

SENATE BILL No. 305

By Senator Thomas

1-8

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to driving under the influence; classifying crimes related to driving
3 under the influence and driving a commercial vehicle under the
4 influence as person crimes; amending K.S.A. 8-2,144 and K.S.A. 2025
5 Supp. 8-1567 and repealing the existing sections.
6

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

8 Section 1. K.S.A. 8-2,144 is hereby amended to read as follows: 8-
9 2,144. (a) Driving a commercial motor vehicle under the influence is
10 operating or attempting to operate any commercial motor vehicle, as
11 defined in K.S.A. 8-2,128, and amendments thereto, within this state
12 while:

13 (1) The alcohol concentration in the person's blood or breath, as
14 shown by any competent evidence, including other competent evidence, as
15 defined in K.S.A. 8-1013(f)(1), and amendments thereto, is 0.04 or more;

16 (2) the alcohol concentration in the person's blood or breath, as
17 measured within three hours of the time of driving a commercial motor
18 vehicle, is 0.04 or more; or

19 (3) committing a violation of K.S.A. 8-1567(a), and amendments
20 thereto, or the ordinance of a city or resolution of a county ~~which that~~
21 prohibits any of the acts prohibited thereunder or is otherwise comparable.

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

23 (A) On a first conviction, a class B, ~~nonperson~~ *person* misdemeanor.
24 The person convicted shall be sentenced to not less than 48 consecutive
25 hours nor more than six months' imprisonment, or in the court's discretion,
26 100 hours of public service, and fined not less than \$750 nor more than
27 \$1,000;

28 (B) on a second conviction, a class A, ~~nonperson~~ *person*
29 misdemeanor. The person convicted shall be sentenced to not less than 90
30 days nor more than one year's imprisonment and fined not less than \$1,250
31 nor more than \$1,750. The following conditions shall apply to such
32 sentence:

33 (i) As a condition of any probation granted under this subsection, the
34 person shall serve at least 120 hours of confinement. The hours of
35 confinement shall include at least 48 hours of imprisonment and otherwise
36 may be served by a combination of: Imprisonment; a work release

1 program, if such work release program requires such person to return to
2 the confinement at the end of each day in the work release program; or a
3 house arrest program pursuant to K.S.A. 21-6609, and amendments
4 thereto; and

5 (ii) (a) if the person is placed into a work release program or placed
6 under a house arrest program for any portion of the minimum of 120 hours
7 of confinement mandated by this subsection, the person shall receive hour-
8 for-hour credit for time served in such program until the minimum
9 sentence is met. If the person is placed into a work release program or
10 placed under a house arrest program for more than the minimum of 120
11 hours of confinement mandated by this subsection, the person shall receive
12 hour-for-hour credit for time served in such program until the minimum of
13 120 hours of confinement is completed, and thereafter, the person shall
14 receive day-for-day credit for time served in such program unless
15 otherwise ordered by the court; and

16 (b) when in a work release program, the person shall only be given
17 credit for the time served in confinement at the end of and continuing to
18 the beginning of the person's work day. When under a house arrest
19 program, the person shall be monitored by an electronic monitoring device
20 that verifies the person's location and shall only be given credit for the
21 time served within the boundaries of the person's residence; and

22 (C) on a third or subsequent conviction, a severity level 6, ~~nonperson~~
23 *person* felony. The following conditions shall apply to such sentence:

24 (i) As a condition of any probation granted under this subsection, the
25 person shall serve at least 30 days of confinement. After at least 48
26 consecutive hours of imprisonment, the remainder of the period of
27 confinement may be served by a combination of: Imprisonment; a work
28 release program, if such work release program requires such person to
29 return to the confinement at the end of each day in the work release
30 program; or a house arrest program pursuant to K.S.A. 21-6609, and
31 amendments thereto; and

32 (ii) (a) if the person is placed into a work release program or placed
33 under a house arrest program for any portion of the minimum of 30 days
34 of confinement mandated by this subsection, the person shall receive hour-
35 for-hour credit for time served in such program for the first 240 hours of
36 confinement, and thereafter, the person shall receive day-for-day credit for
37 time served in such program unless otherwise ordered by the court; and

38 (b) when in a work release program, the person shall only be given
39 credit for the time served in confinement at the end of and continuing to
40 the beginning of the person's work day. When under a house arrest
41 program, the person shall be monitored by an electronic monitoring device
42 that verifies the person's location and shall only be given credit for the
43 time served within the boundaries of the person's residence.

