two serious traffic violations, or 120 days if convicted of three or more serious traffic violations, committed in a commercial motor vehicle arising from separate incidents

occurring within a three-year period. Any disqualification period under this paragraph shall be in addition to any other previous period of disqualification. The beginning date for any three-year period within a ten-year period, required by this subsection, shall be the issuance date of the citation which resulted in a conviction.

(g) A person is disqualified from driving a commercial motor vehicle for a period of not less than 60 days if convicted of two serious traffic violations, or 120 days if convicted of three or more serious traffic violations, committed in a noncommercial motor vehicle arising from separate incidents occurring within a three-year period, if such convictions result in the revocation, cancellation or suspension of the person's driving privileges.

(h) (1) A person who is convicted of operating a commercial motor vehicle in violation of an out-of-service order shall be disqualified from driving a commercial motor vehicle for a period of not less than:

(A) Ninety days nor more than one year, if the driver is convicted of a first violation of an out-of-service order;

(B) one year nor more than five years if the person has one prior conviction for violating an out-of-service order in a separate incident and such prior offense was committed within the 10 years immediately preceding the date of the present violation; or

(C) three years nor more than five years if the person has two or more prior convictions for violating out-of-service orders in separate incidents and such prior offenses were committed within the 10 years immediately preceding the date of the present violation.

(2) A person who is convicted of operating a commercial motor vehicle in violation of an out-of-service order while transporting a hazardous material required to be placarded under 49

U.S.C. 5101 et seq. or while operating a motor vehicle designed to transport more than 15 passengers, including the driver, shall be disqualified from driving a commercial motor vehicle for a period of not less than:

(A) One hundred and eighty days nor more than two years if the driver is convicted of a first violation of an out-of-service order; or

(B) three years nor more than five years if the person has a prior conviction for violating an out-of-service order in a separate incident and such prior offense was committed within the 10 years immediately preceding the date of the present violation.

(i) (1) A person who is convicted of operating a commercial motor vehicle in violation of a federal, state or local law or regulation pertaining to one of the following six offenses at a railroad-highway grade crossing shall be disqualified from driving a commercial motor vehicle for the period of time specified in paragraph (2):

(A) For persons who are not required to always stop, failing to slow down and check that the tracks are clear of an approaching train;

(B) for persons who are not required to always stop, failing to stop before reaching the crossing, if the tracks are not clear;

(C) for persons who are always required to stop, failing to stop before driving onto the crossing;

(D) for all persons failing to have sufficient space to drive completely through the crossing without stopping;

(E) for all persons failing to obey a traffic control device or the directions of an enforcement official at the crossing; or

(F) for all persons failing to negotiate a crossing because of insufficient undercarriage clearance.

(2) A driver shall be disqualified from driving a commercial motor vehicle for not less than:

(A) Sixty days if the driver is convicted of a first violation of a railroad-highway grade crossing violation;

(B) one hundred and twenty days if, during any three-year period, the driver is convicted of a second railroad-highway grade crossing violation in separate incidents; or

(C) one year if, during any three-year period, the driver is convicted of a third or subsequent railroad-highway grade crossing violation in separate incidents.

(j) After suspending, revoking or canceling a commercial driver's license, the division shall update its records to reflect that action within 10 days. After suspending, revoking or canceling a nonresident commercial driver's privileges, the division shall notify the licensing authority of the state which issued the commercial driver's license or nonresident commercial driver's license within 10 days. The notification shall include both the disqualification and the violation that resulted in the disqualification, suspension, revocation or cancellation.

(k) Upon receiving notification from the licensing authority of another state, that it has disqualified a commercial driver's license holder licensed by this state, or has suspended, revoked or canceled such commercial driver's license holder's commercial driver's license, the division shall record such notification and the information such notification provides on the driver's record.

(l) Upon suspension, revocation, cancellation or disqualification of a commercial driver's license under this act, the license shall be immediately surrendered to the division if still in the licensee's possession. If otherwise eligible, and upon payment of the required fees, the licensee may

be issued a noncommercial driver's license for the period of suspension, revocation, cancellation or disqualification of the commercial driver's license under the same identifier number.

(m) As used in this section, "test refusal" means a person's refusal to submit to and complete a test requested pursuant to K.S.A. 8-2,145, and amendments thereto; "test failure" means a person's submission to and completion of a test which determines that the person's alcohol concentration is .04 or greater, pursuant to K.S.A. 8-2,145, and amendments thereto.

Sec. 10. K.S.A. 2010 Supp. 8-2,144 is hereby amended to read as follows: 8-2,144. (a) ~~No person shall drive~~ Driving a commercial motor vehicle under the influence is operating or attempting to operate any commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, 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 .04 or more;

(2) the alcohol concentration in the person's blood or breath, as measured within ~~two~~ three hours of the time of driving a commercial motor vehicle, is .04 or more; or

(3) committing a violation of subsection (a) of K.S.A. 8-1567, and amendments thereto, or the ordinance of a city or resolution of a county which prohibits any of the acts prohibited thereunder.

~~(b) 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:~~

~~———(c) 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:~~

~~———(d) 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 court also requires 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. The 90 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.~~

(b) (1) Driving a commercial motor vehicle under the influence is:

(A) On a first conviction a class A, nonperson misdemeanor. The person convicted shall be 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 shall 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 consecutive days' imprisonment mandated by this subsection may be served by completing: (i) Six days 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; or (ii) 10 days under a house arrest program pursuant to section 249 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, only after such person has served 48 consecutive hours' imprisonment;

(B) on a second conviction a class A, nonperson misdemeanor. The person convicted shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined \$2,500. The person convicted shall serve at least 10 consecutive days' imprisonment before the person is granted

probation, suspension or reduction of sentence or parole or is otherwise released. The 10 consecutive days' imprisonment mandated by this subsection may be served by completing: (i) 12 days in a work release program only after such person has served 96 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; or (ii) 20 days under a house arrest program pursuant to section 249 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, only after such person has served 96 consecutive hours' imprisonment;

(C) on a third or subsequent conviction a severity level 7, nonperson felony.

(2) In addition, prior to sentencing, the court shall order the person to participate in an alcohol and drug evaluation conducted by a licensed provider with a DUI specialty as provided in K.S.A. 8-1008, and amendments thereto. The person shall be required to follow any recommendation made by the provider after such evaluation, unless otherwise ordered by the court.

(c) Any person convicted of a violation of this section, or a violation of a city ordinance or county resolution prohibiting the acts prohibited by this section, 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 shall be served consecutively to any other minimum mandatory penalty imposed for a violation of this section, or a violation of a city ordinance or county resolution prohibiting the acts prohibited by this section. 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.

(d) 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.

(e) 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.

(f) 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.

(g) Prior to filing a complaint alleging a violation of this section, a prosecutor shall request and shall receive from the: (1) Division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state; and (2) Kansas bureau of investigation central repository all criminal history record information concerning such person.

(e)(h) 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 on 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 violation of any of the motor vehicle laws of this state.

(f) (i) 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: (1) Disqualify the person from driving a commercial motor vehicle under K.S.A. 8-2,142, and amendments thereto; and (2) suspend, restrict or suspend and restrict the person's driving privileges as provided by K.S.A. 8-1014, and amendments thereto.

(j) (1) Except as provided in subsections (k) and (l), 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 section as unlawful or prohibited in such city or county and prescribing penalties for violation thereof.

(2) The minimum penalty prescribed by any such ordinance or resolution shall not be less than the minimum penalty prescribed by this section 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.

(3) 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.

(k) Notwithstanding any other law to the contrary, no city shall enact an ordinance declaring the acts prohibited by this section as unlawful or prohibited in such city and prescribing penalties for violation thereof unless:

(1) The municipal law enforcement in such city reports arrests to the Kansas bureau of investigation as required by law;

(2) the municipal court in such city utilizes a standardized risk assessment instrument approved by the Kansas sentencing commission, utilizes a standardized substance abuse evaluation approved by the secretary of social and rehabilitation services, utilizes the results of such assessment and such evaluation in determining disposition of the case, has the capability to supervise the offender accordingly and reports the disposition of such case to the Kansas bureau of investigation central repository; and

(3) the municipal court in such city, on and after July 1, 2012, reports the disposition of such case electronically to the Kansas bureau of investigation central repository.

(l) On and after July 1, 2011, any city ordinance declaring the acts prohibited by this section as unlawful or prohibited in such city and prescribing penalties for violation thereof is hereby declared null and void, regardless of when such ordinance was enacted, unless such city meets the requirements specified in subsection (k).

(m) (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: (A) Division of vehicles a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state; and (B) Kansas bureau of investigation central repository all criminal history record information concerning such person.

(2) 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. The county or district attorney shall accept such referral and pursue a disposition of such violation, and shall not refer any such

violation back to the city attorney.

(n) (1) 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 or resolution.

(2) 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.

(o) (1) A person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section, or a violation of an ordinance of any city or resolution of any county which prohibits the acts that this section prohibits, only once during the person's lifetime.

(2) Any person whom the prosecutor considers for eligibility or finds eligible to enter a diversion agreement in lieu of further criminal proceedings for a violation of this section, or a violation of an ordinance of any city or resolution of any county which prohibits the acts that this section prohibits, shall participate in an alcohol and drug evaluation conducted by a licensed provider with a DUI specialty as provided in K.S.A. 8-1008, and amendments thereto. Any diversion agreement entered shall require such person to follow any recommendation made by the provider after such evaluation, unless otherwise ordered by the court.

(p) 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 may, but shall not be required to, elect one or two of the three prior to submission of the case to the fact finder.

(q) When determining whether a conviction is a first, second, third or subsequent conviction

of a violation of this section:

(1) Convictions for a violation of K.S.A. 8-1567, and amendments thereto, or a violation of an ordinance of any city or resolution of any county which prohibits the acts that such section prohibits, or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging any such violations, shall be taken into account, but only convictions or diversions occurring on or after July 1, 1996. Nothing in this provision shall be construed as preventing any court from considering any convictions or diversions occurring during the person's lifetime in determining the sentence to be imposed within the limits provided for a first, second, third or subsequent offender;

(2) any convictions for a violation of the following sections occurring during a person's lifetime shall be taken into account: (A) This section; (B) section 2, and amendments thereto; (C) K.S.A. 32-1131, and amendments thereto; (D) subsection (a)(3) of section 40 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; (E) subsection (g) of section 48 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; and (F) aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was committed while committing a violation of K.S.A. 8-1567, and amendments thereto;

(3) "conviction" includes: (A) Entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of a crime described in subsection (q)(2); (B) conviction of a violation of an ordinance of a city in this state, a resolution of a county in this state or any law of another state which would constitute a crime described in subsection (q)(1) or (q)(2); and (C) receiving punishment under the uniform code of military justice or Kansas code of military

justice for an act which was committed on a military reservation and which would constitute a crime described in subsection (q)(1) or (q)(2) if committed off a military reservation in this state;

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

(5) multiple convictions of any crime described in subsection (q)(1) or (q)(2) arising from the same arrest shall only be counted as one conviction.

~~(g)~~ (r) 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; and

(3) "drug" includes toxic vapors as such term is defined in K.S.A. 2010 Supp. 21-36a12, and amendments thereto.

Sec. 11. K.S.A. 2010 Supp. 8-1001 is hereby amended to read as follows: 8-1001. (a) Any person who operates or attempts to operate a vehicle within this state is deemed to have given consent, subject to the provisions of this act, to submit to one or more tests of the person's blood, breath, urine or other bodily substance to determine the presence of alcohol or drugs. The testing deemed consented to herein shall include all quantitative and qualitative tests for alcohol and drugs. A person who is dead or unconscious shall be deemed not to have withdrawn the person's consent to such test or tests, which shall be administered in the manner provided by this section.

(b) A law enforcement officer shall request a person to submit to a test or tests deemed

consented to under subsection (a): (1) If the officer has reasonable grounds to believe the person was operating or attempting to operate a vehicle while under the influence of alcohol or drugs, or both, or to believe that the person was driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system, or was under the age of 21 years while having alcohol or other drugs in such person's system; and one of the following conditions exists: (A) The person has been arrested or otherwise taken into custody for any offense involving operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both, or for a violation of K.S.A. 8-1567a, and amendments thereto, or involving driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system, in violation of a state statute ~~or a~~ city ordinance or county resolution; or (B) the person has been involved in a vehicle accident or collision resulting in property damage or personal injury other than serious injury; or (2) if the person was operating or attempting to operate a vehicle and such vehicle has been involved in an accident or collision resulting in serious injury or death of any person and the operator could be cited for any traffic offense, as defined in K.S.A. 8-2117, and amendments thereto. The traffic offense violation shall constitute probable cause for purposes of paragraph (2). The test or tests under paragraph (2) shall not be required if a law enforcement officer has reasonable grounds to believe the actions of the operator did not contribute to the accident or collision. The law enforcement officer directing administration of the test or tests may act on personal knowledge or on the basis of the collective information available to law enforcement officers involved in the accident investigation or arrest.

(c) If a law enforcement officer requests a person to submit to a test of blood under this section, the withdrawal of blood at the direction of the officer may be performed only by: (1) A

person licensed to practice medicine and surgery, licensed as a physician's assistant, or a person acting under the direction of any such licensed person; (2) a registered nurse or a licensed practical nurse; (3) any qualified medical technician, including, but not limited to, an emergency medical technician-intermediate, mobile intensive care technician, an emergency medical technician-intermediate defibrillator, an advanced emergency medical technician or a paramedic, as those terms are defined in K.S.A. 65-6112, and amendments thereto, authorized by medical protocol or (4) a phlebotomist.

(d) A law enforcement officer may direct a medical professional described in this section to draw a sample of blood from a person:

- (1) If the person has given consent and meets the requirements of subsection (b);
- (2) if medically unable to consent, if the person meets the requirements of paragraph (2) of subsection (b); or
- (3) if the person refuses to submit to and complete a test, if the person meets the requirements of paragraph (2) of subsection (b).

(e) When so directed by a law enforcement officer through a written statement, the medical professional shall withdraw the sample as soon as practical and shall deliver the sample to the law enforcement officer or another law enforcement officer as directed by the requesting law enforcement officer as soon as practical, provided the collection of the sample does not jeopardize the person's life, cause serious injury to the person or seriously impede the person's medical assessment, care or treatment. The medical professional authorized herein to withdraw the blood and the medical care facility where the blood is drawn may act on good faith that the requirements have been met for directing the withdrawing of blood once presented with the written statement provided

for under this subsection. The medical professional shall not require the person to sign any additional consent or waiver form. In such a case, the person authorized to withdraw blood and the medical care facility shall not be liable in any action alleging lack of consent or lack of informed consent.

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

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

(h) A law enforcement officer may request a urine sample upon meeting the requirements of paragraph (1) of subsection (b) and shall request a urine sample upon meeting the requirements of paragraph (2) of subsection (b).

(i) If a law enforcement officer requests a person to submit to a test of urine under this section, the collection of the urine sample shall be supervised by ~~persons of the same sex as the person being tested and:~~ (1) A person licensed to practice medicine and surgery, licensed as a physician's assistant, or a person acting under the direction of any such licensed person; (2) a registered nurse or a licensed practical nurse; or (3) a law enforcement officer of the same sex as the person being tested. The collection of the urine sample shall be conducted out of the view of any person other than the persons supervising the collection of the sample and the person being tested, unless the right to privacy is waived by the person being tested. When possible, the supervising

person shall be a law enforcement officer. The results of qualitative testing for drug presence shall be admissible in evidence and questions of accuracy or reliability shall go to the weight rather than the admissibility of the evidence. If the person is medically unable to provide a urine sample in such manner due to the injuries or treatment of the injuries, the same authorization and procedure as used for the collection of blood in subsections (d) and (e) shall apply to the collection of a urine sample.

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

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

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

(3) there is no constitutional right to consult with an attorney regarding whether to submit to testing;

(4) if the person refuses to submit to and complete any test of breath, blood or urine hereafter requested by a law enforcement officer, the person may be charged with a separate crime of refusing to submit to a test to determine the presence of alcohol or drugs, which carries criminal penalties that are equal to or greater than the criminal penalties for the crime of driving under the influence;

~~(4)~~ (5) if the person refuses to submit to and complete any test of breath, blood or urine hereafter requested by a law enforcement officer, the person's driving privileges will be suspended for one year for the first occurrence, two years for the second occurrence, three years for the third occurrence, 10 years for the second, third or fourth occurrence and permanently revoked for a fifth

or subsequent occurrence;

~~(5)~~ (6) if the person submits to and completes the test or tests and the test results show for the first occurrence:

(A) An alcohol concentration of .08 or greater, the person's driving privileges will be suspended for 30 days for the first occurrence; or

(B) an alcohol concentration of .15 or greater, the person's driving privileges will be suspended for one year;

~~(6)~~ (7) if the person submits to and completes the test or tests and the test results show an alcohol concentration of .08 or greater, the person's driving privileges will be suspended for one year for the second, third or fourth occurrence and permanently revoked for a fifth or subsequent occurrence;

~~(7)~~ (8) if the person is less than 21 years of age at the time of the test request and submits to and completes the tests and the test results show an alcohol concentration of .08 or greater, the person's driving privileges will be suspended for one year except the person's driving privileges will be permanently revoked for a fifth or subsequent occurrence;

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

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

~~(10)~~ (11) after the completion of the testing, the person has the right to consult with an

attorney and may secure additional testing, which, if desired, should be done as soon as possible and is customarily available from medical care facilities willing to conduct such testing.

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

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

(n) The person's refusal shall be admissible in evidence against the person at any trial on a charge arising out of the alleged operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both. The person's refusal shall be admissible in evidence against the person at any trial on a charge arising out of the alleged violation of section 2, and amendment

thereto.

(o) If a law enforcement officer had reasonable grounds to believe the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, and the test results show a blood or breath alcohol concentration of .04 or greater, the person shall be disqualified from driving a commercial motor vehicle, pursuant to K.S.A. 8-2,142, and amendments thereto. If a law enforcement officer had reasonable grounds to believe the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, and the test results show a blood or breath alcohol concentration of .08 or greater, or the person refuses a test, the person's driving privileges shall be subject to suspension, or suspension and restriction, pursuant to this section, in addition to being disqualified from driving a commercial motor vehicle pursuant to K.S.A. 8-2,142, and amendments thereto.

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

(q) Failure of a person to provide an adequate breath sample or samples as directed shall constitute a refusal unless the person shows that the failure was due to physical inability caused by a medical condition unrelated to any ingested alcohol or drugs.

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

(s) No test results shall be suppressed because of technical irregularities in the consent or notice required pursuant to this act.