1 (2) In addition, prior to sentencing for any conviction pursuant to
2 subsection (b)(1)(A) or (b)(1)(B), the court shall order the person to
3 participate in an alcohol and drug evaluation conducted by a provider in
4 accordance with K.S.A. 8-1008, and amendments thereto. The person shall
5 be required to follow any recommendation made by the provider after such
6 evaluation, unless otherwise ordered by the court.

7 (c) Any person 18 years of age or older convicted of a violation of
8 this section, or a violation of a city ordinance or county resolution
9 prohibiting the acts prohibited by this section, who had one or more
10 children under the age of 18 years in the vehicle at the time of the offense
11 shall have such person's punishment enhanced by one month of
12 imprisonment. This imprisonment shall be served consecutively to any
13 other minimum mandatory penalty imposed for a violation of this section,
14 or a violation of a city ordinance or county resolution prohibiting the acts
15 prohibited by this section. Any enhanced penalty imposed shall not exceed
16 the maximum sentence allowable by law. During the service of the
17 enhanced penalty, the judge may order the person on house arrest, work
18 release or other conditional release.

19 (d) If a person is charged with a violation of K.S.A. 8-1567(a)(4) or
20 (a)(5), and amendments thereto, as incorporated in this section, the fact
21 that the person is or has been entitled to use the drug under the laws of this
22 state shall not constitute a defense against the charge.

23 (e) The court may establish the terms and time for payment of any
24 fines, fees, assessments and costs imposed pursuant to this section. Any
25 assessment and costs shall be required to be paid not later than 90 days
26 after imposed, and any remainder of the fine shall be paid prior to the final
27 release of the defendant by the court.

28 (f) (1) In lieu of payment of a fine imposed pursuant to this section,
29 the court may order that the person perform community service specified
30 by the court. The person shall receive a credit on the fine imposed in an
31 amount equal to \$5 for each full hour spent by the person in the specified
32 community service. The community service ordered by the court shall be
33 required to be performed not later than one year after the fine is imposed
34 or by an earlier date specified by the court. If by the required date the
35 person performs an insufficient amount of community service to reduce to
36 zero the portion of the fine required to be paid by the person, the
37 remaining balance of the fine shall become due on that date.

38 (2) The court may, in its discretion, waive any portion of a fine
39 imposed pursuant to this section, except the \$250 required to be remitted
40 to the state treasurer pursuant to subsection (q), upon a showing that the
41 person successfully completed court-ordered education or treatment.

42 (g) Prior to filing a complaint alleging a violation of this section, a
43 prosecutor shall request and shall receive from the:

1 (1) Division a record of all prior convictions obtained against such
2 person for any violations of any of the motor vehicle laws of this state; and

3 (2) Kansas bureau of investigation central repository all criminal
4 history record information concerning such person.

5 (h) The court shall electronically report every conviction of a
6 violation of this section to the division. Prior to sentencing under the
7 provisions of this section, the court shall request and shall receive from
8 the:

9 (1) Division a record of all prior convictions obtained against such
10 person for any violation of any of the motor vehicle laws of this state; and

11 (2) Kansas bureau of investigation central repository all criminal
12 history record information concerning such person.

13 (i) Upon conviction of a person of a violation of this section or a
14 violation of a city ordinance or county resolution prohibiting the acts
15 prohibited by this section, the division, upon receiving a report of
16 conviction, shall:

17 (1) Disqualify the person from driving a commercial motor vehicle
18 under K.S.A. 8-2,142, and amendments thereto; and

19 (2) suspend, restrict or suspend and restrict the person's driving
20 privileges as provided by K.S.A. 8-1014, and amendments thereto.

21 (j) (1) Nothing contained in this section shall be construed as
22 preventing any city from enacting ordinances, or any county from adopting
23 resolutions, declaring acts prohibited or made unlawful by this section as
24 unlawful or prohibited in such city or county and prescribing penalties for
25 violation thereof.

26 (2) The minimum penalty prescribed by any such ordinance or
27 resolution shall not be less than the minimum penalty prescribed by this
28 section for the same violation, and the maximum penalty in any such
29 ordinance or resolution shall not exceed the maximum penalty prescribed
30 for the same violation.

31 (3) Any such ordinance or resolution shall authorize the court to order
32 that the convicted person pay restitution to any victim who suffered loss
33 due to the violation for which the person was convicted.

34 (k) (1) Upon the filing of a complaint, citation or notice to appear
35 alleging a person has violated a city ordinance prohibiting the acts
36 prohibited by this section, and prior to conviction thereof, a city attorney
37 shall request and shall receive from the:

38 (A) Division of vehicles a record of all prior convictions obtained
39 against such person for any violations of any of the motor vehicle laws of
40 this state; and

41 (B) Kansas bureau of investigation central repository all criminal
42 history record information concerning such person.

43 (2) If the elements of such ordinance violation are the same as the

1 elements of a violation of this section that would constitute, and be
2 punished as, a felony, the city attorney shall refer the violation to the
3 appropriate county or district attorney for prosecution. The county or
4 district attorney shall accept such referral and pursue a disposition of such
5 violation, and shall not refer any such violation back to the city attorney.

6 (l) No plea bargaining agreement shall be entered into nor shall any
7 judge approve a plea bargaining agreement entered into for the purpose of
8 permitting a person charged with a violation of this section, or a violation
9 of any ordinance of a city or resolution of any county in this state ~~which~~
10 *that* prohibits the acts prohibited by this section, to avoid the mandatory
11 penalties established by this section or by the ordinance or resolution. This
12 subsection shall not be construed to prohibit an amendment or dismissal of
13 any charge where the admissible evidence is not sufficient to support a
14 conviction beyond a reasonable doubt on such charge.

15 (m) The alternatives set out in subsection (a) may be pleaded in the
16 alternative, and the state, city or county may, but shall not be required to,
17 elect one or more of such alternatives prior to submission of the case to the
18 fact finder.

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

21 (1) Convictions for a violation of K.S.A. 8-1567, and amendments
22 thereto, or a violation of an ordinance of any city or resolution of any
23 county that prohibits the acts that such section prohibits, or entering into a
24 diversion agreement in lieu of further criminal proceedings on a complaint
25 alleging any such violations, shall be taken into account, but only
26 convictions or diversions occurring on or after July 1, 2001. Nothing in
27 this provision shall be construed as preventing any court from considering
28 any convictions or diversions occurring during the person's lifetime in
29 determining the sentence to be imposed within the limits provided for a
30 first, second, third, fourth or subsequent offense;

31 (2) any convictions for a violation of the following sections occurring
32 during a person's lifetime shall be taken into account:

33 (A) This section;

34 (B) operating a vessel under the influence of alcohol or drugs, K.S.A.
35 32-1131, and amendments thereto;

36 (C) involuntary manslaughter while driving under the influence of
37 alcohol or drugs, K.S.A. 21-3442, prior to its repeal, or K.S.A. 21-5405(a)
38 (3) or (a)(5), and amendments thereto;

39 (D) aggravated battery as described in K.S.A. 21-5413(b)(3) or (b)
40 (4), and amendments thereto; and

41 (E) aggravated vehicular homicide, K.S.A. 21-3405a, prior to its
42 repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the
43 crime was committed while committing a violation of K.S.A. 8-1567, and

1 amendments thereto;

2 (3) "conviction" includes:

3 (A) Entering into a diversion agreement in lieu of further criminal
4 proceedings on a complaint alleging a violation of a crime described in
5 subsection (n)(2); and

6 (B) conviction of a violation of an ordinance of a city in this state, a
7 resolution of a county in this state or any law of another jurisdiction that
8 would constitute an offense that is comparable to the offense described in
9 subsection (n)(1) or (n)(2);

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

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

15 (o) For the purposes of determining whether an offense is
16 comparable, the following shall be considered:

17 (1) The name of the out-of-jurisdiction offense;

18 (2) the elements of the out-of-jurisdiction offense; and

19 (3) whether the out-of-jurisdiction offense prohibits similar conduct
20 to the conduct prohibited by the closest approximate Kansas offense.

21 (p) For the purpose of this section:

22 (1) "Alcohol concentration" means the number of grams of alcohol
23 per 100 milliliters of blood or per 210 liters of breath;

24 (2) "imprisonment" includes any restrained environment in which the
25 court and law enforcement agency intend to retain custody and control of a
26 defendant and such environment has been approved by the board of county
27 commissioners or the governing body of a city; and

28 (3) "drug" includes toxic vapors as such term is defined in K.S.A. 21-
29 5712, and amendments thereto.