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

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

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

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

- (1) Disabling a person from the physical capacity to remove themselves from the scene;
- (2) renders a person unconscious;
- (3) the immediate loss of or absence of the normal use of at least one limb;
- (4) an injury determined by a physician to require surgery; or
- (5) otherwise indicates the person may die or be permanently disabled by the injury.

Sec. 12. K.S.A. 8-1008 is hereby amended to read as follows: 8-1008. (a) ~~Community-based alcohol and drug safety action programs certified~~ A licensed provider with a DUI specialty licensed in accordance with subsection (b) shall provide:

(1) ~~Presentence~~ Alcohol and drug evaluations, prior to sentencing, of any person who is convicted of a violation of K.S.A. 8-2,144 or 8-1567 or section 2, and amendments thereto, or the ordinance of a city or resolution of a county in this state which prohibits the acts prohibited by that statute; and

~~(2) supervision and monitoring of all persons who are convicted of a violation of K.S.A. 8-1567, and amendments thereto, or the ordinance of a city in this state which prohibits the acts prohibited by that statute, and whose sentences or terms of probation require completion of an alcohol and drug safety action program, as provided in this section, or an alcohol and drug abuse treatment program, as provided in this section;~~

~~——(3) (2) alcohol and drug evaluations of persons whom the prosecutor considers for eligibility or finds eligible to enter a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of K.S.A. 8-2,144 or 8-1567 or section 2, and amendments thereto, or the ordinance of a city or resolution of a county in this state which prohibits the acts prohibited by that statute;~~

~~(4) supervision and monitoring of persons required, under a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of K.S.A. 8-1567, and amendments thereto, or the ordinance of a city in this state which prohibits the acts prohibited by that statute, to complete an alcohol and drug safety action program, as provided in this section, or an alcohol and drug abuse treatment program, as provided in this section; or~~

~~——(5) any combination of (1), (2), (3) and (4).~~

(b) ~~The presentence~~ Prior to sentencing, the alcohol and drug evaluation shall be conducted by a community-based alcohol and drug safety action program certified licensed provider with a DUI specialty licensed in accordance with the provisions of this subsection to provide evaluation and supervision services as described in subsections (c) and (d). ~~A community-based alcohol and drug safety action program shall be certified either by the chief judge of the judicial district to be served by the program or~~ A licensed provider with a DUI specialty shall be licensed by the secretary of

~~social and rehabilitation services for judicial districts in which the chief judge declines to certify a program. In addition to any qualifications established by the secretary, the chief judge may establish qualifications for the certification of programs, which qualifications may include requirements for training, education and certification of personnel, supervision and monitoring of clients, fee reimbursement procedures, handling of conflicts of interest, delivery of services to clients unable to pay, and other matters relating to quality and delivery of services by the program. In establishing the qualifications for programs, the chief judge or the secretary shall give preference to those programs which have had practical experience prior to July 1, 1982, in diagnosis and referral in alcohol and drug abuse. Certification of a program by the chief judge shall be done with consultation and approval of a majority of the judges of the district court of the district and municipal judges of cities lying in whole or in part within the district. If within 60 days after the effective date of this act the chief judge declines to certify any program for the judicial district, the judge shall notify the secretary of social and rehabilitation services, and the secretary of social and rehabilitation services shall certify a community-based alcohol and drug safety action program for that judicial district. The certification shall be for a four-year period. Recertification of a program or certification of a different program shall be by the chief judge, with consultation and approval of a majority of the judges of the district court of the district and municipal judges of cities lying in whole or in part within the district. If upon expiration of certification of a program there will be no certified program for the district and the chief judge declines to recertify or certify any program in the district, the judge shall notify the secretary of social and rehabilitation services, at least six months prior to the expiration of certification, that the judge declines to recertify or certify a program under this subsection. Upon receipt of the notice and prior to the expiration of certification, the secretary shall recertify or certify~~

~~a community-based alcohol and drug safety action program for the judicial district for the next four-year period. To be eligible for certification licensure under this subsection, the chief judge or the secretary of social and rehabilitation services shall determine that a community-based alcohol and drug safety action program the provider with a DUI specialty meets the qualifications established by the judge or secretary and is capable of providing, within the judicial district: (1) The evaluations; supervision and monitoring required under subsection (a); (2) the alcohol and drug evaluation report required under subsection (c) or (d); (3) the follow-up duties specified under subsection (c) or (d) for persons who prepare the alcohol and drug evaluation report; and (4) any other functions and duties specified by law. Community-based alcohol and drug safety action programs~~ Each judicial district shall be provided with a list of licensed providers with a DUI specialty licensed in accordance with this subsection, and such list shall be used when selecting a licensed provider with a DUI specialty to be used as described in subsections (c) and (d). A licensed provider with a DUI specialty performing services in any judicial district under this section prior to the effective date of this act may continue to perform those services until a community-based alcohol and drug safety action program is certified for that judicial district January 1, 2012.

(c) ~~A presentence~~ Prior to sentencing, an alcohol and drug evaluation shall be conducted on any person who is convicted of a violation of K.S.A. 8-2,144 or 8-1567 or section 2, and amendments thereto, or the ordinance of a city or resolution of a county in this state which prohibits the acts prohibited by ~~that statute~~ those statutes. The ~~presentence~~ alcohol and drug evaluation report shall be made available to and shall be considered by the court prior to sentencing. The ~~presentence~~ alcohol and drug evaluation report shall ~~contain a history of the defendant's prior traffic record; characteristics and alcohol or drug problems, or both, and a recommendation concerning the~~

~~amenability of the defendant to education and rehabilitation. The presentence alcohol and drug evaluation report shall include a recommendation concerning the alcohol and drug driving safety education and treatment for the defendant. The presentence alcohol and drug evaluation report shall be prepared by a program which has demonstrated practical experience in the diagnosis of alcohol and drug abuse. The duties of persons who prepare the presentence alcohol and drug evaluation report may also include appearing at sentencing and probation hearings in accordance with the orders of the court, monitoring defendants in the treatment programs, notifying the probation department and the court of any defendant failing to meet the conditions of probation or referrals to treatment, appearing at revocation hearings as may be required and providing assistance and data reporting and program evaluation meet the standards of assessment as set forth by the secretary of social and rehabilitation services. The court shall order that cost of any alcohol and drug education, rehabilitation and treatment programs evaluation for any person shall be paid by such person, and such costs shall include, but not be limited to, the assessments required by subsection (c). If financial obligations are not met or cannot be met, the sentencing court shall be notified for the purpose of collection or review and further action on the defendant's sentence to the provider at the time of service, and shall not exceed \$150.~~

(d) An alcohol and drug evaluation shall be conducted on any person whom the prosecutor considers for eligibility or finds eligible to enter a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of K.S.A. 8-2,144 or 8-1567 or section 2, and amendments thereto, or the ordinance of a city or resolution of a county in this state which prohibits the acts prohibited by ~~that statute~~ those statutes. The alcohol and drug evaluation report shall be made available to the prosecuting attorney and the defense attorney, and shall be considered by the

prosecuting attorney. The alcohol and drug evaluation report shall contain a history of the person's prior traffic record, characteristics and alcohol or drug problems, or both, and a recommendation concerning the amenability of the person to education and rehabilitation. The alcohol and drug evaluation report shall include a recommendation concerning the alcohol and drug driving safety education and treatment for the person. The alcohol and drug evaluation report shall be prepared by a program which has demonstrated practical experience in the diagnosis of alcohol and drug abuse. The duties of persons who prepare the alcohol and drug evaluation report may also include monitoring persons in the treatment programs, notifying the prosecutor and the court of any person failing to meet the conditions of diversion or referrals to treatment, and providing assistance and data reporting and program evaluation meet the standards of assessment as set forth by the secretary of social and rehabilitation services. The cost of any alcohol and drug education, rehabilitation and treatment programs evaluation for any person shall be paid by such person, and such costs shall include, but not be limited to, the assessments required by subsection (e) to the provider at the time of service, and shall not exceed \$150.

(e) Evaluations and recommendations made by a licensed provider with a DUI specialty shall be accepted in any jurisdiction.

(e) In addition to any fines, fees, penalties or costs levied against a person who is convicted of a violation of K.S.A. 8-1567, and amendments thereto, or the ordinance of a city in this state which prohibits the acts prohibited by that statute, or who enters a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of that statute or such an ordinance, \$150 shall be assessed against the person by the sentencing court or under the diversion agreement. The \$150 assessment may be waived by the court, in whole or in part, or, in the case of diversion of

~~criminal proceedings, by the prosecuting attorney, if the court or prosecuting attorney finds that the defendant is an indigent person. Except as otherwise provided in this subsection, the clerk of the court shall deposit all assessments received under this section in the alcohol and drug safety action fund of the court, which fund shall be subject to the administration of the judge having administrative authority over that court. If the secretary of social and rehabilitation services certifies the community-based alcohol and drug safety action program for the judicial district in which the court is located, the clerk of the court shall remit, during the four-year period for which the program is certified, 15% of all assessments received under this section to the secretary of social and rehabilitation services. Moneys credited to the alcohol and drug safety action fund shall be expended by the court, pursuant to vouchers signed by the judge having administrative authority over that court, only for costs of the services specified by subsection (a) or otherwise required or authorized by law and provided by community-based alcohol and drug safety action programs, except that not more than 10% of the money credited to the fund may be expended to cover the expenses of the court involved in administering the provisions of this section. In the provision of these services the court shall contract as may be necessary to carry out the provisions of this section. The district or municipal judge having administrative authority over that court shall compile a report and send such report to the office of the state judicial administrator on or before January 20 of each year, beginning January 20, 1991. Such report shall include, but not be limited to:~~

~~———— (1) The balance of the alcohol and drug safety action fund of the court on December 31 of each year;~~

~~———— (2) the assessments deposited into the fund during the 12-month period ending the preceding December 31; and~~

~~(3) the dollar amounts expended from the fund during the 12-month period ending the preceding December 31.~~

~~The office of the state judicial administrator shall compile such reports into a statewide report and submit such statewide report to the legislature on or before March 1 of each year.~~

~~(f) The secretary of social and rehabilitation services shall remit all moneys received by the secretary under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the certification of community-based alcohol and drug safety action programs fee fund, which is hereby created. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants issued pursuant to vouchers approved by the secretary of social and rehabilitation services or a person designated by the secretary.~~

Sec. 13. K.S.A. 2010 Supp. 8-1012 is hereby amended to read as follows: 8-1012. (a) Any person who operates or attempts to operate a vehicle within this state is deemed to have given consent to submit to a preliminary screening test of the person's breath or saliva, or both, subject to the provisions set out in subsection (b).

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

(c) At the time the test is requested, the person shall be given oral notice that: (1) There is

no right to consult with an attorney regarding whether to submit to testing; (2) refusal to submit to testing is a traffic infraction; and (3) further testing may be required after the preliminary screening test. Failure to provide the notice shall not be an issue or defense in any action. The law enforcement officer then shall request the person to submit to the test.

(d) Refusal to take and complete the test as requested is a traffic infraction. If the person submits to the test, the results shall be used for the purpose of assisting law enforcement officers in determining whether an arrest should be made and whether to request the tests authorized by K.S.A. 8-1001 and amendments thereto. A law enforcement officer may arrest a person based in whole or in part upon the results of a preliminary screening test. Such results shall not be admissible in any civil or criminal action concerning the operation of or attempted operation of a vehicle except to aid the court or hearing officer in determining a challenge to the validity of the arrest or the validity of the request to submit to a test pursuant to K.S.A. 8-1001 and amendments thereto. Following the preliminary screening test, additional tests may be requested pursuant to K.S.A. 8-1001 and amendments thereto.

(e) Any preliminary screening of a person's breath shall be conducted with a device approved pursuant to K.S.A. 65-1,107, and amendments thereto. Any preliminary screening of a person's saliva shall be conducted with a device approved pursuant to section 4, and amendments thereto.

Sec. 14. K.S.A. 2010 Supp. 8-1013 is hereby amended to read as follows: 8-1013. As used in K.S.A. 8-1001 through 8-1010, 8-1011, 8-1012, 8-1014, 8-1015, 8-1016, 8-1017 and 8-1018, and amendments thereto, and this section:

(a) "Alcohol concentration" means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.

(b) (1) "Alcohol or drug-related conviction" means conviction of any of the following: (A) ~~Conviction of vehicular battery or aggravated vehicular homicide, if the crime is committed while committing a violation of K.S.A. 8-1567 and amendments thereto or the ordinance of a city or resolution of a county in this state which prohibits any acts prohibited by that statute, or conviction of a violation of K.S.A. 8-1567 and amendments thereto;~~ (B) ~~conviction of a violation of a law of another state which would constitute a crime described in subsection (b)(1)(A) if committed in this state;~~ (C) ~~conviction of a violation of an ordinance of a city in this state or a resolution of a county in this state which would constitute a crime described in subsection (b)(1)(A), whether or not such conviction is in a court of record;~~ or (D) ~~conviction of an act which was committed on a military reservation and which would constitute a violation of K.S.A. 8-1567, and amendments thereto, or would constitute a crime described in subsection (b)(1)(A) if committed off a military reservation in this state.~~

~~(2) For the purpose of determining whether an occurrence is a first, second or subsequent occurrence: (A) "Alcohol or drug-related conviction" also includes entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging commission of a crime described in subsection (b)(1), including a diversion agreement entered into prior to the effective date of this act; and (B) it is irrelevant whether an offense occurred before or after conviction or diversion for a previous offense: (A) Section 2, and amendments thereto; (B) K.S.A. 8-2,144, and amendments thereto; (C) K.S.A. 8-1567, and amendments thereto; (D) K.S.A. 32-1131, and amendments thereto; (E) subsection (a)(3) of section 40 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; (F) subsection (g) of section 48 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; and (G) aggravated vehicular homicide, K.S.A.~~

21-3405a, prior to its repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was committed while committing a violation of K.S.A. 8-1567, and amendments thereto.

(2) "Alcohol or drug-related conviction" also means: (A) Entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of a crime described in subsection (b)(1); (B) conviction of a violation of a law of another state, or an ordinance of a city in this state or of another state, or a resolution of a county in this state or of another state, which would constitute a crime described in subsection (b)(1); and (C) receiving punishment under the uniform code of military justice or Kansas code of military justice for an act which was committed on a military reservation and which would constitute a crime described in subsection (b)(1) if committed off a military reservation in this state.

(3) It is irrelevant whether an offense occurred before or after conviction for a previous offense.

(c) "Division" means the division of vehicles of the department of revenue.

(d) "Ignition interlock device" means a device which uses a breath analysis mechanism to prevent a person from operating a motor vehicle if such person has consumed an alcoholic beverage.

(e) "Occurrence" means a test refusal, test failure or alcohol or drug-related conviction, or any combination thereof arising from one arrest, including an arrest which occurred prior to the effective day of this act.

(f) "Other competent evidence" includes: (1) Alcohol concentration tests obtained from samples taken ~~two~~ three hours or more after the operation or attempted operation of a vehicle; and (2) readings obtained from a partial alcohol concentration test on a breath testing machine.

(g) "Samples" includes breath supplied directly for testing, which breath is not preserved.

(h) "Test failure" or "fails a test" refers to a person's having results of a test administered pursuant to this act, other than a preliminary screening test, which show an alcohol concentration of .08 or greater in the person's blood or breath, and includes failure of any such test on a military reservation.

(i) "Test refusal" or "refuses a test" refers to a person's failure to submit to or complete any test of the person's blood, breath, urine or other bodily substance, other than a preliminary screening test, in accordance with this act, and includes refusal of any such test on a military reservation.

(j) "Law enforcement officer" has the meaning provided by ~~K.S.A. 21-3110~~ section 11 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, and includes any person authorized by law to make an arrest on a military reservation for an act which would constitute a violation of K.S.A. 8-1567, and amendments thereto, if committed off a military reservation in this state.

(k) "Department" means the Kansas department of health and environment.

Sec. 15. K.S.A. 2010 Supp. 8-1014 is hereby amended to read as follows: 8-1014. (a) Except as provided by subsection (e) and K.S.A. 8-2,142, and amendments thereto, if a person refuses a test, the division, pursuant to K.S.A. 8-1002, and amendments thereto, shall:

(1) On the person's first occurrence, suspend the person's driving privileges for one year and at the end of the suspension, restrict the person's driving privileges for one year to driving only a motor vehicle equipped with an ignition interlock device;

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

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

(4) on the person's fourth occurrence, suspend the person's driving privileges for ~~10 years~~ one year and at the end of the suspension, restrict the person's driving privileges for four years to driving only a motor vehicle equipped with an ignition interlock device; and

(5) on the person's fifth or subsequent occurrence, revoke the person's driving privileges permanently.

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

(A) On the person's first occurrence, suspend the person's driving privileges for 30 days and at the end of the suspension, then restrict the person's driving privileges as provided by subsection (b) of K.S.A. 8-1015, and amendments thereto, for an additional 330 days one year;

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

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

(D) on the person's fourth occurrence, suspend the person's driving privileges for one year and at the end of the suspension, restrict the person's driving privileges for three years to driving only

a motor vehicle equipped with an ignition interlock device; and

~~(C)~~ (E) on the person's fifth or subsequent occurrence, the person's driving privileges shall be permanently revoked.

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

(A) On the person's first occurrence, suspend the person's driving privileges for one year and at the end of the suspension, restrict the person's driving privileges for one year to driving only a motor vehicle equipped with an ignition interlock device;

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

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

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

(E) on the person's fifth or subsequent occurrence, the person's driving privileges shall be permanently revoked.

~~(3) Whenever a person's driving privileges have been restricted to driving only a motor vehicle equipped with an ignition interlock device, proof of the installation of such device, for the~~

~~entire restriction period, shall be provided to the division before the person's driving privileges are fully reinstated.~~

~~(4) Whenever a person's driving privileges have been suspended for one year on the second occurrence of an alcohol or drug-related conviction in this state as provided in subsection (b)(1); after 45 days of such suspension, such person may apply to the division for such person's driving privileges to be restricted for the remainder of the one-year period to driving only a motor vehicle equipped with an ignition interlock and only for the purposes of getting to and from work, school, or an alcohol treatment program or to go to and from the ignition interlock provider for maintenance and downloading of data from the device. If such person violates the restrictions, such person's driving privileges shall be suspended for an additional year, in addition to any term of restriction as provided in subsection (b)(1).~~

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

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

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

~~(d) Whenever the division is notified by an alcohol and drug safety action program that a person has failed to complete any alcohol and drug safety action education or treatment program~~

~~ordered by a court for a conviction of a violation of K.S.A. 8-1567, and amendments thereto, the division shall suspend the person's driving privileges until the division receives notice of the person's completion of such program:~~

~~——(e) (d) (1)~~ Except as provided in K.S.A. 8-2,142, and amendments thereto, if a person's driving privileges are subject to suspension pursuant to this section for a test refusal, test failure or alcohol or drug-related conviction arising from the same arrest, the period of such suspension shall not exceed the longest applicable period authorized by subsection (a), (b) or (c), and such suspension periods shall not be added together or otherwise imposed consecutively. In addition, in determining the period of such suspension as authorized by subsection (a), (b) or (c), such person shall receive credit for any period of time for which such person's driving privileges were suspended while awaiting any hearing or final order authorized by this act.

(2) If a person's driving privileges are subject to restriction pursuant to this section for a test refusal, test failure or alcohol or drug-related conviction arising from the same arrest, the restriction periods shall not be added together or otherwise imposed consecutively. In addition, in determining the period of restriction, the person shall receive credit for any period of suspension imposed for a test refusal arising from the same arrest.

~~(f) (e)~~ If the division has taken action under subsection (a) for a test refusal or under subsection (b) or (c) for a test failure and such action is stayed pursuant to K.S.A. 8-259, and amendments thereto, or if temporary driving privileges are issued pursuant to K.S.A. 8-1020, and amendments thereto, the stay or temporary driving privileges shall not prevent the division from taking the action required by subsection (b) or (c) for an alcohol or drug-related conviction.

~~(g) Upon restricting a person's driving privileges pursuant to this section, the division shall~~

~~issue a copy of the order imposing the restrictions which is required to be carried by the person at any time the person is operating a motor vehicle on the highways of this state.~~

~~(h) Except as provided further, any person whose license is restricted to operating only a motor vehicle with an ignition interlock device installed may operate an employer's vehicle without an ignition interlock device installed during normal business activities, provided that the person does not partly or entirely own or control the employer's vehicle or business. The provisions of this subsection shall not apply to any person whose driving privileges have been restricted for the remainder of the one-year period on the second occurrence of an alcohol or drug-related conviction in this state as provided in subsection (b)(1).~~

(f) The provisions of subsection (a), (b) and (c), as amended by this act, may be applied retroactively only if requested by a person who has had such person's driving privileges suspended or restricted pursuant to subsection (a), (b) or (c) prior to such amendment. Such person may apply to the division to have the penalties applied retroactively, as provided under subsection (h) of K.S.A. 8-1015, and amendments thereto.

(g) (1) If a person's driving privileges are suspended or restricted pursuant to this section and such person is incarcerated with the department of corrections for an alcohol or drug-related conviction, any period of incarceration shall not count toward the person's suspension or restriction period. Any period of time the person's driving privileges are suspended or restricted before incarceration begins shall be counted. For the purpose of this section, the date of release from incarceration shall be deemed the date the suspension or restriction period resumes.

(2) The secretary of corrections shall notify the division of the date when incarceration began and the date of release from incarceration for any person incarcerated for an alcohol or drug-related

conviction. The notification shall be in a format approved by the division.

(h) As used in this section, "suspension" includes any period of suspension and any period of restriction as provided in subsection (a) of K.S.A. 8-1015, and amendments thereto.

Sec. 16. K.S.A. 2010 Supp. 8-1015 is hereby amended to read as follows: 8-1015. ~~(a) When subsection (b)(1) of K.S.A. 8-1014, and amendments thereto, requires or authorizes the division to place restrictions on a person's driving privileges, the division shall restrict the person's driving privileges to driving only under the circumstances provided by subsections (a)(1), (2), (3) and (4) of K.S.A. 8-292 and amendments thereto:~~

~~(b) In lieu of the restrictions set out in subsection (a), the division, upon request of the person whose driving privileges are to be restricted, may restrict the person's driving privileges to driving only a motor vehicle equipped with an ignition interlock device, approved by the division and obtained, installed and maintained at the person's expense. Prior to issuing such restricted license, the division shall receive proof of the installation of such device: (a) (1) Whenever a person's driving privileges have been suspended for one year as provided in subsection (a), (b) or (c) of K.S.A. 8-1014, and amendments thereto, after 45 days of such suspension, such person may apply to the division for such person's driving privileges to be restricted for the remainder of the one-year suspension period to driving only a motor vehicle equipped with an ignition interlock and only for the purposes of getting to and from: Work, school or an alcohol treatment program; and the ignition interlock provider for maintenance and downloading of data from the device.~~

(2) The division shall approve the request for such restricted license unless such person's driving privileges have been suspended or revoked pursuant to another action by the division or a court. If the request is approved, upon receipt of proof of the installation of such device, the division

shall issue a copy of the order imposing such restrictions on the person's driving privileges and such order shall be carried by the person at any time the person is operating a motor vehicle on the highways of this state. If such person violates the restrictions, such person's driving privileges shall be suspended for an additional year, in addition to any term of suspension or restriction as provided in subsection (a), (b) or (c) of K.S.A. 8-1014, and amendments thereto.

(b) When a person has completed the suspension pursuant to subsection (b)(1)(A) of K.S.A. 8-1014, and amendments thereto, the division shall restrict the person's driving privileges pursuant to subsection (b)(1)(A) of K.S.A. 8-1014, and amendments thereto, to driving only a motor vehicle equipped with an ignition interlock and only for the purposes of getting to and from: Work, school or an alcohol treatment program; the ignition interlock provider for maintenance and downloading of data from the device; and court or court-ordered supervision. If such person violates the restrictions, such person's driving privileges shall be suspended for an additional year, in addition to any term of suspension or restriction as provided in subsection (b)(1)(A) of K.S.A. 8-1014, and amendments thereto.

(c) (1) Any person whose driving privileges have been restricted as provided in subsection (a) or (b) shall carry documentation, as provided in rules and regulations promulgated by the division, of scheduled events the person is allowed to drive to and from under such restrictions at any time the person is operating a motor vehicle on the highways of this state. The division shall promulgate such rules and regulations on or before July 1, 2012.

(2) Whenever a law enforcement officer stops any person operating a motor vehicle on the highways of this state whose driving privileges have been restricted as provided in subsection (a) or (b) and the person is not carrying the documentation described in this subsection, there shall be a

rebuttable presumption that the person is operating a motor vehicle on the highways of this state in violation of such restrictions.

~~(c) (d) Except as provided in subsection (b), when a person has completed the suspension pursuant to subsection (a), (b) or (c) of K.S.A. 8-1014, and amendments thereto, the division shall restrict the person's driving privileges pursuant to subsection (a), (b) or (c) of K.S.A. 8-1014, and amendments thereto, to driving only a motor vehicle equipped with an ignition interlock device, approved by the division and maintained at the person's expense. Proof of the installation of such device, for the entire restriction period, shall be provided to the division before the person's driving privileges are fully reinstated. Upon restricting a person's driving privileges pursuant to this subsection, the division shall issue a copy of the order imposing the restrictions which is required to be carried by the person at any time the person is operating a motor vehicle on the highways of this state.~~

(e) Whenever an ignition interlock device is required by law, such ignition interlock device shall be approved by the department of health and environment and maintained at the person's expense. Proof of the installation of such ignition interlock device, for the entire period required by the applicable law, shall be provided to the division before the person's driving privileges are fully reinstated.

(f) Except as provided further, any person whose license is restricted to operating only a motor vehicle with an ignition interlock device installed may operate an employer's vehicle without an ignition interlock device installed during normal business activities, provided that the person does not partly or entirely own or control the employer's vehicle or business. The provisions of this subsection shall not apply to any person whose driving privileges have been restricted for the

remainder of the one-year suspension period as provided in subsection (a).

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

(h) Any person who has had the person's driving privileges suspended or restricted pursuant to subsection (a), (b) or (c) of K.S.A. 8-1014 prior to the amendments by this act, may apply to the division to have the suspension and restriction penalties modified in conformity with the provisions of subsection (a), (b) or (c) of K.S.A. 8-1014, and amendments thereto. The division shall assess an application fee of \$59 for a person to apply to modify the suspension and restriction penalties previously issued. The division shall remit all application fees to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of such remittance, the state treasurer shall deposit the entire amount in the state treasury and shall credit such moneys to the division of vehicles operating fund. The application fee established in this section shall be the only fee collected or moneys in the nature of a fee collected for such application. Such fee shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee. The division shall modify the suspension and restriction penalties, unless such person's driving privileges have been suspended or revoked pursuant to another action by the division or a court.

Sec. 17. K.S.A. 8-1016 is hereby amended to read as follows: 8-1016. (a) On or before July

1, 2012, the secretary of ~~revenue~~ health and environment shall adopt rules and regulations for:

(1) The approval by the ~~division~~ department of models and classes of ignition interlock devices suitable for use by persons whose driving privileges have been restricted to driving a vehicle equipped with such a device. Such rules and regulations shall require that any ignition interlock device approved by the department shall be capable of capturing a photographic image of the person using the device;

(2) the calibration and maintenance of such devices, which shall be the responsibility of the manufacturer. Such rules and regulations shall require that the manufacturer or the manufacturer's representatives calibrate and maintain the devices at intervals not to exceed 60 days. Calibration and maintenance shall include, but not be limited to, physical inspection of the device, the vehicle and wiring of the device to the vehicle for signs of tampering, calibration of the device and downloading of all data contained within the device's memory and reporting of any violation or noncompliance to the division; and

(3) ensuring that each manufacturer approved provides a reasonable statewide service network where such devices may be obtained, repaired, replaced or serviced and such service network can be accessed 24 hours per day through a toll-free phone service; and

(4) requiring that each manufacturer provide a credit of at least 2% of the gross program revenues in the state as a credit for those persons who have otherwise qualified to obtain an ignition interlock restricted license under this act who are indigent as evidenced by qualification and eligibility for the federal food stamp program. Such rules and regulations shall require that the manufacturer or the manufacturer's representatives inform persons of this credit and how to qualify for assistance in obtaining an ignition interlock device.

~~In adopting rules and regulations for approval of ignition interlock devices under this section, the secretary of revenue shall require that the manufacturer or the manufacturer's representatives calibrate and maintain the devices at intervals not to exceed 60 days. Calibration and maintenance shall include but not be limited to physical inspection of the device, the vehicle and wiring of the device to the vehicle for signs of tampering, calibration of the device and downloading of all data contained within the device's memory and reporting of any violation or noncompliance to the division.~~

~~(4) (b) On or before July 1, 2012, the division shall adopt by rules and regulations:~~

~~_____ (1) Participant requirements for proper use and maintenance of a certified ignition interlock device during any time period the person's license is restricted by the division to only operating a motor vehicle with an ignition interlock device installed and by rules and regulations;~~

~~_____ (2) the reporting requirements of the approved manufacturer to the division relating to the person's proper use and maintenance of a certified ignition interlock device; and~~

~~_____ (3) the requirements for notices to be sent by ignition interlock providers to the division when a person is required to have an ignition interlock device installed, which shall include, but not be limited to, a requirement that the notice be signed by the person required to have the ignition interlock device acknowledging that: (A) Operation of any vehicle that is not equipped with an ignition interlock device may subject the person to criminal and civil penalties; (B) tampering or interfering with the proper and intended operation of an ignition interlock device may subject the person to further civil penalties; and (C) the ignition interlock device shall be maintained at the person's expense, up-to-date records shall be kept in the vehicle showing required service and calibration and such records shall be provided upon request.~~

~~(5) The division shall require that each manufacturer provide a credit of at least 2% of the gross program revenues in the state as a credit for those persons who have otherwise qualified to obtain an ignition interlock restricted license under this act who are indigent as evidenced by qualification and eligibility for the federal food stamp program.~~

(b) (c) If the ~~division~~ department approves an ignition interlock device in accordance with rules and regulations adopted under this section, the ~~division~~ department shall give written notice of the approval to the manufacturer of the device. Such notice shall be admissible in any civil or criminal proceeding in this state.

(c) (d) The manufacturer of an ignition interlock device shall reimburse the ~~division~~ department for any cost incurred in approving or disapproving such device under this section.

(d) (e) Neither the state nor any agency, officer or employee thereof shall be liable in any civil or criminal proceeding arising out of the use of an ignition interlock device approved under this section.

(f) All rules and regulations, orders and directives of the secretary of revenue that relate to this section, and that are in effect on July 1, 2011, shall continue to be effective and shall be deemed to be rules and regulations, orders and directives of the secretary of health and environment until revised, amended, revoked or nullified pursuant to law.

Sec. 18. K.S.A. 8-1017 is hereby amended to read as follows: 8-1017. (a) No person shall:

(1) Tamper with an ignition interlock device for the purpose of circumventing it or rendering it inaccurate or inoperative;

(2) request or solicit another to blow into an ignition interlock device, or start a motor vehicle equipped with such device, for the purpose of providing an operable motor vehicle to a

person whose driving privileges have been restricted to driving a motor vehicle equipped with such device;

(3) blow into or start a motor vehicle equipped with an ignition interlock device for the purpose of providing an operable motor vehicle to a person whose driving privileges have been restricted to driving a motor vehicle equipped with such device; or

(4) operate a vehicle not equipped with an ignition interlock device during the restricted period.

(b) Violation of this section is a class A, nonperson misdemeanor.

(c) In addition to any other penalties provided by law, ~~upon receipt of a conviction for a violation of this section, the division shall suspend the person's driving privileges for a period of two years.:~~

(1) On a first conviction of a violation of subsection (a)(1) or (a)(2), the division shall extend the ignition interlock restriction period on the person's driving privileges for an additional 90 days; and

(2) on a second or subsequent conviction of a violation of subsection (a)(1) or (a)(2), the division shall restart the original ignition interlock restriction period on the person's driving privileges.

Sec. 19. K.S.A. 2010 Supp. 8-1020 is hereby amended to read as follows: 8-1020. (a) Any licensee served with an officer's certification and notice of suspension pursuant to K.S.A. 8-1002, and amendments thereto, may request an administrative hearing. Such request may be made either by:

(1) Mailing a written request which is postmarked 14 days after service of notice; or

(2) transmitting a written request by electronic facsimile which is received by the division within 14 days after service of notice.

(b) If the licensee makes a timely request for an administrative hearing, any temporary license issued pursuant to K.S.A. 8-1002, and amendments thereto, shall remain in effect until the 30th day after the effective date of the decision made by the division.

(c) If the licensee fails to make a timely request for an administrative hearing, the licensee's driving privileges shall be suspended or suspended and then restricted in accordance with the notice of suspension served pursuant to K.S.A. 8-1002, and amendments thereto.

(d) (1) Upon receipt of a timely request for a hearing, the division shall forthwith set the matter for hearing before a representative of the director and provide notice of the extension of temporary driving privileges. The hearing shall be held by telephone conference call unless the hearing request includes a request that the hearing be held in person before a representative of the director. The officer's certification and notice of suspension shall inform the licensee of the availability of a hearing before a representative of the director. Except for a hearing conducted by telephone conference call, the hearing shall be conducted in the county where the arrest occurred or a county adjacent thereto.

(2) The division shall charge a fee of \$50 for a hearing, whether held by telephone or in person, to be applied by the division for administrative costs to conduct the hearing. The division shall remit all hearing fees to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the division of vehicles operating fund. The hearing fee established in this section shall be the only fee collected or moneys in the nature of a fee

collected for such hearing. Such fee shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee.

(e) Except as provided in subsection (f), prehearing discovery shall be limited to the following documents, which shall be provided to the licensee or the licensee's attorney no later than seven days prior to the date of hearing:

- (1) The officer's certification and notice of suspension;
- (2) in the case of a breath or blood test failure, copies of documents indicating the result of any evidentiary breath or blood test administered at the request of a law enforcement officer;
- (3) in the case of a breath test failure, a copy of the affidavit showing certification of the officer and the instrument; and
- (4) in the case of a breath test failure, a copy of the Kansas department of health and environment testing protocol checklist.

(f) At or prior to the time the notice of hearing is sent, the division shall issue an order allowing the licensee or the licensee's attorney to review any video or audio tape record made of the events upon which the administrative action is based. Such review shall take place at a reasonable time designated by the law enforcement agency and shall be made at the location where the video or audio tape is kept. The licensee may obtain a copy of any such video or audio tape upon request and upon payment of a reasonable fee to the law enforcement agency, not to exceed \$25 per tape.

(g) Witnesses at the hearing shall be limited to the licensee, to any law enforcement officer who signed the certification form and to one other witness who was present at the time of the issuance of the certification and called by the licensee. The presence of the certifying officer or officers shall not be required, unless requested by the licensee at the time of making the request for

the hearing. The examination of a law enforcement officer shall be restricted to the factual circumstances relied upon in the officer's certification.

(h) (1) If the officer certifies that the person refused the test, the scope of the hearing shall be limited to whether:

(A) A law enforcement officer had reasonable grounds to believe the person was operating or attempting to operate a vehicle while under the influence of alcohol or drugs, or both, or had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system;

(B) the person was in custody or arrested for an alcohol or drug related offense or was involved in a vehicle accident or collision resulting in property damage, personal injury or death;

(C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto; and

(D) the person refused to submit to and complete a test as requested by a law enforcement officer.

(2) If the officer certifies that the person failed a breath test, the scope of the hearing shall be limited to whether:

(A) A law enforcement officer had reasonable grounds to believe the person was operating a vehicle while under the influence of alcohol or drugs, or both, or had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system;

(B) the person was in custody or arrested for an alcohol or drug related offense or was involved in a vehicle accident or collision resulting in property damage, personal injury or death;

(C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto;

(D) the testing equipment used was certified by the Kansas department of health and environment;

(E) the person who operated the testing equipment was certified by the Kansas department of health and environment;

(F) the testing procedures used substantially complied with the procedures set out by the Kansas department of health and environment;

(G) the test result determined that the person had an alcohol concentration of .08 or greater in such person's breath; and

(H) the person was operating or attempting to operate a vehicle.