30 (q) On and after July 1, 2011, the amount of \$250 from each fine
31 imposed pursuant to this section shall be remitted by the clerk of the
32 district court to the state treasurer in accordance with the provisions of
33 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
34 remittance, the state treasurer shall credit the entire amount to the
35 community corrections supervision fund established by K.S.A. 75-52,113,
36 and amendments thereto.

37 Sec. 2. K.S.A. 2025 Supp. 8-1567 is hereby amended to read as
38 follows: 8-1567. (a) Driving under the influence is operating or attempting
39 to operate any vehicle within this state while:

40 (1) The alcohol concentration in the person's blood or breath as
41 shown by any competent evidence, including other competent evidence, as
42 defined in K.S.A. 8-1013(f)(1), and amendments thereto, is 0.08 or more;

43 (2) the alcohol concentration in the person's blood or breath, as

1 measured within three hours of the time of operating or attempting to
2 operate a vehicle, is 0.08 or more;

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

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

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

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

11 (A) On a first conviction, a class B, ~~nonperson~~ *person* misdemeanor.
12 The person convicted shall be sentenced to not less than 48 consecutive
13 hours nor more than six months' imprisonment, or in the court's discretion
14 100 hours of public service, and fined not less than \$750 nor more than
15 \$1,000;

16 (B) on a second conviction, a class A, ~~nonperson~~ *person*
17 misdemeanor. The person convicted shall be sentenced to not less than 90
18 days nor more than one year's imprisonment and fined not less than \$1,250
19 nor more than \$1,750. The following conditions shall apply to such
20 sentence:

21 (i) As a condition of any probation granted under this subsection, the
22 person shall serve at least 120 hours of confinement. The hours of
23 confinement shall include at least 48 hours of imprisonment and otherwise
24 may be served by a combination of: Imprisonment; a work release
25 program, if such work release program requires such person to return to
26 the confinement at the end of each day in the work release program; or a
27 house arrest program pursuant to K.S.A. 21-6609, and amendments
28 thereto;

29 (ii) (a) if the person is placed into a work release program or placed
30 under a house arrest program for any portion of the minimum of 120 hours
31 of confinement mandated by this subsection, the person shall receive hour-
32 for-hour credit for time served in such program until the minimum
33 sentence is met. If the person is placed into a work release program or
34 placed under a house arrest program for more than the minimum of 120
35 hours of confinement mandated by this subsection, the person shall receive
36 hour-for-hour credit for time served in such program until the minimum of
37 120 hours of confinement is completed, and thereafter, the person shall
38 receive day-for-day credit for time served in such program unless
39 otherwise ordered by the court; and

40 (b) when in a work release program, the person shall only be given
41 credit for the time served in confinement at the end of and continuing to
42 the beginning of the person's work day. When under a house arrest
43 program, the person shall be monitored by an electronic monitoring device

1 that verifies the person's location and shall only be given credit for the
2 time served within the boundaries of the person's residence;

3 (C) on a third conviction, a class A, ~~nonperson~~ *person* misdemeanor,
4 except as provided in subsection (b)(1)(D). The person convicted shall be
5 sentenced to not less than 90 days nor more than one year's imprisonment
6 and fined not less than \$1,750 nor more than \$2,500. The following
7 conditions shall apply to such sentence:

8 (i) As a condition of any probation granted under this subsection, the
9 person shall serve at least 30 days of confinement. After at least 48
10 consecutive hours of imprisonment, the remainder of the period of
11 confinement may be served by a combination of: Imprisonment; a work
12 release program, if such work release program requires such person to
13 return to the confinement at the end of each day in the work release
14 program; or a house arrest program pursuant to K.S.A. 21-6609, and
15 amendments thereto; and

16 (ii) (a) if the person is placed into a work release program or placed
17 under a house arrest program for any portion of the minimum of 30 days
18 of confinement mandated by this subsection, the person shall receive hour-
19 for-hour credit for time served in such program for the first 240 hours of
20 confinement, and thereafter, the person shall receive day-for-day credit for
21 time served in such program unless otherwise ordered by the court; and

22 (b) when in a work release program, the person shall only be given
23 credit for the time served in confinement at the end of and continuing to
24 the beginning of the person's work day. When under a house arrest
25 program, the person shall be monitored by an electronic monitoring device
26 that verifies the person's location and shall only be given credit for the
27 time served within the boundaries of the person's residence;