(3) If the officer certifies that the person failed a blood test, the scope of the hearing shall be limited to whether:

(A) A law enforcement officer had reasonable grounds to believe the person was operating a vehicle while under the influence of alcohol or drugs, or both, or had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system;

(B) the person was in custody or arrested for an alcohol or drug related offense or was involved in a vehicle accident or collision resulting in property damage, personal injury or death;

(C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto;

(D) the testing equipment used was reliable;

- (E) the person who operated the testing equipment was qualified;
- (F) the testing procedures used were reliable;
- (G) the test result determined that the person had an alcohol concentration of .08 or greater in such person's blood; and
- (H) the person was operating or attempting to operate a vehicle.
- (i) At a hearing pursuant to this section, or upon court review of an order entered at such a hearing, an affidavit of the custodian of records at the Kansas department of health and environment stating that the breath testing device was certified and the operator of such device was certified on the date of the test shall be admissible into evidence in the same manner and with the same force and effect as if the certifying officer or employee of the Kansas department of health and environment had testified in person. A certified operator of a breath testing device shall be competent to testify regarding the proper procedures to be used in conducting the test.
- (j) At a hearing pursuant to this section, or upon court review of an order entered at such a hearing, in which the report of blood test results have been prepared by the Kansas bureau of investigation or other forensic laboratory of a state or local law enforcement agency are to be introduced as evidence, the report, or a copy of the report, of the findings of the forensic examiner shall be admissible into evidence in the same manner and with the same force and effect as if the forensic examiner who performed such examination, analysis, comparison or identification and prepared the report thereon had testified in person.
- (k) At the hearing, the licensee has the burden of proof by a preponderance of the evidence to show that the facts set out in the officer's certification are false or insufficient and that the order suspending or suspending and restricting the licensee's driving privileges should be dismissed.

(l) Evidence at the hearing shall be limited to the following:

(1) The documents set out in subsection (e);

(2) the testimony of the licensee;

(3) the testimony of any certifying officer;

(4) the testimony of any witness present at the time of the issuance of the certification and called by the licensee;

(5) any affidavits submitted from other witnesses;

(6) any documents submitted by the licensee to show the existence of a medical condition, as described in K.S.A. 8-1001, and amendments thereto; and

(7) any video or audio tape record of the events upon which the administrative action is based.

(m) After the hearing, the representative of the director shall enter an order affirming the order of suspension or suspension and restriction of driving privileges or for good cause appearing therefor, dismiss the administrative action. If the representative of the director enters an order affirming the order of suspension or suspension and restriction of driving privileges, the suspension or suspension and restriction shall begin on the 30th day after the effective date of the order of suspension or suspension and restriction. If the person whose privileges are suspended is a nonresident licensee, the license of the person shall be forwarded to the appropriate licensing authority in the person's state of residence if the result at the hearing is adverse to such person or if no timely request for a hearing is received.

(n) The representative of the director may issue an order at the close of the hearing or may take the matter under advisement and issue a hearing order at a later date. If the order is made at the

close of the hearing, the licensee or the licensee's attorney shall be served with a copy of the order by the representative of the director. If the matter is taken under advisement or if the hearing was by telephone conference call, the licensee and any attorney who appeared at the administrative hearing upon behalf of the licensee each shall be served with a copy of the hearing order by mail. Any law enforcement officer who appeared at the hearing also may be mailed a copy of the hearing order. The effective date of the hearing order shall be the date upon which the hearing order is served, whether served in person or by mail.

(o) The licensee may file a petition for review of the hearing order pursuant to K.S.A. 8-259, and amendments thereto. Upon filing a petition for review, the licensee shall serve the secretary of revenue with a copy of the petition and summons. Upon receipt of a copy of the petition for review by the secretary, the temporary license issued pursuant to subsection (b) shall be extended until the decision on the petition for review is final.

(p) Such review shall be in accordance with this section and the act for judicial review and civil enforcement of agency actions. To the extent that this section and any other provision of law conflicts, this section shall prevail. The petition for review shall be filed within 14 days after the effective date of the order. Venue of the action for review is the county where the person was arrested or the accident occurred, or, if the hearing was not conducted by telephone conference call, the county where the administrative proceeding was held. The action for review shall be by trial de novo to the court and the evidentiary restrictions of subsection (l) shall not apply to the trial de novo. The court shall take testimony, examine the facts of the case and determine whether the petitioner is entitled to driving privileges or whether the petitioner's driving privileges are subject to suspension or suspension and restriction under the provisions of this act. If the court finds that the grounds for

action by the agency have been met, the court shall affirm the agency action.

(q) Upon review, the licensee shall have the burden to show that the decision of the agency should be set aside.

(r) Notwithstanding the requirement to issue a temporary license in K.S.A. 8-1002, and amendments thereto, and the requirements to extend the temporary license in this section, any such temporary driving privileges are subject to restriction, suspension, revocation or cancellation as provided in K.S.A. 8-1014, and amendments thereto, or for other cause.

(s) Upon motion by a party, or on the court's own motion, the court may enter an order restricting the driving privileges allowed by the temporary license provided for in K.S.A. 8-1002, and amendments thereto, and in this section. The temporary license also shall be subject to restriction, suspension, revocation or cancellation, as set out in K.S.A. 8-1014, and amendments thereto, or for other cause.

(t) The facts found by the hearing officer or by the district court upon a petition for review shall be independent of the determination of the same or similar facts in the adjudication of any criminal charges arising out of the same occurrence. The disposition of those criminal charges shall not affect the suspension or suspension and restriction to be imposed under this section.

(u) All notices affirming or canceling a suspension under this section, all notices of a hearing held under this section and all issuances of temporary driving privileges pursuant to this section shall be sent by first-class mail and a United States post office certificate of mailing shall be obtained therefor. All notices so mailed shall be deemed received three days after mailing, except that this provision shall not apply to any licensee where such application would result in a manifest injustice.

(v) The provisions of K.S.A. 60-206, and amendments thereto, regarding the computation

of time shall be applicable in determining the time for requesting an administrative hearing as set out in subsection (a) and to the time for filing a petition for review pursuant to subsection (o) and K.S.A. 8-259, and amendments thereto.

Sec. 20. K.S.A. 8-1501 is hereby amended to read as follows: 8-1501. The provisions of this article relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except:

(a) Where a different place is specifically referred to in a given section; and

(b) The provisions of K.S.A. 8-1566 to 8-1568, inclusive, section 2 and the provisions of article 10 of chapter 8 of the Kansas Statutes Annotated, and any acts amendatory thereof, shall apply upon highways and elsewhere throughout the state.

Sec. 21. K.S.A. 2009 Supp. 8-1567, as amended by section 3 of chapter 153 of the 2010 Session Laws of Kansas, is hereby amended to read as follows: 8-1567. (a) ~~No person shall operate or attempt~~ Driving under the influence is operating or attempting 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~~ three 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; or

~~(b) No person shall operate or attempt to operate any vehicle within this state if~~

(6) 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 \$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)~~

(b) (1) Driving under the influence is:

(A) On a first conviction a class A, nonperson misdemeanor. The person convicted shall be sentenced to not less than 30 days nor more than six months' imprisonment and fined not less than \$500 nor more than \$1,000. The person convicted shall 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;

(B) on a second conviction a class A, nonperson misdemeanor. The person convicted shall be sentenced to not less than 90 days nor more than one years' imprisonment and fined not less than \$1,000 nor more than \$1,500. The person convicted shall 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 consecutive days' imprisonment mandated by this subsection may be served by completing: (i) Six days 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; or (ii) ten days under a house arrest program pursuant to section 249 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, only after such person has served 48 consecutive hours' imprisonment;

(C) on a third conviction a class A, nonperson misdemeanor, except as provided in subsection (b)(1)(D). The person convicted shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined \$2,500. The person convicted shall serve at least 10 consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. The 10 consecutive days' imprisonment mandated by this subsection may be served by completing: (i) Twelve days in a work release program only after such person has served 96 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; or (ii) twenty days under a house arrest program pursuant to section 249 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, only after such person has served 96 consecutive hours' imprisonment;

(D) on a third conviction a nonperson felony, if the person has a prior conviction which occurred within the preceding 10 years, not including any period of incarceration. The person convicted shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined \$2,500. The person convicted shall serve at least 10 consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. The 10 consecutive days' imprisonment mandated by this subsection may be served by completing:

(i) Twelve days in a work release program only after such person has served 96 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; or (ii) twenty days under a house arrest program pursuant to section 249 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, only after such person has served 96 consecutive hours' imprisonment;

(E) the court may order that the term of imprisonment imposed pursuant to paragraph (1) subsection (b)(1)(C) or (b)(1)(D) 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 section 285 of chapter 136 of the 2010 Session Laws of Kansas, 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) (i) 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)~~ (ii) the person fails to meaningfully participate in the treatment program of the designated facility; ~~(C)~~ (iii) the person is disruptive to the security or operation of the designated facility; or ~~(D)~~ (iv) 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 or section 280 of chapter 136 of the 2010 Session Laws of Kansas, 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) (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 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.~~

~~———— (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.~~

~~(h) Any person convicted of violating this section or an ordinance which prohibits the acts that this section prohibits~~

(F) on a fourth or subsequent conviction a severity level 7, nonperson felony.

(2) In addition, prior to sentencing for any conviction, the court shall order the person to participate in an alcohol and drug evaluation conducted by a licensed provider with a DUI specialty as provided in K.S.A. 8-1008, and amendments thereto. The person shall be required to follow any recommendation made by the provider after such evaluation, unless otherwise ordered by the court.

(c) Any person convicted of a violation of this section, or a violation of a city ordinance or county resolution prohibiting the acts prohibited by this section, 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~~ shall 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,~~ or a violation of a city ordinance or county resolution prohibiting the acts prohibited by this section. 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.

(d) 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.

(i) (e) 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) (f) 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) (g) (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~~ any motor vehicle owned or operated, or both, by the convicted person be impounded or immobilized for a period not to exceed ~~one year~~ two years 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.

~~(f) (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) (h) Prior to filing a complaint alleging a violation of this section, a prosecutor shall request and shall receive from the: (1) 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: and (2) Kansas bureau of investigation central repository all criminal history record information concerning such person.~~

~~(n) (i) 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 on 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) (j) 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) (k) (1) Except as provided in subsections (l) and (m), 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;~~

(2) The minimum penalty prescribed by any such ordinance or resolution shall not be less than the minimum penalty prescribed by this ~~act~~ section 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) (3) 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);~~

(4) 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 in accordance with subsection (g).~~

~~(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.~~

(1) Notwithstanding any other law to the contrary, no city shall enact an ordinance declaring the acts prohibited by this section as unlawful or prohibited in such city and prescribing penalties for violation thereof unless:

(1) The municipal law enforcement in such city reports arrests to the Kansas bureau of investigation as required by law;

(2) the municipal court in such city utilizes a standardized risk assessment instrument

approved by the Kansas sentencing commission, utilizes a standardized substance abuse evaluation approved by the secretary of social and rehabilitation services, utilizes the results of such assessment and such evaluation in determining disposition of the case, has the capability to supervise the offender accordingly and reports the disposition of such case to the Kansas bureau of investigation central repository; and

(3) the municipal court in such city, on and after July 1, 2012, reports the disposition of such case electronically to the Kansas bureau of investigation central repository.

(m) On and after July 1, 2011, any city ordinance declaring the acts prohibited by this section as unlawful or prohibited in such city and prescribing penalties for violation thereof is hereby declared null and void, regardless of when such ordinance was enacted, unless such city meets the requirements specified in subsection (l).

(n) Notwithstanding any other law to the contrary, the district court shall have exclusive jurisdiction over violations of subsections (b)(1)(C) and (b)(1)(D) committed on or after July 1, 2011. No city shall enact an ordinance granting a municipal court jurisdiction over violations of subsections (b)(1)(C) and (b)(1)(D) which is concurrent with the jurisdiction of the district court over violations of subsections (b)(1)(C) and (b)(1)(D). On and after July 1, 2011, any part of any city ordinance in conflict with this subsection is hereby declared null and void, regardless of when such ordinance was enacted.

(r) (o) (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: (A) 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;~~ and (B) Kansas bureau of investigation central repository all criminal history record information concerning such person.

~~(2)~~ (2) 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 third or subsequent conviction, the city attorney shall refer the violation to the appropriate county or district attorney for prosecution. The county or district attorney shall accept such referral and pursue a disposition of such violation, and shall not refer any such violation back to the city attorney.

~~(s) (p) (1)~~ 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.

(2) 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.

(q) (1) A person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section, or a violation of an ordinance of any city or resolution of any county which prohibits the acts that this section prohibits, only once during the person's lifetime.

(2) Any person whom the prosecutor considers for eligibility or finds eligible to enter a diversion agreement in lieu of further criminal proceedings for a violation of this section, or a

violation of an ordinance of any city or resolution of any county which prohibits the acts that this section prohibits, shall participate in an alcohol and drug evaluation conducted by a licensed provider with a DUI specialty as provided in K.S.A. 8-1008, and amendments thereto. Any diversion agreement entered shall require such person to follow any recommendation made by the provider after such evaluation, unless otherwise ordered by the court.

~~(t)~~ (r) The alternatives set out in subsections (a)(1), (a)(2) and (a)(3) may be pleaded in the alternative, and the state, city or county may, 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)~~ (s) Upon a 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. 2009 Supp. 21-36a12, and amendments thereto.~~

~~(w)~~ (t) 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.~~

(u) When determining whether a conviction is a first, second, third, fourth or subsequent conviction of a violation of this section:

(1) Convictions for a violation of this section, or a violation of 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 on a complaint alleging any such violations, shall be taken into account, but only convictions or diversions occurring on or after July 1, 1996. Nothing in this provision shall be construed as preventing any court from considering any convictions or diversions occurring during the person's lifetime in determining the sentence to be imposed within the limits provided for a first, second, third or subsequent offender;

(2) any convictions for a violation of the following sections occurring during a person's lifetime shall be taken into account: (A) Section 2, and amendments thereto; (B) K.S.A. 8-2,144, and amendments thereto; (C) K.S.A. 32-1131, and amendments thereto; (D) subsection (a)(3) of section 40 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; (E) subsection (g)

of section 48 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; and (F) aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was committed while committing a violation of K.S.A. 8-1567, and amendments thereto;

(3) "conviction" includes: (A) Entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of a crime described in subsection (u)(2); (B) conviction of a violation of an ordinance of a city in this state, or a resolution of a county in this state or any law of another state which would constitute a crime described in subsection (u)(1) or (u)(2); and (C) receiving punishment under the uniform code of military justice or Kansas code of military justice for an act which was committed on a military reservation and which would constitute a crime described in subsection (u)(1) or (u)(2) if committed off a military reservation in this state;

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

(5) multiple convictions of any crime described in subsection (u)(1) or (u)(2) arising from the same arrest shall only be counted as one conviction.

(v) As used in 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; and

(3) "drug" includes toxic vapors as such term is defined in K.S.A. 2010 Supp. 21-36a12, and

amendments thereto.

Sec. 22. K.S.A. 2010 Supp. 12-4104 is hereby amended to read as follows: 12-4104. (a) The municipal court of each city shall have jurisdiction to hear and determine cases involving violations of the ordinances of the city, including concurrent jurisdiction to hear and determine a violation of an ordinance when the elements of such ordinance violation are the same as the elements of a violation of one of the following state statutes and would constitute, and be punished as, a felony if charged in district court:

~~(1) K.S.A. 8-1567, and amendments thereto, driving under the influence;~~

~~— (2) K.S.A. 21-3412a~~ (1) Section 49 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, domestic battery;

~~(3) K.S.A. 21-3701~~ (2) section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, theft;

~~(4) K.S.A. 21-3707~~ (3) section 107 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, giving a worthless check; or

~~(5)~~ (4) subsection (b)(3) of K.S.A. 2010 Supp. 21-36a06, and amendments thereto, possession of marijuana.

(b) Search warrants shall not issue out of a municipal court.

Sec. 23. K.S.A. 2010 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) In all cases alleging a violation of a city ordinance prohibiting the acts prohibited by K.S.A. 8-2,144 or 8-1567 or section 2, and amendments thereto, 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; the municipal court:~~

(1) Utilizes a standardized risk assessment instrument approved by the Kansas sentencing commission; utilizes a standardized substance abuse evaluation approved by the secretary of social and rehabilitation services; utilizes the results of such assessment and such evaluation in determining disposition of the case; has the capability to supervise the offender accordingly; and reports the disposition of such case to the Kansas bureau of investigation central repository; and

(2) on and after July 1, 2012, reports the disposition of such case electronically to the Kansas bureau of investigation central repository.

Sec. 24. K.S.A. 2010 Supp. 12-4516 is hereby amended to read as follows: 12-4516. (a) (1) Except as provided in subsection (b) ~~or~~, (c) and (d), any person who has been convicted of a violation of a city ordinance of this state may petition the convicting court for the expungement of such conviction and related arrest records if three or more years have elapsed since the person:

(A) Satisfied the sentence imposed; or

(B) was discharged from probation, parole or a suspended sentence.

(2) Except as provided in subsection (b) ~~or~~, (c) and (d), any person who has fulfilled the terms of a diversion agreement based on a violation of a city ordinance of this state may petition the court for the expungement of such diversion agreement and related arrest records if three or more years have elapsed since the terms of the diversion agreement were fulfilled.

(b) No person may petition for expungement until five or more years have elapsed since the person satisfied the sentence imposed or the terms of a diversion agreement or was discharged from probation, parole, conditional release or a suspended sentence, if such person was convicted of the

violation of a city ordinance which would also constitute:

(1) Vehicular homicide, as defined by ~~K.S.A. 21-3405~~ section 41 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(2) driving while the privilege to operate a motor vehicle on the public highways of this state has been canceled, suspended or revoked, as prohibited by K.S.A. 8-262, and amendments thereto;

(3) perjury resulting from a violation of K.S.A. 8-261a, and amendments thereto;

(4) a violation of the provisions of the fifth clause of K.S.A. 8-142, and amendments thereto, relating to fraudulent applications;

(5) any crime punishable as a felony wherein a motor vehicle was used in the perpetration of such crime;

(6) failing to stop at the scene of an accident and perform the duties required by K.S.A. 8-1602, 8-1603 or 8-1604, and amendments thereto;

(7) a violation of the provisions of K.S.A. 40-3104, and amendments thereto, relating to motor vehicle liability insurance coverage; or

(8) a violation of K.S.A. 21-3405b, ~~and amendments thereto~~ prior to its repeal.

(c) No person may petition for expungement until 10 or more years have elapsed since the person satisfied the sentence imposed or the terms of a diversion agreement or was discharged from probation, parole, conditional release or a suspended sentence, if such person was convicted of the violation of a city ordinance which would also constitute a violation of K.S.A. 8-1567, and amendments thereto.

~~(c)~~ (d) There shall be no expungement of convictions or diversions for a violation of a city ordinance which would also constitute a violation of K.S.A. ~~8-1567~~ or 8-2,144, and amendments

thereto.

~~(d)~~ (e) When a petition for expungement is filed, the court shall set a date for a hearing of such petition and shall cause notice of such hearing to be given to the prosecuting attorney and the arresting law enforcement agency. The petition shall state: (1) The defendant's full name;

(2) the full name of the defendant at the time of arrest, conviction or diversion, if different than the defendant's current name;

(3) the defendant's sex, race and date of birth;

(4) the crime for which the defendant was arrested, convicted or diverted;

(5) the date of the defendant's arrest, conviction or diversion; and

(6) the identity of the convicting court, arresting law enforcement agency or diverting authority. A municipal court may prescribe a fee to be charged as costs for a person petitioning for an order of expungement pursuant to this section. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner and shall have access to any reports or records relating to the petitioner that are on file with the secretary of corrections or the Kansas parole board.

~~(e)~~ (f) At the hearing on the petition, the court shall order the petitioner's arrest record, conviction or diversion expunged if the court finds that:

(1) The petitioner has not been convicted of a felony in the past two years and no proceeding involving any such crime is presently pending or being instituted against the petitioner;

(2) the circumstances and behavior of the petitioner warrant the expungement; and

(3) the expungement is consistent with the public welfare.

~~(f)~~ (g) When the court has ordered an arrest record, conviction or diversion expunged, the

order of expungement shall state the information required to be contained in the petition. The clerk of the court shall send a certified copy of the order of expungement to the Kansas bureau of investigation which shall notify the federal bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the arrest, conviction or diversion. After the order of expungement is entered, the petitioner shall be treated as not having been arrested, convicted or diverted of the crime, except that:

(1) Upon conviction for any subsequent crime, the conviction that was expunged may be considered as a prior conviction in determining the sentence to be imposed;

(2) the petitioner shall disclose that the arrest, conviction or diversion occurred if asked about previous arrests, convictions or diversions:

(A) In any application for employment as a detective with a private detective agency, as defined by K.S.A. 75-7b01, and amendments thereto; as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the department of social and rehabilitation services;

(B) in any application for admission, or for an order of reinstatement, to the practice of law in this state;

(C) to aid in determining the petitioner's qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(D) to aid in determining the petitioner's qualifications for executive director of the Kansas racing and gaming commission, for employment with the commission or for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission, or to aid

in determining qualifications for licensure or renewal of licensure by the commission;

(E) to aid in determining the petitioner's qualifications for the following under the Kansas expanded lottery act: (i) Lottery gaming facility manager or prospective manager, racetrack gaming facility manager or prospective manager, licensee or certificate holder; or (ii) an officer, director, employee, owner, agent or contractor thereof;

(F) upon application for a commercial driver's license under K.S.A. 8-2,125 through 8-2,142, and amendments thereto;

(G) to aid in determining the petitioner's qualifications to be an employee of the state gaming agency;

(H) to aid in determining the petitioner's qualifications to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact;

(I) in any application for registration as a broker-dealer, agent, investment adviser or investment adviser representative all as defined in K.S.A. 17-12a102, and amendments thereto;

(J) in any application for employment as a law enforcement officer, as defined in K.S.A. 22-2202 or 74-5602, and amendments thereto; or

(K) for applications received on and after July 1, 2006, to aid in determining the petitioner's qualifications for a license to carry a concealed weapon pursuant to the personal and family protection act, K.S.A. 2010 Supp. 75-7c01 et seq., and amendments thereto;

(3) the court, in the order of expungement, may specify other circumstances under which the arrest, conviction or diversion is to be disclosed; and

(4) the conviction may be disclosed in a subsequent prosecution for an offense which requires as an element of such offense a prior conviction of the type expunged.

~~(g)~~ (h) Whenever a person is convicted of an ordinance violation, pleads guilty and pays a fine for such a violation, is placed on parole or probation or is granted a suspended sentence for such a violation, the person shall be informed of the ability to expunge the arrest records or conviction. Whenever a person enters into a diversion agreement, the person shall be informed of the ability to expunge the diversion.

~~(h)~~ (i) Subject to the disclosures required pursuant to subsection ~~(f)~~ (g), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose arrest records, conviction or diversion of an offense has been expunged under this statute may state that such person has never been arrested, convicted or diverted of such offense.

~~(i)~~ (j) Whenever the record of any arrest, conviction or diversion has been expunged under the provisions of this section or under the provisions of any other existing or former statute, the custodian of the records of arrest, conviction, diversion and incarceration relating to that crime shall not disclose the existence of such records, except when requested by:

- (1) The person whose record was expunged;
- (2) a private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or operator by the person whose record has been expunged;
- (3) a court, upon a showing of a subsequent conviction of the person whose record has been expunged;
- (4) the secretary of social and rehabilitation services, or a designee of the secretary, for the purpose of obtaining information relating to employment in an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the department of social and rehabilitation services of any

person whose record has been expunged;

(5) a person entitled to such information pursuant to the terms of the expungement order;

(6) a prosecuting attorney, and such request is accompanied by a statement that the request is being made in conjunction with a prosecution of an offense that requires a prior conviction as one of the elements of such offense;

(7) the supreme court, the clerk or disciplinary administrator thereof, the state board for admission of attorneys or the state board for discipline of attorneys, and the request is accompanied by a statement that the request is being made in conjunction with an application for admission, or for an order of reinstatement, to the practice of law in this state by the person whose record has been expunged;

(8) the Kansas lottery, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(9) the governor or the Kansas racing and gaming commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for executive director of the commission, for employment with the commission, for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission or for licensure, renewal of licensure or continued licensure by the commission;

(10) the Kansas racing and gaming commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining

qualifications of the following under the Kansas expanded lottery act: (A) Lottery gaming facility managers and prospective managers, racetrack gaming facility managers and prospective managers, licensees and certificate holders; and (B) their officers, directors, employees, owners, agents and contractors;

(11) the state gaming agency, and the request is accompanied by a statement that the request is being made to aid in determining qualifications: (A) To be an employee of the state gaming agency; or (B) to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact;

(12) the Kansas securities commissioner, or a designee of the commissioner, and the request is accompanied by a statement that the request is being made in conjunction with an application for registration as a broker-dealer, agent, investment adviser or investment adviser representative by such agency and the application was submitted by the person whose record has been expunged;

(13) the attorney general, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for a license to carry a concealed weapon pursuant to the personal and family protection act;

(14) the Kansas sentencing commission;

(15) the Kansas commission on peace officers' standards and training and the request is accompanied by a statement that the request is being made to aid in determining certification eligibility as a law enforcement officer pursuant to K.S.A. 74-5601 et seq., and amendments thereto;
or

(16) a law enforcement agency and the request is accompanied by a statement that the request is being made to aid in determining eligibility for employment as a law enforcement officer

as defined by K.S.A. 22-2202, and amendments thereto.

Sec. 25. K.S.A. 2010 Supp. 22-2802 is hereby amended to read as follows: 22-2802. (1) Any person charged with a crime shall, at the person's first appearance before a magistrate, be ordered released pending preliminary examination or trial upon the execution of an appearance bond in an amount specified by the magistrate and sufficient to assure the appearance of such person before the magistrate when ordered and to assure the public safety. If the person is being bound over for a felony, the bond shall also be conditioned on the person's appearance in the district court or by way of a two-way electronic audio-video communication as provided in subsection (14) at the time required by the court to answer the charge against such person and at any time thereafter that the court requires. Unless the magistrate makes a specific finding otherwise, if the person is being bonded out for a person felony or a person misdemeanor, the bond shall be conditioned on the person being prohibited from having any contact with the alleged victim of such offense for a period of at least 72 hours. The magistrate may impose such of the following additional conditions of release as will reasonably assure the appearance of the person for preliminary examination or trial:

(a) Place the person in the custody of a designated person or organization agreeing to supervise such person;

(b) place restrictions on the travel, association or place of abode of the person during the period of release;

(c) impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody during specified hours;

(d) place the person under a house arrest program pursuant to K.S.A. 21-4603b, and amendments thereto; or

(e) place the person under the supervision of a court services officer responsible for monitoring the person's compliance with any conditions of release ordered by the magistrate.

(2) (a) In addition to any conditions of release provided in subsection (1), for any person charged with a felony, the magistrate may order such person to submit to a drug abuse examination and evaluation in a public or private treatment facility or state institution and, if determined by the head of such facility or institution that such person is a drug abuser or incapacitated by drugs, to submit to treatment for such drug abuse, as a condition of release.

(b) In addition to any conditions of release provided in subsection (1) and (2)(a), for any person charged with a violation of K.S.A. 8-2,144 or 8-1567 or section 2, and amendments thereto, the magistrate may order such person to: Not operate or attempt to operate a vehicle without a valid driver's license and insurance; not operate or attempt to operate a vehicle without first providing the court proof of installation of an ignition interlock device, with reports sent to the court for monitoring use of the device; abstain from using alcohol and illegal drugs; agree to submit to alcohol or drug testing when directed by the court; or use an alcohol monitoring device.

(3) The appearance bond shall be executed with sufficient solvent sureties who are residents of the state of Kansas, unless the magistrate determines, in the exercise of such magistrate's discretion, that requiring sureties is not necessary to assure the appearance of the person at the time ordered.

(4) A deposit of cash in the amount of the bond may be made in lieu of the execution of the bond pursuant to ~~paragraph~~ subsection (3). Except as provided in ~~paragraph~~ subsection (5), such deposit shall be in the full amount of the bond and in no event shall a deposit of cash in less than the full amount of bond be permitted. Any person charged with a crime who is released on a cash bond

shall be entitled to a refund of all moneys paid for the cash bond, after deduction of any outstanding restitution, costs, fines and fees, after the final disposition of the criminal case if the person complies with all requirements to appear in court. The court may not exclude the option of posting bond pursuant to paragraph subsection (3).

(5) Except as provided further, the amount of the appearance bond shall be the same whether executed as described in subsection (3) or posted with a deposit of cash as described in subsection (4). When the appearance bond has been set at \$2,500 or less and the most serious charge against the person is a misdemeanor, a severity level 8, 9 or 10 nonperson felony, a drug severity level 4 felony or a violation of K.S.A. 8-1567, and amendments thereto, the magistrate may allow the person to deposit cash with the clerk in the amount of 10% of the bond, provided the person meets at least the following qualifications:

- (A) Is a resident of the state of Kansas;
- (B) has a criminal history score category of G, H or I;
- (C) has no prior history of failure to appear for any court appearances;
- (D) has no detainer or hold from any other jurisdiction;
- (E) has not been extradited from, and is not awaiting extradition to, another state; and
- (F) has not been detained for an alleged violation of probation.

(6) In the discretion of the court, a person charged with a crime may be released upon the person's own recognizance by guaranteeing payment of the amount of the bond for the person's failure to comply with all requirements to appear in court. The release of a person charged with a crime upon the person's own recognizance shall not require the deposit of any cash by the person.

- (7) The court shall not impose any administrative fee.

(8) In determining which conditions of release will reasonably assure appearance and the public safety, the magistrate shall, on the basis of available information, take into account the nature and circumstances of the crime charged; the weight of the evidence against the defendant; the defendant's family ties, employment, financial resources, character, mental condition, length of residence in the community, record of convictions, record of appearance or failure to appear at court proceedings or of flight to avoid prosecution; the likelihood or propensity of the defendant to commit crimes while on release, including whether the defendant will be likely to threaten, harass or cause injury to the victim of the crime or any witnesses thereto; and whether the defendant is on probation or parole from a previous offense at the time of the alleged commission of the subsequent offense.

(9) The appearance bond shall set forth all of the conditions of release.

(10) A person for whom conditions of release are imposed and who continues to be detained as a result of the person's inability to meet the conditions of release shall be entitled, upon application, to have the conditions reviewed without unnecessary delay by the magistrate who imposed them. If the magistrate who imposed conditions of release is not available, any other magistrate in the county may review such conditions.

(11) A magistrate ordering the release of a person on any conditions specified in this section may at any time amend the order to impose additional or different conditions of release. If the imposition of additional or different conditions results in the detention of the person, the provisions of subsection (10) shall apply.

(12) Statements or information offered in determining the conditions of release need not conform to the rules of evidence. No statement or admission of the defendant made at such a proceeding shall be received as evidence in any subsequent proceeding against the defendant.

(13) The appearance bond and any security required as a condition of the defendant's release shall be deposited in the office of the magistrate or the clerk of the court where the release is ordered. If the defendant is bound to appear before a magistrate or court other than the one ordering the release, the order of release, together with the bond and security shall be transmitted to the magistrate or clerk of the court before whom the defendant is bound to appear.

(14) Proceedings before a magistrate as provided in this section to determine the release conditions of a person charged with a crime including release upon execution of an appearance bond may be conducted by two-way electronic audio-video communication between the defendant and the judge in lieu of personal presence of the defendant or defendant's counsel in the courtroom in the discretion of the court. The defendant may be accompanied by the defendant's counsel. The defendant shall be informed of the defendant's right to be personally present in the courtroom during such proceeding if the defendant so requests. Exercising the right to be present shall in no way prejudice the defendant.

(15) The magistrate may order the person to pay for any costs associated with the supervision of the conditions of release of the appearance bond in an amount not to exceed \$15 per week of such supervision.

Sec. 26. K.S.A. 22-3610 is hereby amended to read as follows: 22-3610. (a) When a case is appealed to the district court, such court shall hear and determine the cause on the original complaint, unless the complaint shall be found defective, in which case the court may order a new complaint to be filed and the case shall proceed as if the original complaint had not been set aside. The case shall be tried *de novo* in the district court.

(b) Notwithstanding subsection (a), appeal from a conviction rendered pursuant to subsection

(b) of K.S.A. 12-4416 shall be conducted only on the record of the stipulation of facts relating to the complaint.

(c) Notwithstanding subsection (a), if the complaint in the case appealed to the district court is one in which the number of prior convictions is required to be reflected in the charging document and the prosecutor can establish to the district court's satisfaction that the defendant has obtained additional convictions since the complaint was filed in municipal court, the prosecutor shall be allowed to amend the complaint to reflect the proper number of prior convictions.

Sec. 27. K.S.A. 2010 Supp. 22-3717 is hereby amended to read as follows: 22-3717. (a) Except as otherwise provided by this section; K.S.A. 1993 Supp. 21-4628 prior to its repeal; K.S.A. 21-4635 through 21-4638, and amendments thereto; K.S.A. 8-1567, and amendments thereto; K.S.A. 21-4642, and amendments thereto; and K.S.A. 21-4624, and amendments thereto, an inmate, including an inmate sentenced pursuant to K.S.A. 21-4618, and amendments thereto, shall be eligible for parole after serving the entire minimum sentence imposed by the court, less good time credits.

(b) (1) Except as provided by K.S.A. 21-4635 through 21-4638, and amendments thereto, an inmate sentenced to imprisonment for the crime of capital murder, or an inmate sentenced for the crime of murder in the first degree based upon a finding of premeditated murder, committed on or after July 1, 1994, shall be eligible for parole after serving 25 years of confinement, without deduction of any good time credits.

(2) Except as provided by subsection (b)(1) or (b)(4), K.S.A. 1993 Supp. 21-4628 prior to its repeal and K.S.A. 21-4635 through 21-4638, and amendments thereto, an inmate sentenced to imprisonment for an off-grid offense committed on or after July 1, 1993, but prior to July 1, 1999, shall be eligible for parole after serving 15 years of confinement, without deduction of any good time

credits and an inmate sentenced to imprisonment for an off-grid offense committed on or after July 1, 1999, shall be eligible for parole after serving 20 years of confinement without deduction of any good time credits.

(3) Except as provided by K.S.A. 1993 Supp. 21-4628 prior to its repeal, an inmate sentenced for a class A felony committed before July 1, 1993, including an inmate sentenced pursuant to K.S.A. 21-4618, and amendments thereto, shall be eligible for parole after serving 15 years of confinement, without deduction of any good time credits.

(4) An inmate sentenced to imprisonment for a violation of subsection (a) of K.S.A. 21-3402, and amendments thereto, committed on or after July 1, 1996, but prior to July 1, 1999, shall be eligible for parole after serving 10 years of confinement without deduction of any good time credits.

(5) An inmate sentenced to imprisonment pursuant to K.S.A. 21-4643, and amendments thereto, committed on or after July 1, 2006, shall be eligible for parole after serving the mandatory term of imprisonment without deduction of any good time credits.

(c) (1) Except as provided in subsection (e), if an inmate is sentenced to imprisonment for more than one crime and the sentences run consecutively, the inmate shall be eligible for parole after serving the total of:

(A) The aggregate minimum sentences, as determined pursuant to K.S.A. 21-4608 and amendments thereto, less good time credits for those crimes which are not class A felonies; and

(B) an additional 15 years, without deduction of good time credits, for each crime which is a class A felony.

(2) If an inmate is sentenced to imprisonment pursuant to K.S.A. 21-4643, and amendments

thereto, for crimes committed on or after July 1, 2006, the inmate shall be eligible for parole after serving the mandatory term of imprisonment.

(d) (1) Persons sentenced for crimes, other than off-grid crimes, committed on or after July 1, 1993, or persons subject to subparagraph (G), will not be eligible for parole, but will be released to a mandatory period of postrelease supervision upon completion of the prison portion of their sentence as follows:

(A) Except as provided in subparagraphs (D) and (E), persons sentenced for nondrug severity level 1 through 4 crimes and drug severity levels 1 and 2 crimes must serve 36 months, plus the amount of good time and program credit earned and retained pursuant to K.S.A. 21-4722, and amendments thereto, on postrelease supervision.

(B) Except as provided in subparagraphs (D) and (E), persons sentenced for nondrug severity levels 5 and 6 crimes and drug severity level 3 crimes must serve 24 months, plus the amount of good time and program credit earned and retained pursuant to K.S.A. 21-4722, and amendments thereto, on postrelease supervision.

(C) Except as provided in subparagraphs (D) ~~and~~ (E) and (H), persons sentenced for nondrug severity level 7 through 10 crimes and drug severity level 4 crimes must serve 12 months, plus the amount of good time and program credit earned and retained pursuant to K.S.A. 21-4722, and amendments thereto, on postrelease supervision.

(D) (i) The sentencing judge shall impose the postrelease supervision period provided in subparagraph (d)(1)(A), (d)(1)(B) or (d)(1)(C), unless the judge finds substantial and compelling reasons to impose a departure based upon a finding that the current crime of conviction was sexually motivated. In that event, departure may be imposed to extend the postrelease supervision to a period

of up to 60 months.

(ii) If the sentencing judge departs from the presumptive postrelease supervision period, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure. Departures in this section are subject to appeal pursuant to K.S.A. 21-4721, and amendments thereto.

(iii) In determining whether substantial and compelling reasons exist, the court shall consider:

- (a) Written briefs or oral arguments submitted by either the defendant or the state;
- (b) any evidence received during the proceeding;
- (c) the presentence report, the victim's impact statement and any psychological evaluation as ordered by the court pursuant to subsection (e) of K.S.A. 21-4714, and amendments thereto; and
- (d) any other evidence the court finds trustworthy and reliable.