28 (D) on a third conviction, a severity level 6, ~~nonperson~~ *person* felony
29 if the person has a prior conviction—~~which~~ *that* occurred within the
30 preceding 10 years, not including any period of incarceration. The
31 following conditions shall apply to such sentence:

32 (i) As a condition of any probation granted under this subsection, the
33 person shall serve at least 30 days of confinement. After at least 48
34 consecutive hours of imprisonment, the remainder of the period of
35 confinement may be served by a combination of: Imprisonment; a work
36 release program, if such work release program requires such person to
37 return to the confinement at the end of each day in the work release
38 program; or a house arrest program pursuant to K.S.A. 21-6609, and
39 amendments thereto; and

40 (ii) (a) if the person is placed into a work release program or placed
41 under a house arrest program for any portion of the minimum of 30 days
42 of confinement mandated by this subsection, the person shall receive hour-
43 for-hour credit for time served in such program for the first 240 hours of

1 confinement, and thereafter, the person shall receive day-for-day credit for
2 time served in such program unless otherwise ordered by the court; and

3 (b) when in a work release program, the person shall only be given
4 credit for the time served in confinement at the end of and continuing to
5 the beginning of the person's work day. When under a house arrest
6 program, the person shall be monitored by an electronic monitoring device
7 that verifies the person's location and shall only be given credit for the
8 time served within the boundaries of the person's residence; and

9 (E) on a fourth or subsequent conviction, a severity level 6,
10 ~~nonperson~~ *person* felony. The following conditions shall apply to such
11 sentence:

12 (i) As a condition of any probation granted under this subsection, the
13 person shall serve at least 30 days of confinement. After at least 48
14 consecutive hours of imprisonment, the remainder of the period of
15 confinement may be served by a combination of: Imprisonment; a work
16 release program, if such work release program requires such person to
17 return to the confinement at the end of each day in the work release
18 program; or a house arrest program pursuant to K.S.A. 21-6609, and
19 amendments thereto; and

20 (ii) (a) if the person is placed into a work release program or placed
21 under a house arrest program for any portion of the minimum of 30 days
22 of confinement mandated by this subsection, the person shall receive hour-
23 for-hour credit for time served in such program for the first 240 hours of
24 confinement, and thereafter, the person shall receive day-for-day credit for
25 time served in such program unless otherwise ordered by the court; and

26 (b) when in a work release program, the person shall only be given
27 credit for the time served in confinement at the end of and continuing to
28 the beginning of the person's work day. When under a house arrest
29 program, the person shall be monitored by an electronic monitoring device
30 that verifies the person's location and shall only be given credit for the
31 time served within the boundaries of the person's residence.

32 (2) (A) The court may order that the term of imprisonment imposed
33 pursuant to subsection (b)(1)(D) or (b)(1)(E) be served in a state facility in
34 the custody of the secretary of corrections in a facility designated by the
35 secretary for the provision of substance abuse treatment pursuant to the
36 provisions of K.S.A. 21-6804, and amendments thereto. The secretary of
37 corrections may refuse to admit the person to the designated facility and
38 place the person in a different state facility, or admit the person and
39 subsequently transfer the person to a different state facility, if the secretary
40 determines: (i) That substance abuse treatment resources or the capacity of
41 the facility designated by the secretary for the incarceration and treatment
42 of the person is not available; (ii) the person has failed to meaningfully
43 participate in the treatment program of the designated facility; (iii) the

1 person is disruptive to the security or operation of the designated facility;
2 or (iv) the medical or mental health condition of the person renders the
3 person unsuitable for confinement at the designated facility. The
4 determination by the secretary that the person either is not to be admitted
5 into the designated facility or is to be transferred from the designated
6 facility is not subject to review.

7 (B) In addition to the provisions of subsection (b)(1), for any
8 conviction pursuant to subsection (b)(1)(D) or (b)(1)(E), if the person is
9 granted probation, the court shall determine whether the person shall be
10 supervised by community correctional services or court services based on
11 the risk and needs of the person. The risk and needs of the person shall be
12 determined by use of a risk assessment tool specified by the Kansas
13 sentencing commission. During the probation supervision, the person shall
14 be required to participate in a multidisciplinary model of services for
15 substance use disorders facilitated by a Kansas department for aging and
16 disability services designated care coordination agency to include
17 assessment and, if appropriate, referral to a community based substance
18 use disorder treatment including recovery management and mental health
19 counseling as needed. The multidisciplinary team shall include the
20 designated care coordination agency, the supervision officer, the Kansas
21 department for aging and disability services designated treatment provider
22 and the person.