(iv) The sentencing judge may order that a psychological evaluation be prepared and the recommended programming be completed by the offender. The department of corrections or the parole board shall ensure that court ordered sex offender treatment be carried out.

(v) In carrying out the provisions of subparagraph (d)(1)(D), the court shall refer to K.S.A. 21-4718, and amendments thereto.

(vi) Upon petition, the parole board may provide for early discharge from the postrelease supervision period upon completion of court ordered programs and completion of the presumptive postrelease supervision period, as determined by the crime of conviction, pursuant to subparagraph (d)(1)(A), (d)(1)(B) or (d)(1)(C). Early discharge from postrelease supervision is at the discretion of the parole board.

(vii) Persons convicted of crimes deemed sexually violent or sexually motivated, shall be registered according to the offender registration act, K.S.A. 22-4901 through 22-4910, and amendments thereto.

(viii) Persons convicted of K.S.A. 21-3510 or 21-3511, and amendments thereto, shall be required to participate in a treatment program for sex offenders during the postrelease supervision period.

(E) The period of postrelease supervision provided in subparagraphs (A) and (B) may be reduced by up to 12 months and the period of postrelease supervision provided in subparagraph (C) may be reduced by up to six months based on the offender's compliance with conditions of supervision and overall performance while on postrelease supervision. The reduction in the supervision period shall be on an earned basis pursuant to rules and regulations adopted by the secretary of corrections.

(F) In cases where sentences for crimes from more than one severity level have been imposed, the offender shall serve the longest period of postrelease supervision as provided by this section available for any crime upon which sentence was imposed irrespective of the severity level of the crime. Supervision periods will not aggregate.

(G) Except as provided in subsection (u), persons convicted of a sexually violent crime committed on or after July 1, 2006, and who are released from prison, shall be released to a mandatory period of postrelease supervision for the duration of the person's natural life.

(H) Notwithstanding any other provision of law, persons sentenced for a violation of K.S.A. 8-2,144 or 8-1567 or section 2, and amendments thereto, shall serve 24 months, plus the amount of good time and program credit earned and retained pursuant to section 302 of chapter 136 of the 2010

Session Laws of Kansas, and amendments thereto, on postrelease supervision. Such persons released by the parole board pursuant to subsection (w) shall serve 24 months, plus the remainder of their sentence, plus the amount of good time and program credit earned and retained pursuant to section 302 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, on postrelease supervision.

(2) As used in this section, "sexually violent crime" means:

(A) Rape, K.S.A. 21-3502, and amendments thereto;

(B) indecent liberties with a child, K.S.A. 21-3503, and amendments thereto;

(C) aggravated indecent liberties with a child, K.S.A. 21-3504, and amendments thereto;

(D) criminal sodomy, subsection (a)(2) and (a)(3) of K.S.A. 21-3505, and amendments thereto;

(E) aggravated criminal sodomy, K.S.A. 21-3506, and amendments thereto;

(F) indecent solicitation of a child, K.S.A. 21-3510, and amendments thereto;

(G) aggravated indecent solicitation of a child, K.S.A. 21-3511, and amendments thereto;

(H) sexual exploitation of a child, K.S.A. 21-3516, and amendments thereto;

(I) aggravated sexual battery, K.S.A. 21-3518, and amendments thereto;

(J) aggravated incest, K.S.A. 21-3603, and amendments thereto; or

(K) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, and amendments thereto, of a sexually violent crime as defined in this section.

"Sexually motivated" means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant's sexual gratification.

(e) If an inmate is sentenced to imprisonment for a crime committed while on parole or

conditional release, the inmate shall be eligible for parole as provided by subsection (c), except that the Kansas parole board may postpone the inmate's parole eligibility date by assessing a penalty not exceeding the period of time which could have been assessed if the inmate's parole or conditional release had been violated for reasons other than conviction of a crime.

(f) If a person is sentenced to prison for a crime committed on or after July 1, 1993, while on probation, parole, conditional release or in a community corrections program, for a crime committed prior to July 1, 1993, and the person is not eligible for retroactive application of the sentencing guidelines and amendments thereto pursuant to K.S.A. 21-4724, and amendments thereto, the new sentence shall not be aggregated with the old sentence, but shall begin when the person is paroled or reaches the conditional release date on the old sentence. If the offender was past the offender's conditional release date at the time the new offense was committed, the new sentence shall not be aggregated with the old sentence but shall begin when the person is ordered released by the Kansas parole board or reaches the maximum sentence expiration date on the old sentence, whichever is earlier. The new sentence shall then be served as otherwise provided by law. The period of postrelease supervision shall be based on the new sentence, except that those offenders whose old sentence is a term of imprisonment for life, imposed pursuant to K.S.A. 1993 Supp. 21-4628 prior to its repeal, or an indeterminate sentence with a maximum term of life imprisonment, for which there is no conditional release or maximum sentence expiration date, shall remain on postrelease supervision for life or until discharged from supervision by the Kansas parole board.

(g) Subject to the provisions of this section, the Kansas parole board may release on parole those persons confined in institutions who are eligible for parole when: (1) The board believes that the inmate should be released for hospitalization, for deportation or to answer the warrant or other

process of a court and is of the opinion that there is reasonable probability that the inmate can be released without detriment to the community or to the inmate; or (2) the secretary of corrections has reported to the board in writing that the inmate has satisfactorily completed the programs required by any agreement entered under K.S.A. 75-5210a, and amendments thereto, or any revision of such agreement, and the board believes that the inmate is able and willing to fulfill the obligations of a law abiding citizen and is of the opinion that there is reasonable probability that the inmate can be released without detriment to the community or to the inmate. Parole shall not be granted as an award of clemency and shall not be considered a reduction of sentence or a pardon.

(h) The Kansas parole board shall hold a parole hearing at least the month prior to the month an inmate will be eligible for parole under subsections (a), (b) and (c). At least the month preceding the parole hearing, the county or district attorney of the county where the inmate was convicted shall give written notice of the time and place of the public comment sessions for the inmate to any victim of the inmate's crime who is alive and whose address is known to the county or district attorney or, if the victim is deceased, to the victim's family if the family's address is known to the county or district attorney. Except as otherwise provided, failure to notify pursuant to this section shall not be a reason to postpone a parole hearing. In the case of any inmate convicted of an off-grid felony or a class A felony the secretary of corrections shall give written notice of the time and place of the public comment session for such inmate at least one month preceding the public comment session to any victim of such inmate's crime or the victim's family pursuant to K.S.A. 74-7338, and amendments thereto. If notification is not given to such victim or such victim's family in the case of any inmate convicted of an off-grid felony or a class A felony, the board shall postpone a decision on parole of the inmate to a time at least 30 days after notification is given as provided in this

section. Nothing in this section shall create a cause of action against the state or an employee of the state acting within the scope of the employee's employment as a result of the failure to notify pursuant to this section. If granted parole, the inmate may be released on parole on the date specified by the board, but not earlier than the date the inmate is eligible for parole under subsections (a), (b) and (c). At each parole hearing and, if parole is not granted, at such intervals thereafter as it determines appropriate, the Kansas parole board shall consider: (1) Whether the inmate has satisfactorily completed the programs required by any agreement entered under K.S.A. 75-5210a, and amendments thereto, or any revision of such agreement; and (2) all pertinent information regarding such inmate, including, but not limited to, the circumstances of the offense of the inmate; the presentence report; the previous social history and criminal record of the inmate; the conduct, employment, and attitude of the inmate in prison; the reports of such physical and mental examinations as have been made, including, but not limited to, risk factors revealed by any risk assessment of the inmate; comments of the victim and the victim's family including in person comments, contemporaneous comments and prerecorded comments made by any technological means; comments of the public; official comments; any recommendation by the staff of the facility where the inmate is incarcerated; proportionality of the time the inmate has served to the sentence a person would receive under the Kansas sentencing guidelines for the conduct that resulted in the inmate's incarceration; and capacity of state correctional institutions.

(i) In those cases involving inmates sentenced for a crime committed after July 1, 1993, the parole board will review the inmates proposed release plan. The board may schedule a hearing if they desire. The board may impose any condition they deem necessary to insure public safety, aid in the reintegration of the inmate into the community, or items not completed under the agreement entered

into under K.S.A. 75-5210a, and amendments thereto. The board may not advance or delay an inmate's release date. Every inmate while on postrelease supervision shall remain in the legal custody of the secretary of corrections and is subject to the orders of the secretary.

(j) (1) Before ordering the parole of any inmate, the Kansas parole board shall have the inmate appear either in person or via a video conferencing format and shall interview the inmate unless impractical because of the inmate's physical or mental condition or absence from the institution. Every inmate while on parole shall remain in the legal custody of the secretary of corrections and is subject to the orders of the secretary. Whenever the Kansas parole board formally considers placing an inmate on parole and no agreement has been entered into with the inmate under K.S.A. 75-5210a, and amendments thereto, the board shall notify the inmate in writing of the reasons for not granting parole. If an agreement has been entered under K.S.A. 75-5210a, and amendments thereto, and the inmate has not satisfactorily completed the programs specified in the agreement, or any revision of such agreement, the board shall notify the inmate in writing of the specific programs the inmate must satisfactorily complete before parole will be granted. If parole is not granted only because of a failure to satisfactorily complete such programs, the board shall grant parole upon the secretary's certification that the inmate has successfully completed such programs. If an agreement has been entered under K.S.A. 75-5210a, and amendments thereto, and the secretary of corrections has reported to the board in writing that the inmate has satisfactorily completed the programs required by such agreement, or any revision thereof, the board shall not require further program participation. However, if the board determines that other pertinent information regarding the inmate warrants the inmate's not being released on parole, the board shall state in writing the reasons for not granting the parole. If parole is denied for an inmate sentenced for a crime other than a class A or

class B felony or an off-grid felony, the board shall hold another parole hearing for the inmate not later than one year after the denial unless the parole board finds that it is not reasonable to expect that parole would be granted at a hearing if held in the next three years or during the interim period of a deferral. In such case, the parole board may defer subsequent parole hearings for up to three years but any such deferral by the board shall require the board to state the basis for its findings. If parole is denied for an inmate sentenced for a class A or class B felony or an off-grid felony, the board shall hold another parole hearing for the inmate not later than three years after the denial unless the parole board finds that it is not reasonable to expect that parole would be granted at a hearing if held in the next 10 years or during the interim period of a deferral. In such case, the parole board may defer subsequent parole hearings for up to 10 years but any such deferral shall require the board to state the basis for its findings.

(2) Inmates sentenced for a class A or class B felony who have not had a parole board hearing in the five years prior to July 1, 2010, shall have such inmates' cases reviewed by the parole board on or before July 1, 2012. Such review shall begin with the inmates with the oldest deferral date and progress to the most recent. Such review shall be done utilizing existing resources unless the parole board determines that such resources are insufficient. If the parole board determines that such resources are insufficient, then the provisions of this paragraph are subject to appropriations therefor.

(k) Parolees and persons on postrelease supervision shall be assigned, upon release, to the appropriate level of supervision pursuant to the criteria established by the secretary of corrections.

(l) The Kansas parole board shall adopt rules and regulations in accordance with K.S.A. 77-415 et seq., and amendments thereto, not inconsistent with the law and as it may deem proper or

necessary, with respect to the conduct of parole hearings, postrelease supervision reviews, revocation hearings, orders of restitution, reimbursement of expenditures by the state board of indigents' defense services and other conditions to be imposed upon parolees or releasees. Whenever an order for parole or postrelease supervision is issued it shall recite the conditions thereof.

(m) Whenever the Kansas parole board orders the parole of an inmate or establishes conditions for an inmate placed on postrelease supervision, the board:

(1) Unless it finds compelling circumstances which would render a plan of payment unworkable, shall order as a condition of parole or postrelease supervision that the parolee or the person on postrelease supervision pay any transportation expenses resulting from returning the parolee or the person on postrelease supervision to this state to answer criminal charges or a warrant for a violation of a condition of probation, assignment to a community correctional services program, parole, conditional release or postrelease supervision;

(2) to the extent practicable, shall order as a condition of parole or postrelease supervision that the parolee or the person on postrelease supervision make progress towards or successfully complete the equivalent of a secondary education if the inmate has not previously completed such educational equivalent and is capable of doing so;

(3) may order that the parolee or person on postrelease supervision perform community or public service work for local governmental agencies, private corporations organized not-for-profit or charitable or social service organizations performing services for the community;

(4) may order the parolee or person on postrelease supervision to pay the administrative fee imposed pursuant to K.S.A. 22-4529, and amendments thereto, unless the board finds compelling circumstances which would render payment unworkable; and

(5) unless it finds compelling circumstances which would render a plan of payment unworkable, shall order that the parolee or person on postrelease supervision reimburse the state for all or part of the expenditures by the state board of indigents' defense services to provide counsel and other defense services to the person. In determining the amount and method of payment of such sum, the parole board shall take account of the financial resources of the person and the nature of the burden that the payment of such sum will impose. Such amount shall not exceed the amount claimed by appointed counsel on the payment voucher for indigents' defense services or the amount prescribed by the board of indigents' defense services reimbursement tables as provided in K.S.A. 22-4522, and amendments thereto, whichever is less, minus any previous payments for such services.

(n) If the court which sentenced an inmate specified at the time of sentencing the amount and the recipient of any restitution ordered as a condition of parole or postrelease supervision, the Kansas parole board shall order as a condition of parole or postrelease supervision that the inmate pay restitution in the amount and manner provided in the journal entry unless the board finds compelling circumstances which would render a plan of restitution unworkable.

(o) Whenever the Kansas parole board grants the parole of an inmate, the board, within 10 days of the date of the decision to grant parole, shall give written notice of the decision to the county or district attorney of the county where the inmate was sentenced.

(p) When an inmate is to be released on postrelease supervision, the secretary, within 30 days prior to release, shall provide the county or district attorney of the county where the inmate was sentenced written notice of the release date.

(q) Inmates shall be released on postrelease supervision upon the termination of the prison portion of their sentence. Time served while on postrelease supervision will vest.

(r) An inmate who is allocated regular good time credits as provided in K.S.A. 22-3725, and amendments thereto, may receive meritorious good time credits in increments of not more than 90 days per meritorious act. These credits may be awarded by the secretary of corrections when an inmate has acted in a heroic or outstanding manner in coming to the assistance of another person in a life threatening situation, preventing injury or death to a person, preventing the destruction of property or taking actions which result in a financial savings to the state.

(s) The provisions of subsections (d)(1)(A), (d)(1)(B), (d)(1)(C) and (d)(1)(E) shall be applied retroactively as provided in subsection (t).

(t) For offenders sentenced prior to the effective date of this act who are eligible for modification of their postrelease supervision obligation, the department of corrections shall modify the period of postrelease supervision as provided for by this section for offenders convicted of severity level 9 and 10 crimes on the sentencing guidelines grid for nondrug crimes and severity level 4 crimes on the sentencing guidelines grid for drug crimes on or before September 1, 2000; for offenders convicted of severity level 7 and 8 crimes on the sentencing guidelines grid for nondrug crimes on or before November 1, 2000; and for offenders convicted of severity level 5 and 6 crimes on the sentencing guidelines grid for nondrug crimes and severity level 3 crimes on the sentencing guidelines grid for drug crimes on or before January 1, 2001.

(u) An inmate sentenced to imprisonment pursuant to K.S.A. 21-4643, and amendments thereto, for crimes committed on or after July 1, 2006, shall be placed on parole for life and shall not be discharged from supervision by the Kansas parole board. When the board orders the parole of an inmate pursuant to this subsection, the board shall order as a condition of parole that the inmate be electronically monitored for the duration of the inmate's natural life.

(v) Whenever the Kansas parole board or the court orders a person to be electronically monitored, the board or court shall order the person to reimburse the state for all or part of the cost of such monitoring. In determining the amount and method of payment of such sum, the board or court shall take account of the financial resources of the person and the nature of the burden that the payment of such sum will impose.

(w) (1) Notwithstanding any other provision of law, the Kansas parole board may release an inmate who has entered into an agreement pursuant to section 3, and amendments thereto, when the secretary of corrections has reported to the board in writing that the inmate has satisfactorily completed the programs required by any agreement entered under section 3, and amendments thereto, or any revision of such agreement, and the board believes that the inmate is able and willing to fulfill the obligations of a law abiding citizen and is of the opinion that there is reasonable probability that the inmate can be released without detriment to the community or to the inmate. Release shall not be granted as an award of clemency and shall not be considered a reduction of sentence or a pardon.

(2) The board shall hold a hearing to determine whether such release will be granted. If the board determines that other pertinent information regarding the inmate warrants the inmate not being released, the board shall state in writing the reasons for not granting the release. If the board determines that release is appropriate, the inmate shall be released to a mandatory period of postrelease supervision pursuant to subsection (d)(1)(H).

Sec. 28. Section 14 of chapter 136 of the 2010 Session Laws of Kansas, is hereby amended to read as follows: Sec. 14. A person may be guilty of a crime without having a culpable mental state if the crime is:

(a) A misdemeanor, cigarette or tobacco infraction or traffic infraction and the statute

defining the crime clearly indicates a legislative purpose to impose absolute liability for the conduct described;

(b) a felony and the statute defining the crime clearly indicates a legislative purpose to impose absolute liability for the conduct described;

(c) a violation of section 2, and amendments thereto;

~~(c)~~ (d) a violation of K.S.A. 8-1567 or 8-1567a, and amendments thereto; or

~~(d)~~ (e) a violation of K.S.A. 22-4901 et seq., and amendments thereto.

Sec. 29. Section 48 of chapter 136 of the 2010 Session Laws of Kansas, is hereby amended to read as follows: Sec. 48. (a) Battery is:

(1) Knowingly or recklessly causing bodily harm to another person; or

(2) knowingly causing physical contact with another person when done in a rude, insulting or angry manner;

(b) Aggravated battery is:

(1) (A) Knowingly causing great bodily harm to another person or disfigurement of another person;

(B) knowingly causing bodily harm to another person with a deadly weapon, or in any manner whereby great bodily harm, disfigurement or death can be inflicted; or

(C) knowingly causing physical contact with another person when done in a rude, insulting or angry manner with a deadly weapon, or in any manner whereby great bodily harm, disfigurement or death can be inflicted;

(2) (A) recklessly causing great bodily harm to another person or disfigurement of another person; or

(B) recklessly causing bodily harm to another person with a deadly weapon, or in any manner whereby great bodily harm, disfigurement or death can be inflicted.

(c) Battery against a law enforcement officer is:

(1) Battery, as defined in subsection (a)(2), committed against a:

(A) Uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty; or

(B) uniformed or properly identified state, county or city law enforcement officer, other than a state correctional officer or employee, a city or county correctional officer or employee, a juvenile correctional facility officer or employee or a juvenile detention facility office, or employee, while such officer is engaged in the performance of such officer's duty; or

(2) battery, as defined in subsection (a)(1), committed against a:

(A) Uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty; or

(B) uniformed or properly identified state, county or city law enforcement officer, other than a state correctional officer or employee, a city or county correctional officer or employee, a juvenile correctional facility officer or employee or a juvenile detention facility office, or employee, while such officer is engaged in the performance of such officer's duty; or

(3) battery, as defined in subsection (a) committed against a:

(A) State correctional officer or employee by a person in custody of the secretary of corrections, while such officer or employee is engaged in the performance of such officer's or employee's duty;

(B) juvenile correctional facility officer or employee by a person confined in such juvenile

correctional facility, while such officer or employee is engaged in the performance of such officer's or employee's duty;

(C) juvenile detention facility officer or employee by a person confined in such juvenile detention facility, while such officer or employee is engaged in the performance of such officer's or employee's duty; or

(D) city or county correctional officer or employee by a person confined in a city holding facility or county jail facility, while such officer or employee is engaged in the performance of such officer's or employee's duty.

(d) Aggravated battery against a law enforcement officer is:

(1) An aggravated battery, as defined in subsection (b)(1)(a) committed against a:

(A) Uniformed or properly identified state, county or city law enforcement officer while the officer is engaged in the performance of the officer's duty; or

(B) uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty;

(2) an aggravated battery, as defined in subsection (b)(1)(B) or (b)(1)(C), committed against a:

(A) Uniformed or properly identified state, county or city law enforcement officer while the officer is engaged in the performance of the officer's duty; or

(B) uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty; or

(3) knowingly causing, with a motor vehicle, bodily harm to a:

(A) Uniformed or properly identified state, county or city law enforcement officer while the

officer is engaged in the performance of the officer's duty; or

(B) uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty.

(e) Battery against a school employee is a battery, as defined in subsection (a), committed against a school employee in or on any school property or grounds upon which is located a building or structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12 or at any regularly scheduled school sponsored activity or event, while such employee is engaged in the performance of such employee's duty.

(f) Battery against a mental health employee is a battery, as defined in subsection (a), committed against a mental health employee by a person in the custody of the secretary of social and rehabilitation services, while such employee is engaged in the performance of such employee's duty.

(g) Aggravated battery while driving under the influence is:

(1) With no requirement of a culpable mental state, causing great bodily harm to another person or disfiguring of another person committed in the commission of, or attempt to commit, or flight from an act described in K.S.A. 8-1567, and amendments thereto; or

(2) with no requirement of a culpable mental state, causing bodily harm to another person or disfiguring of another person committed in the commission of, or attempt to commit, or flight from an act described in K.S.A. 8-1567, and amendments thereto.

~~(g)~~ (h) (1) Battery is a class B person misdemeanor.

(2) Aggravated battery as defined in:

(A) Subsection (b)(1)(A) is a severity level 4, person felony;

(B) subsection (b)(1)(B) or (b)(1)(C) is a severity level 7, person felony;

(C) subsection (b)(2)(A) is a severity level 5, person felony; and

(D) subsection (b)(2)(B) is a severity level 8, person felony.

(3) Battery against a law enforcement officer as defined in:

(A) Subsection (c)(1) is a class A person misdemeanor;

(B) subsection (c)(2) is a severity level 7, person felony; and

(C) subsection (c)(3) is a severity level 5, person felony.

(4) Aggravated battery against a law enforcement officer as defined in:

(A) Subsection (d)(1) or (d)(3) is a severity level 3, person felony; and

(B) subsection (d)(2) is a severity level 4, person felony.

(5) Battery against a school employee is a class A person misdemeanor.

(6) Battery against a mental health employee is a severity level 7, person felony.

(7) Aggravated battery while driving under the influence as defined in:

(A) Subsection (g)(1) is a severity level 5, person felony; and

(B) subsection (g)(2) is a severity level 8, person felony.

~~(h)~~ (i) As used in this section:

(1) "Correctional institution" means any institution or facility under the supervision and control of the secretary of corrections;

(2) "state correctional officer or employee" means any officer or employee of the Kansas department of corrections or any independent contractor, or any employee of such contractor, working at a correctional institution;

(3) "juvenile correctional facility officer or employee" means any officer or employee of the

juvenile justice authority or any independent contractor, or any employee of such contractor, working at a juvenile correctional facility, as defined in K.S.A. ~~2009~~ 2010 Supp. 38-2302, and amendments thereto;

(4) "juvenile detention facility officer or employee" means any officer or employee of a juvenile detention facility as defined in K.S.A. ~~2009~~ 2010 Supp. 38-2302, and amendments thereto;

(5) "city or county correctional officer or employee" means any correctional officer or employee of the city or county or any independent contractor, or any employee of such contractor, working at a city holding facility or county jail facility;

(6) "school employee" means any employee of a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12; and

(7) "mental health employee" means an employee of the department of social and rehabilitation services working at Larned state hospital, Osawatomie state hospital and Rainbow mental health facility, Kansas neurological institute and Parsons state hospital and training center and the treatment staff as defined in K.S.A. 59-29a02, and amendments thereto.

Sec. 30. Section 254 of chapter 136 of the 2010 Session Laws of Kansas, is hereby amended to read as follows: Sec. 254. (a) (1) Except as provided in subsections (b) ~~and~~, (c) and (d), any person convicted in this state of a traffic infraction, cigarette or tobacco infraction, misdemeanor or a class D or E felony, or for crimes committed on or after July 1, 1993, nondrug crimes ranked in severity levels 6 through 10 or any felony ranked in severity level 4 of the drug grid, may petition the convicting court for the expungement of such conviction or related arrest records if three or more years have elapsed since the person: (A) Satisfied the sentence imposed; or (B) was discharged from

probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence.

(2) Except as provided in subsections (b) ~~and~~, (c) and (d), any person who has fulfilled the terms of a diversion agreement may petition the district court for the expungement of such diversion agreement and related arrest records if three or more years have elapsed since the terms of the diversion agreement were fulfilled.

(b) Except as provided in ~~subsection (c)~~ subsections (c) and (d), no person may petition for expungement until five or more years have elapsed since the person satisfied the sentence imposed, the terms of a diversion agreement or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a class A, B or C felony, or for crimes committed on or after July 1, 1993, if convicted of an off-grid felony or any nondrug crime ranked in severity levels 1 through 5 or any felony ranked in severity levels 1 through 3 of the drug grid, or:

(1) Vehicular homicide, as defined by section 41 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or as prohibited by any law of another state which is in substantial conformity with that statute;

(2) driving while the privilege to operate a motor vehicle on the public highways of this state has been canceled, suspended or revoked, as prohibited by K.S.A. 8-262, and amendments thereto, or as prohibited by any law of another state which is in substantial conformity with that statute;

(3) perjury resulting from a violation of K.S.A. 8-261a, and amendments thereto, or resulting from the violation of a law of another state which is in substantial conformity with that statute;

(4) violating the provisions of the fifth clause of K.S.A. 8-142, and amendments thereto,

relating to fraudulent applications or violating the provisions of a law of another state which is in substantial conformity with that statute;

(5) any crime punishable as a felony wherein a motor vehicle was used in the perpetration of such crime;

(6) failing to stop at the scene of an accident and perform the duties required by K.S.A. 8-1602, 8-1603 or 8-1604, and amendments thereto, or required by a law of another state which is in substantial conformity with those statutes;

(7) violating the provisions of K.S.A. 40-3104, and amendments thereto, relating to motor vehicle liability insurance coverage; or

(8) a violation of K.S.A. 21-3405b, prior to its repeal.

(c) No person may petition for expungement until 10 or more years have elapsed since the person satisfied the sentence imposed, the terms of a diversion agreement or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a violation of K.S.A. 8-1567, and amendments thereto, including any diversion for such violation.

~~(e)~~ (d) There shall be no expungement of convictions for the following offenses or of convictions for an attempt to commit any of the following offenses:

(1) Rape as defined in section 67 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(2) indecent liberties with a child or aggravated indecent liberties with a child as defined in section 70 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(3) criminal sodomy as defined in subsection (a)(3) or (a)(4) of section 68 of chapter 136 of

the 2010 Session Laws of Kansas, and amendments thereto;

(4) aggravated criminal sodomy as defined in section 68 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(5) indecent solicitation of a child or aggravated indecent solicitation of a child as defined in section 72 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(6) sexual exploitation of a child as defined in section 74 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(7) aggravated incest as defined in section 81 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(8) endangering a child or aggravated endangering a child as defined in section 78 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(9) abuse of a child as defined in section 79 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(10) capital murder as defined in section 36 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(11) murder in the first degree as defined in section 37 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(12) murder in the second degree as defined in section 38 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(13) voluntary manslaughter as defined in section 39 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(14) involuntary manslaughter as defined in section 40 of chapter 136 of the 2010 Session

Laws of Kansas, and amendments thereto;

(15) sexual battery as defined in section 69 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, when the victim was less than 18 years of age at the time the crime was committed;

(16) aggravated sexual battery as defined in section 69 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

~~(17) a violation of K.S.A. 8-1567, and amendments thereto, including any diversion for such violation;~~

~~——~~ (18) (17) a violation of K.S.A. 8-2,144, and amendments thereto, including any diversion for such violation; or

~~(19)~~ (18) any conviction for any offense in effect at any time prior to the effective date of this act, that is comparable to any offense as provided in this subsection.

(d) (1) When a petition for expungement is filed, the court shall set a date for a hearing of such petition and shall cause notice of such hearing to be given to the prosecutor and the arresting law enforcement agency. The petition shall state the:

(A) Defendant's full name;

(B) full name of the defendant at the time of arrest, conviction or diversion, if different than the defendant's current name;

(C) defendant's sex, race and date of birth;

(D) crime for which the defendant was arrested, convicted or diverted;

(E) date of the defendant's arrest, conviction or diversion; and

(F) identity of the convicting court, arresting law enforcement authority or diverting

authority.

(2) Except as provided further, there shall be no docket fee for filing a petition pursuant to this section. On and after July 1, 2009 through June 30, 2010, the supreme court may impose a charge, not to exceed \$10 per case, to fund the costs of non-judicial personnel. The charge established in this section shall be the only fee collected or moneys in the nature of a fee collected for the case. Such charge shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee.

(3) All petitions for expungement shall be docketed in the original criminal action. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner and shall have access to any reports or records relating to the petitioner that are on file with the secretary of corrections or the Kansas parole board.

(e) At the hearing on the petition, the court shall order the petitioner's arrest record, conviction or diversion expunged if the court finds that:

(1) The petitioner has not been convicted of a felony in the past two years and no proceeding involving any such crime is presently pending or being instituted against the petitioner;

(2) the circumstances and behavior of the petitioner warrant the expungement;

(3) the expungement is consistent with the public welfare.

(f) When the court has ordered an arrest record, conviction or diversion expunged, the order of expungement shall state the information required to be contained in the petition. The clerk of the court shall send a certified copy of the order of expungement to the Kansas bureau of investigation which shall notify the federal bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the arrest, conviction or diversion. After the

order of expungement is entered, the petitioner shall be treated as not having been arrested, convicted or diverted of the crime, except that:

(1) Upon conviction for any subsequent crime, the conviction that was expunged may be considered as a prior conviction in determining the sentence to be imposed;

(2) the petitioner shall disclose that the arrest, conviction or diversion occurred if asked about previous arrests, convictions or diversions:

(A) In any application for licensure as a private detective, private detective agency, certification as a firearms trainer pursuant to K.S.A. ~~2009~~ 2010 Supp. 75-7b21, and amendments thereto, or employment as a detective with a private detective agency, as defined by K.S.A. 75-7b01, and amendments thereto; as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the department of social and rehabilitation services;

(B) in any application for admission, or for an order of reinstatement, to the practice of law in this state;

(C) to aid in determining the petitioner's qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(D) to aid in determining the petitioner's qualifications for executive director of the Kansas racing and gaming commission, for employment with the commission or for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission, or to aid in determining qualifications for licensure or renewal of licensure by the commission;

(E) to aid in determining the petitioner's qualifications for the following under the Kansas

expanded lottery act: (i) Lottery gaming facility manager or prospective manager, racetrack gaming facility manager or prospective manager, licensee or certificate holder; or (ii) an officer, director, employee, owner, agent or contractor thereof;

(F) upon application for a commercial driver's license under K.S.A. 8-2,125 through 8-2,142, and amendments thereto;

(G) to aid in determining the petitioner's qualifications to be an employee of the state gaming agency;

(H) to aid in determining the petitioner's qualifications to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact;

(I) in any application for registration as a broker-dealer, agent, investment adviser or investment adviser representative all as defined in K.S.A. 17-12a102, and amendments thereto;

(J) in any application for employment as a law enforcement officer as defined in K.S.A. 22-2202 or 74-5602, and amendments thereto; or

(K) for applications received on and after July 1, 2006, to aid in determining the petitioner's qualifications for a license to carry a concealed weapon pursuant to the personal and family protection act, K.S.A. ~~2009~~ 2010 Supp. 75-7c01 et seq., and amendments thereto;

(3) the court, in the order of expungement, may specify other circumstances under which the conviction is to be disclosed;

(4) the conviction may be disclosed in a subsequent prosecution for an offense which requires as an element of such offense a prior conviction of the type expunged; and

(5) upon commitment to the custody of the secretary of corrections, any previously expunged record in the possession of the secretary of corrections may be reinstated and the expungement

disregarded, and the record continued for the purpose of the new commitment.

(g) Whenever a person is convicted of a crime, pleads guilty and pays a fine for a crime, is placed on parole, postrelease supervision or probation, is assigned to a community correctional services program, is granted a suspended sentence or is released on conditional release, the person shall be informed of the ability to expunge the arrest records or conviction. Whenever a person enters into a diversion agreement, the person shall be informed of the ability to expunge the diversion.

(h) Subject to the disclosures required pursuant to subsection (f), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose arrest records, conviction or diversion of a crime has been expunged under this statute may state that such person has never been arrested, convicted or diverted of such crime, but the expungement of a felony conviction does not relieve an individual of complying with any state or federal law relating to the use or possession of firearms by persons convicted of a felony.

(i) Whenever the record of any arrest, conviction or diversion has been expunged under the provisions of this section or under the provisions of any other existing or former statute, the custodian of the records of arrest, conviction, diversion and incarceration relating to that crime shall not disclose the existence of such records, except when requested by:

- (1) The person whose record was expunged;
- (2) a private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or operator by the person whose record has been expunged;
- (3) a court, upon a showing of a subsequent conviction of the person whose record has been expunged;

(4) the secretary of social and rehabilitation services, or a designee of the secretary, for the purpose of obtaining information relating to employment in an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the department of social and rehabilitation services of any person whose record has been expunged;

(5) a person entitled to such information pursuant to the terms of the expungement order;

(6) a prosecutor, and such request is accompanied by a statement that the request is being made in conjunction with a prosecution of an offense that requires a prior conviction as one of the elements of such offense;

(7) the supreme court, the clerk or disciplinary administrator thereof, the state board for admission of attorneys or the state board for discipline of attorneys, and the request is accompanied by a statement that the request is being made in conjunction with an application for admission, or for an order of reinstatement, to the practice of law in this state by the person whose record has been expunged;

(8) the Kansas lottery, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(9) the governor or the Kansas racing and gaming commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for executive director of the commission, for employment with the commission, for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission or for licensure, renewal of licensure or continued licensure by the

commission;

(10) the Kansas racing and gaming commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications of the following under the Kansas expanded lottery act: (A) Lottery gaming facility managers and prospective managers, racetrack gaming facility managers and prospective managers, licensees and certificate holders; and (B) their officers, directors, employees, owners, agents and contractors;

(11) the Kansas sentencing commission;

(12) the state gaming agency, and the request is accompanied by a statement that the request is being made to aid in determining qualifications: (A) To be an employee of the state gaming agency; or (B) to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-gaming compact;

(13) the Kansas securities commissioner or a designee of the commissioner, and the request is accompanied by a statement that the request is being made in conjunction with an application for registration as a broker-dealer, agent, investment adviser or investment adviser representative by such agency and the application was submitted by the person whose record has been expunged;

(14) the Kansas commission on peace officers' standards and training and the request is accompanied by a statement that the request is being made to aid in determining certification eligibility as a law enforcement officer pursuant to K.S.A. 74-5601 et seq., and amendments thereto;

(15) a law enforcement agency and the request is accompanied by a statement that the request is being made to aid in determining eligibility for employment as a law enforcement officer as defined by K.S.A. 22-2202, and amendments thereto; or

(16) the attorney general and the request is accompanied by a statement that the request is being made to aid in determining qualifications for a license to carry a concealed weapon pursuant to the personal and family protection act.

Sec. 31. Section 285 of chapter 136 of the 2010 Session Laws of Kansas, is hereby amended to read as follows: Sec. 285. (a) The provisions of this section shall be applicable to the sentencing guidelines grid for nondrug crimes. The following sentencing guidelines grid shall be applicable to nondrug felony crimes:

(b) Sentences expressed in the sentencing guidelines grid for nondrug crimes represent months of imprisonment.

(c) The sentencing guidelines grid is a two-dimensional crime severity and criminal history classification tool. The grid's vertical axis is the crime severity scale which classifies current crimes of conviction. The grid's horizontal axis is the criminal history scale which classifies criminal histories.

(d) The sentencing guidelines grid for nondrug crimes as provided in this section defines presumptive punishments for felony convictions, subject to the sentencing court's discretion to enter a departure sentence. The appropriate punishment for a felony conviction should depend on the severity of the crime of conviction when compared to all other crimes and the offender's criminal history.

(e) (1) The sentencing court has discretion to sentence at any place within the sentencing range. In the usual case it is recommended that the sentencing judge select the center of the range and reserve the upper and lower limits for aggravating and mitigating factors insufficient to warrant a departure.

(2) In presumptive imprisonment cases, the sentencing court shall pronounce the complete sentence which shall include the:

(A) Prison sentence;

(B) maximum potential reduction to such sentence as a result of good time; and

(C) period of postrelease supervision at the sentencing hearing. Failure to pronounce the period of postrelease supervision shall not negate the existence of such period of postrelease

supervision.

(3) In presumptive nonprison cases, the sentencing court shall pronounce the:

(A) Prison sentence; and

(B) duration of the nonprison sanction at the sentencing hearing.