23 (3) In addition to the provisions of subsection (b)(1), for any
24 conviction pursuant to subsection (b)(1)(C), at the time of the filing of the
25 judgment form or journal entry as required by K.S.A. 21-6711 or 22-3426,
26 and amendments thereto, the court shall cause a certified copy to be sent to
27 the officer having the person in charge. The court shall determine whether
28 the person, upon release from imprisonment, shall be supervised by
29 community correctional services or court services based upon the risk and
30 needs of the person. The risk and needs of the person shall be determined
31 by use of a risk assessment tool specified by the Kansas sentencing
32 commission. The law enforcement agency maintaining custody and control
33 of a person for imprisonment shall cause a certified copy of the judgment
34 form or journal entry to be sent to the supervision office designated by the
35 court and upon expiration of the term of imprisonment shall deliver the
36 person to a location designated by the supervision office designated by the
37 court. After the term of imprisonment imposed by the court, the person
38 shall be placed on supervision to community correctional services or court
39 services, as determined by the court, for a mandatory one-year period of
40 supervision, which such period of supervision shall not be reduced. During
41 such supervision, the person shall be required to participate in a
42 multidisciplinary model of services for substance use disorders facilitated
43 by a Kansas department for aging and disability services designated care

1 coordination agency to include assessment and, if appropriate, referral to a
2 community based substance use disorder treatment including recovery
3 management and mental health counseling as needed. The
4 multidisciplinary team shall include the designated care coordination
5 agency, the supervision officer, the Kansas department for aging and
6 disability services designated treatment provider and the person. A person
7 for whom a warrant has been issued by the court alleging a violation of
8 this supervision shall be considered a fugitive from justice if it is found
9 that the warrant cannot be served. If it is found that the person has violated
10 the provisions of this supervision, the court shall determine whether the
11 time from the issuing of the warrant to the date of the court's determination
12 of an alleged violation, or any part of it, shall be counted as time served on
13 supervision. Any violation of the conditions of such supervision may
14 subject such person to revocation of supervision and imprisonment in jail
15 for the remainder of the period of imprisonment, the remainder of the
16 supervision period, or any combination or portion thereof. The term of
17 supervision may be extended at the court's discretion beyond one year, and
18 any violation of the conditions of such extended term of supervision may
19 subject such person to the revocation of supervision and imprisonment in
20 jail of up to the remainder of the original sentence, not the term of the
21 extended supervision.

22 (4) In addition to the provisions of subsection (b)(1), prior to
23 sentencing for any conviction pursuant to subsection (b)(1)(A) or (b)(1)
24 (B), the court shall order the person to participate in an alcohol and drug
25 evaluation conducted by a provider in accordance with K.S.A. 8-1008, and
26 amendments thereto. The person shall be required to follow any
27 recommendation made by the provider after such evaluation, unless
28 otherwise ordered by the court.

29 (c) Any person 18 years of age or older convicted of violating this
30 section or an ordinance~~which~~ that prohibits the acts that this section
31 prohibits who had one or more children under the age of 18 years in the
32 vehicle at the time of the offense shall have such person's punishment
33 enhanced by one month of imprisonment. This imprisonment must be
34 served consecutively to any other minimum mandatory penalty imposed
35 for a violation of this section or an ordinance~~which~~ that prohibits the acts
36 that this section prohibits. Any enhanced penalty imposed shall not exceed
37 the maximum sentence allowable by law. During the service of the
38 enhanced penalty, the judge may order the person on house arrest, work
39 release or other conditional release.

40 (d) If a person is charged with a violation of subsection (a)(4) or (a)
41 (5), the fact that the person is or has been entitled to use the drug under the
42 laws of this state shall not constitute a defense against the charge.