(f) Each grid block states the presumptive sentencing range for an offender whose crime of conviction and criminal history place such offender in that grid block. If an offense is classified in a grid block below the dispositional line, the presumptive disposition shall be nonimprisonment. If an offense is classified in a grid block above the dispositional line, the presumptive disposition shall be imprisonment. If an offense is classified in grid blocks 5-H, 5-I or 6-G, the court may impose an optional nonprison sentence as provided in subsection (q).

(g) The sentence for a violation of section 48, and amendments thereto, aggravated battery against a law enforcement officer committed prior to July 1, 2006, or a violation of section 47, and amendments thereto, aggravated assault against a law enforcement officer, which places the defendant's sentence in grid block 6-H or 6-I shall be presumed imprisonment. The court may impose an optional nonprison sentence as provided in subsection (q).

(h) When a firearm is used to commit any person felony, the offender's sentence shall be presumed imprisonment. The court may impose an optional nonprison sentence as provided in subsection (q).

(i) (1) The sentence for the violation of the felony provision of subsection (b)(1)(D) of K.S.A. 8-1567, subsection (b)(3) of section 49 of chapter 136 of the 2010 Session Laws of Kansas, subsections (b)(3) and (b)(4) of section 109 of chapter 136 of the 2010 Session Laws of Kansas, section 223 of chapter 136 of the 2010 Session Laws of Kansas and section 227 of chapter 136 of

the 2010 Session Laws of Kansas, and amendments thereto, shall be as provided by the specific mandatory sentencing requirements of that section and shall not be subject to the provisions of this section or section 288 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

(2) If because of the offender's criminal history classification the offender is subject to presumptive imprisonment or if the judge departs from a presumptive probation sentence and the offender is subject to imprisonment, the provisions of this section and section 288 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall apply and the offender shall not be subject to the mandatory sentence as provided in section 109 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

(3) Notwithstanding the provisions of any other section, the term of imprisonment imposed for the violation of the felony provision of subsection (b)(1)(D) of K.S.A. 8-1567, subsection (b)(3) of section 49 of chapter 136 of the 2010 Session Laws of Kansas, subsections (b)(3) and (b)(4) of section 109 of chapter 136 of the 2010 Session Laws of Kansas, section 223 and section 227 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall not be served in a state facility in the custody of the secretary of corrections, except that the term of imprisonment for felony violations of subsection (b)(1)(D) of K.S.A. 8-1567, and amendments thereto, may be served in a state correctional facility designated by the secretary of corrections if the secretary determines that substance abuse treatment resources and facility capacity is available. The secretary's determination regarding the availability of treatment resources and facility capacity shall not be subject to review.

(4) Notwithstanding the provisions of any other section, the sentencing court shall retain jurisdiction to modify the sentence imposed for the violation of subsection (b)(1)(D) of K.S.A.

8-1567, and amendments thereto.

(j) (1) The sentence for any persistent sex offender whose current convicted crime carries a presumptive term of imprisonment shall be double the maximum duration of the presumptive imprisonment term. The sentence for any persistent sex offender whose current conviction carries a presumptive nonprison term shall be presumed imprisonment and shall be double the maximum duration of the presumptive imprisonment term.

(2) Except as otherwise provided in this subsection, as used in this subsection, "persistent sex offender" means a person who:

(A) (i) Has been convicted in this state of a sexually violent crime, as defined in K.S.A. 22-3717, and amendments thereto; and

(ii) at the time of the conviction under paragraph (A)(i) has at least one conviction for a sexually violent crime, as defined in K.S.A. 22-3717, and amendments thereto, in this state or comparable felony under the laws of another state, the federal government or a foreign government; or

(B) (i) has been convicted of rape, as defined in K.S.A. 21-3502, prior to its repeal, or section 67 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; and

(ii) at the time of the conviction under paragraph (B)(i) has at least one conviction for rape in this state or comparable felony under the laws of another state, the federal government or a foreign government.

(3) Except as provided in paragraph (2)(B), the provisions of this subsection shall not apply to any person whose current convicted crime is a severity level 1 or 2 felony.

(k) (1) If it is shown at sentencing that the offender committed any felony violation for the

benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further or assist in any criminal conduct by gang members, the offender's sentence shall be presumed imprisonment. The court may impose an optional nonprison sentence as provided in subsection (q).

(2) As used in this subsection, "criminal street gang" means any organization, association or group of three or more persons, whether formal or informal, having as one of its primary activities:

(A) The commission of one or more person felonies; or

(B) the commission of felony violations of K.S.A. ~~2009~~ 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto; and

(C) its members have a common name or common identifying sign or symbol; and

(D) its members, individually or collectively, engage in or have engaged in the commission, attempted commission, conspiracy to commit or solicitation of two or more person felonies or felony violations of K.S.A. ~~2009~~ 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto, or any substantially similar offense from another jurisdiction.

(l) Except as provided in subsection (o), the sentence for a violation of subsection (a)(1) of section 93 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, when such person being sentenced has a prior conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715, prior to its repeal, 21-3716, prior to its repeal, subsection (a)(1) or (a)(2) of section 93 of chapter 136 of the 2010 Session Laws of Kansas or subsection (b) of section 93 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall be presumed imprisonment.

(m) The sentence for a violation of K.S.A 22-4903 or subsection (a)(2) of section 138 of

chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall be presumptive imprisonment. If an offense under such sections is classified in grid blocks 5-E, 5-F, 5-G, 5-H or 5-I, the court may impose an optional nonprison sentence as provided in subsection (q).

(n) The sentence for a violation of criminal deprivation of property, as defined in section 89 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, when such property is a motor vehicle, and when such person being sentenced has any combination of two or more prior convictions of subsection (b) of K.S.A. 21-3705, prior to its repeal, or of criminal deprivation of property, as defined in section 89 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, when such property is a motor vehicle, shall be presumptive imprisonment. Such sentence shall not be considered a departure and shall not be subject to appeal.

(o) The sentence for a felony violation of theft of property as defined in section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or burglary as defined in subsection (a) of section 93 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, when such person being sentenced has no prior convictions for a violation of K.S.A. 21-3701 or 21-3715, prior to their repeal, or theft of property as defined in section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or burglary as defined in subsection (a) of section 93 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; or the sentence for a felony violation of theft of property as defined in section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, when such person being sentenced has one or two prior felony convictions for a violation of K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal, or theft of property as defined in section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or burglary as defined in section 93 of chapter 136 of the 2010 Session Laws

of Kansas, and amendments thereto; or the sentence for a felony violation of burglary as defined in subsection (a) of section 93 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, when such person being sentenced has one prior felony conviction for a violation of K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal, or theft of property as defined in section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or burglary as defined in section 93 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall be the sentence as provided by this section, except that the court may order an optional nonprison sentence for a defendant to participate in a drug treatment program, including, but not limited to, an approved after-care plan, if the court makes the following findings on the record:

- (1) Substance abuse was an underlying factor in the commission of the crime;
- (2) substance abuse treatment in the community is likely to be more effective than a prison term in reducing the risk of offender recidivism; and
- (3) participation in an intensive substance abuse treatment program will serve community safety interests.

A defendant sentenced to an optional nonprison sentence under this subsection shall be supervised by community correctional services. The provisions of subsection (f)(1) of section 305 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall apply to a defendant sentenced under this subsection. The sentence under this subsection shall not be considered a departure and shall not be subject to appeal.

(p) The sentence for a felony violation of theft of property as defined in section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, when such person being sentenced has any combination of three or more prior felony convictions for violations of K.S.A.

21-3701, 21-3715 or 21-3716, prior to their repeal, or theft of property as defined in section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or burglary as defined in section 93 of chapter 136 of the 2010 Session Laws of Kansas; or the sentence for a violation of burglary as defined in subsection (a) of section 93 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, when such person being sentenced has any combination of two or more prior convictions for violations of K.S.A. 21-3701, 21-3715 and 21-3716, prior to their repeal, or theft of property as defined in section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or burglary as defined in section 93 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall be presumed imprisonment and the defendant shall be sentenced to prison as provided by this section, except that the court may recommend that an offender be placed in the custody of the secretary of corrections, in a facility designated by the secretary to participate in an intensive substance abuse treatment program, upon making the following findings on the record:

- (1) Substance abuse was an underlying factor in the commission of the crime;
- (2) substance abuse treatment with a possibility of an early release from imprisonment is likely to be more effective than a prison term in reducing the risk of offender recidivism; and
- (3) participation in an intensive substance abuse treatment program with the possibility of an early release from imprisonment will serve community safety interests by promoting offender reformation.

The intensive substance abuse treatment program shall be determined by the secretary of corrections, but shall be for a period of at least four months. Upon the successful completion of such intensive treatment program, the offender shall be returned to the court and the court may modify

the sentence by directing that a less severe penalty be imposed in lieu of that originally adjudged within statutory limits. If the offender's term of imprisonment expires, the offender shall be placed under the applicable period of postrelease supervision. The sentence under this subsection shall not be considered a departure and shall not be subject to appeal.

(q) As used in this section, an "optional nonprison sentence" is a sentence which the court may impose, in lieu of the presumptive sentence, upon making the following findings on the record:

(1) An appropriate treatment program exists which is likely to be more effective than the presumptive prison term in reducing the risk of offender recidivism; and

(2) the recommended treatment program is available and the offender can be admitted to such program within a reasonable period of time; or

(3) the nonprison sanction will serve community safety interests by promoting offender reformation.

Any decision made by the court regarding the imposition of an optional nonprison sentence shall not be considered a departure and shall not be subject to appeal.

(r) The sentence for a violation of subsection (c)(2) of section 48 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall be presumptive imprisonment and shall be served consecutively to any other term or terms of imprisonment imposed. Such sentence shall not be considered a departure and shall not be subject to appeal.

(s) The sentence for a violation of subsection (b)(1)(C) of K.S.A. 8-2,144 or a violation of subsection (b)(1)(C) of section 2, and amendments thereto, shall be presumptive imprisonment. Such sentence shall not be considered a departure and shall not be subject to appeal. Notwithstanding the provisions of any other section, an offense under subsection (b)(1)(C) of K.S.A. 8-2,144 or an

offense under subsection (b)(1)(C) of section 2, and amendments thereto, shall be classified in the following grid block, except when, because of the offender's criminal history classification, the offense is classified in a grid block which exceeds the grid block specified:

(1) A 3rd conviction shall be classified in grid block 7-G;

(2) a 4th conviction shall be classified in grid block 7-F;

(3) a 5th conviction shall be classified in grid block 7-E;

(4) a 6th conviction shall be classified in grid block 7-D;

(5) a 7th conviction shall be classified in grid block 7-C;

(6) an 8th conviction shall be classified in grid block 7-B; and

(7) a 9th or subsequent conviction shall be classified in grid block 7-A.

(t) The sentence for a violation of subsection (b)(1)(F) of K.S.A. 8-1567, and amendments thereto, shall be presumptive imprisonment. Such sentence shall not be considered a departure and shall not be subject to appeal. Notwithstanding the provisions of any other section, an offense under subsection (b)(1)(F) of K.S.A. 8-1567, and amendments thereto, shall be classified in the following grid block, except when, because of the offender's criminal history classification, the offense is classified in a grid block which exceeds the grid block specified:

(1) A 4th conviction shall be classified in grid block 7-G;

(2) a 5th conviction shall be classified in grid block 7-F;

(3) a 6th conviction shall be classified in grid block 7-E;

(4) a 7th conviction shall be classified in grid block 7-D;

(5) an 8th conviction shall be classified in grid block 7-C;

(6) a 9th conviction shall be classified in grid block 7-B; and

(7) a 10th or subsequent conviction shall be classified in grid block 7-A.

Sec. 32. Section 292 of chapter 136 of the 2010 Session Laws of Kansas, is hereby amended to read as follows: Sec. 292. In addition to the provisions of section 291 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, the following shall apply in determining an offender's criminal history classification as contained in the presumptive sentencing guidelines grids:

(a) Every three prior adult convictions or juvenile adjudications of class A and class B person misdemeanors in the offender's criminal history, or any combination thereof, shall be rated as one adult conviction or one juvenile adjudication of a person felony for criminal history purposes. Every three prior adult convictions or juvenile adjudications of assault as defined in subsection (a) of section 47 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, occurring within a period commencing three years prior to the date of conviction for the current crime of conviction shall be rated as one adult conviction or one juvenile adjudication of a person felony for criminal history purposes.

(b) A conviction of criminal use of weapons as defined in subsection (a)(8) or (a)(13) of section 186 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or possession of a firearm on the grounds or in the state capitol building as defined in section 194 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, will be scored as a select class B nonperson misdemeanor conviction or adjudication and shall not be scored as a person misdemeanor for criminal history purposes.

(c) (1) If the current crime of conviction was committed before July 1, 1996, and is for subsection (b) of K.S.A. 21-3404, as in effect on June 30, 1996, involuntary manslaughter in the commission of driving under the influence, then, each prior adult conviction or juvenile adjudication

for K.S.A. 8-1567, and amendments thereto, shall count as one person felony for criminal history purposes.

(2) If the current crime of conviction was committed on or after July 1, 1996, and prior to July 1, 2011, and is for a violation of subsection (a)(3) of section 40 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, each prior adult conviction, diversion in lieu of criminal prosecution or juvenile adjudication for: (A) An act described in K.S.A. 8-1567, and amendments thereto; or (B) a violation of a law of another state or an ordinance of any city, or resolution of any county, which prohibits the act described in K.S.A. 8-1567, and amendments thereto, shall count as one person felony for criminal history purposes.

(3) If the current crime of conviction was committed on or after July 1, 2011, and is for a violation of subsection (a)(3) of section 40 of chapter 136 of the 2010 Session Laws of Kansas or a violation of subsection (g) of section 48 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, each prior adult conviction, diversion in lieu of criminal prosecution or juvenile adjudication for the following shall count as one person felony for criminal history purposes: (A) Section 2, and amendments thereto; (B) K.S.A. 8-2,144, and amendments thereto; (C) K.S.A. 8-1567, and amendments thereto; (D) K.S.A. 32-1131, and amendments thereto; (E) subsection (a)(3) of section 40 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; (F) subsection (g) of section 48 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; and (G) aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was committed while committing a violation of K.S.A. 8-1567, and amendments thereto.

(d) Prior burglary adult convictions and juvenile adjudications will be scored for criminal

history purposes as follows:

(1) As a prior person felony if the prior conviction or adjudication was classified as a burglary as defined in subsection (a)(1) of section 93 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

(2) As a prior nonperson felony if the prior conviction or adjudication was classified as a burglary as defined in subsection (a)(2) or (a)(3) of section 93 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

The facts required to classify prior burglary adult convictions and juvenile adjudications shall be established by the state by a preponderance of the evidence.

(e) Out-of-state convictions and juvenile adjudications shall be used in classifying the offender's criminal history. An out-of-state crime will be classified as either a felony or a misdemeanor according to the convicting jurisdiction. If a crime is a felony in another state, it will be counted as a felony in Kansas. The state of Kansas shall classify the crime as person or nonperson. In designating a crime as person or nonperson comparable offenses shall be referred to. If the state of Kansas does not have a comparable offense, the out-of-state conviction shall be classified as a nonperson crime. Convictions or adjudications occurring within the federal system, other state systems, the District of Columbia, foreign, tribal or military courts are considered out-of-state convictions or adjudications. The facts required to classify out-of-state adult convictions and juvenile adjudications shall be established by the state by a preponderance of the evidence.

(f) Except as provided in subsections (d)(3)(B), (d)(3)(C), (d)(3)(D) and (d)(4) of section 291 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, juvenile adjudications will be applied in the same manner as adult convictions. Out-of-state juvenile adjudications will be

treated as juvenile adjudications in Kansas.

(g) A prior felony conviction of an attempt, a conspiracy or a solicitation as provided in section 33, 34 or 35 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, to commit a crime shall be treated as a person or nonperson crime in accordance with the designation assigned to the underlying crime.

(h) Drug crimes are designated as nonperson crimes for criminal history scoring.

Sec. 33. Section 299 of chapter 136 of the 2010 Session Laws of Kansas, is hereby amended to read as follows: Sec. 299. (a) When a departure sentence is appropriate, the sentencing judge may depart from the sentencing guidelines as provided in this section.

(1) The sentencing judge shall not impose a downward dispositional departure sentence for any crime of extreme sexual violence, as defined in section 296 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto. The sentencing judge shall not impose a downward durational departure sentence for any crime of extreme sexual violence, as defined in section 296 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, to less than 50% of the center of the range of the sentence for such crime.

(2) The sentencing judge shall not impose a downward dispositional departure sentence or a downward durational departure sentence for a violation of subsection (b)(1)(C) of K.S.A. 8-2,144 or subsection (b)(1)(F) of K.S.A. 8-1567 or subsection (b)(1)(C) of section 2, and amendments thereto.

(b) When a sentencing judge departs in setting the duration of a presumptive term of imprisonment:

(1) The judge shall consider and apply the sentencing guidelines, which is to impose a

sentence that is proportionate to the severity of the crime of conviction and the offender's criminal history; and

(2) the presumptive term of imprisonment set in such departure shall not total more than double the maximum duration of the presumptive imprisonment term.

(c) When a sentencing judge imposes a prison term as a dispositional departure:

(1) The judge shall consider and apply the primary purpose of the sentencing guidelines, which is to impose a sentence that is proportionate to the severity of the crime of conviction; and

(2) the term of imprisonment shall not exceed the maximum duration of the presumptive imprisonment term listed within the sentencing grid. Any sentence inconsistent with the provisions of this section shall constitute an additional departure and shall require substantial and compelling reasons independent of the reasons given for the dispositional departure.

(d) If the sentencing judge imposes a nonprison sentence as a dispositional departure from the guidelines, the recommended duration shall be as provided in subsection (c) of section 248 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

Sec. 34. K.S.A. 8-241, 8-285, 8-1008, 8-1016, 8-1017, 8-1501, 22-3610 and K.S.A. 2009 Supp. 8-1567, as amended by section 3 of chapter 153 of the 2010 Session Laws of Kansas, and K.S.A. 2010 Supp. 8-235, 8-262, 8-2,142, 8-2,144, 8-1001, 8-1012, 8-1013, 8-1014, 8-1015, 8-1020, 8-1567, 12-4104, 12-4106, 12-4516, 22-2802, 22-3717, sections 14, 48, 254, 285, 292 and 299 of chapter 136 of the 2010 Sessions Laws of Kansas, are hereby repealed.

Sec. 35. This act shall take effect and be in force from and after its publication in the statute book.