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

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

5 (f) (1) In lieu of payment of a fine imposed pursuant to this section,
6 the court may order that the person perform community service specified
7 by the court. The person shall receive a credit on the fine imposed in an
8 amount equal to \$5 for each full hour spent by the person in the specified
9 community service. The community service ordered by the court shall be
10 required to be performed not later than one year after the fine is imposed
11 or by an earlier date specified by the court. If by the required date the
12 person performs an insufficient amount of community service to reduce to
13 zero the portion of the fine required to be paid by the person, the
14 remaining balance of the fine shall become due on that date.

15 (2) The court may, in its discretion, waive any portion of a fine
16 imposed pursuant to this section, except the \$250 required to be remitted
17 to the state treasurer pursuant to subsection (q)(3), upon a showing that the
18 person successfully completed court-ordered education or treatment.

19 (g) Prior to filing a complaint alleging a violation of this section, a
20 prosecutor shall request and shall receive from the:

21 (1) Division a record of all prior convictions obtained against such
22 person for any violations of any of the motor vehicle laws of this state; and

23 (2) Kansas bureau of investigation central repository all criminal
24 history record information concerning such person.

25 (h) The court shall electronically report every conviction of a
26 violation of this section and every diversion agreement entered into in lieu
27 of further criminal proceedings on a complaint alleging a violation of this
28 section to the division including any finding regarding the alcohol
29 concentration in the person's blood or breath. Prior to sentencing under the
30 provisions of this section, the court shall request and shall receive from the
31 division a record of all prior convictions obtained against such person for
32 any violations of any of the motor vehicle laws of this state.

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

36 (1) Convictions for a violation of this section, or a violation of an
37 ordinance of any city or resolution of any county that prohibits the acts
38 that this section prohibits, or entering into a diversion agreement in lieu of
39 further criminal proceedings on a complaint alleging any such violations,
40 shall be taken into account, but only convictions or diversions occurring
41 on or after July 1, 2001. Nothing in this provision shall be construed as
42 preventing any court from considering any convictions or diversions
43 occurring during the person's lifetime in determining the sentence to be

1 imposed within the limits provided for a first, second, third, fourth or
2 subsequent offense;

3 (2) any convictions for a violation of the following sections occurring
4 during a person's lifetime shall be taken into account:

5 (A) Driving a commercial motor vehicle under the influence, K.S.A.
6 8-2,144, and amendments thereto;

7 (B) operating a vessel under the influence of alcohol or drugs, K.S.A.
8 32-1131, and amendments thereto;

9 (C) involuntary manslaughter while driving under the influence of
10 alcohol or drugs, K.S.A. 21-3442, prior to its repeal, or K.S.A. 21-5405(a)
11 (3) or (a)(5), and amendments thereto;

12 (D) aggravated battery as described in K.S.A. 21-5413(b)(3) or (b)
13 (4), and amendments thereto; and

14 (E) aggravated vehicular homicide, K.S.A. 21-3405a, prior to its
15 repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the
16 crime was committed while committing a violation of K.S.A. 8-1567, and
17 amendments thereto;

18 (3) "conviction" includes:

19 (A) Entering into a diversion agreement in lieu of further criminal
20 proceedings on a complaint alleging an offense described in subsection (i)
21 (2); and

22 (B) conviction of a violation of an ordinance of a city in this state, a
23 resolution of a county in this state or any law of another jurisdiction that
24 would constitute an offense that is comparable to the offense described in
25 subsection (i)(1) or (i)(2);

26 (4) multiple convictions of any crime described in subsection (i)(1) or
27 (i)(2) arising from the same arrest shall only be counted as one conviction;

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

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

34 (j) For the purposes of determining whether an offense is comparable,
35 the following shall be considered:

36 (1) The name of the out-of-jurisdiction offense;

37 (2) the elements of the out-of-jurisdiction offense; and

38 (3) whether the out-of-jurisdiction offense prohibits similar conduct
39 to the conduct prohibited by the closest approximate Kansas offense.

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

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

2 (1) (1) Nothing contained in this section shall be construed as
3 preventing any city from enacting ordinances, or any county from adopting
4 resolutions, declaring acts prohibited or made unlawful by this act as
5 unlawful or prohibited in such city or county and prescribing penalties for
6 violation thereof.

7 (2) The minimum penalty prescribed by any such ordinance or
8 resolution shall not be less than the minimum penalty prescribed by this
9 section for the same violation, and the maximum penalty in any such
10 ordinance or resolution shall not exceed the maximum penalty prescribed
11 for the same violation.

12 (3) On and after July 1, 2007, and retroactive for ordinance violations
13 committed on or after July 1, 2006, an ordinance may grant to a municipal
14 court jurisdiction over a violation of such ordinance—~~which~~ *that* is
15 concurrent with the jurisdiction of the district court over a violation of this
16 section, notwithstanding that the elements of such ordinance violation are
17 the same as the elements of a violation of this section that would
18 constitute, and be punished as, a felony.

19 (4) Any such ordinance or resolution shall authorize the court to order
20 that the convicted person pay restitution to any victim who suffered loss
21 due to the violation for which the person was convicted.

22 (m) (1) Upon the filing of a complaint, citation or notice to appear
23 alleging a person has violated a city ordinance prohibiting the acts
24 prohibited by this section, and prior to conviction thereof, a city attorney
25 shall request and shall receive from the:

26 (A) Division a record of all prior convictions obtained against such
27 person for any violations of any of the motor vehicle laws of this state; and

28 (B) Kansas bureau of investigation central repository all criminal
29 history record information concerning such person.

30 (2) If the elements of such ordinance violation are the same as the
31 elements of a violation of this section that would constitute, and be
32 punished as, a felony, the city attorney shall refer the violation to the
33 appropriate county or district attorney for prosecution.

34 (n) No plea bargaining agreement shall be entered into nor shall any
35 judge approve a plea bargaining agreement entered into for the purpose of
36 permitting a person charged with a violation of this section, or a violation
37 of any ordinance of a city or resolution of any county in this state—~~which~~
38 *that* prohibits the acts prohibited by this section, to avoid the mandatory
39 penalties established by this section or by the ordinance. For the purpose
40 of this subsection, entering into a diversion agreement pursuant to K.S.A.
41 12-4413 et seq. or 22-2906 et seq., and amendments thereto, shall not
42 constitute plea bargaining. This subsection shall not be construed to
43 prohibit an amendment or dismissal of any charge where the admissible

1 evidence is not sufficient to support a conviction beyond a reasonable
2 doubt on such charge.

3 (o) The alternatives set out in subsection (a) may be pleaded in the
4 alternative, and the state, city or county may, but shall not be required to,
5 elect one or more of such alternatives prior to submission of the case to the
6 fact finder.

7 (p) As used in this section:

8 (1) "Alcohol concentration" means the number of grams of alcohol
9 per 100 milliliters of blood or per 210 liters of breath;

10 (2) "imprisonment" includes any restrained environment in which the
11 court and law enforcement agency intend to retain custody and control of a
12 person and such environment has been approved by the board of county
13 commissioners or the governing body of a city; and

14 (3) "drug" includes toxic vapors as such term is defined in K.S.A. 21-
15 5712, and amendments thereto.

16 (q) (1) The amount of the increase in fines as specified in this section
17 shall be remitted by the clerk of the district court to the state treasurer in
18 accordance with the provisions of K.S.A. 75-4215, and amendments
19 thereto. Upon receipt of remittance of the increase provided in this act, the
20 state treasurer shall deposit the entire amount in the state treasury and the
21 state treasurer shall credit 50% to the community alcoholism and
22 intoxication programs fund and 50% to the Kansas department for aging
23 and disability services alcohol and drug abuse treatment fund, which is
24 hereby created in the state treasury.

25 (2) On July 1, 2025, the director of accounts and reports shall transfer
26 all moneys in the department of corrections alcohol and drug abuse
27 treatment fund to the Kansas department for aging and disability services
28 alcohol and drug abuse treatment fund. On July 1, 2025, all liabilities of
29 the department of corrections alcohol and drug abuse treatment fund are
30 hereby transferred and imposed on the Kansas department for aging and
31 disability services alcohol and drug abuse treatment fund, and the
32 department of corrections alcohol and drug abuse treatment fund is hereby
33 abolished.

34 (3) On and after July 1, 2011, the amount of \$250 from each fine
35 imposed pursuant to this section shall be remitted by the clerk of the
36 district court to the state treasurer in accordance with the provisions of
37 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
38 remittance, the state treasurer shall credit the entire amount to the
39 community corrections supervision fund established by K.S.A. 75-52,113,
40 and amendments thereto.

41 Sec. 3. K.S.A. 8-2,144 and K.S.A. 2025 Supp. 8-1567 are hereby
42 repealed.

43 Sec. 4. This act shall take effect and be in force from and after its

- 1 publication in the statute book.