

Journal of the Senate

SEVENTY-SECOND DAY

SENATE CHAMBER, TOPEKA, KANSAS
Friday, May 18, 2012, 10:00 a.m.

The Senate was called to order by President Stephen Morris.
The roll was called with thirty-nine senators present.
Senator Emler was excused.
Invocation by Chaplain Fred S. Hollomon:

Heavenly Father,

As always during wrap-up
People ask me to pray hard.
Almost everyone is homesick,
So help me pray, O God!

Messages are arriving daily
From the restless folks at home;
Asking why it takes so long
To leave the old green dome.

Senators hear things like...
"The air conditioner's broken"
And, "The car just will not start"
"The baby has a fever;"
And "The curtains are falling apart."

"The business is in trouble."
And "The help is calling me."
"You promised to be home
For the children's games to see."

"If you're not home soon
The problem will surely worsen."
"The children will be screaming,
Who is that strange person?"

Of course I don't know
When the session will end.

I just hope that when it does,
I pray the parents will be friends.

I pray in the Name of Jesus Christ, AMEN

The Pledge of Allegiance was led by President Stephen Morris.

MESSAGE FROM THE HOUSE

The House adopts the Conference Committee report on **House Substitute for SB 60**.

The House reconsidered its action on not adopting the conference committee report on **Senate Substitute for HB 2157**; adopts the conference committee report and requests return of the bill.

The House adopts the Conference Committee report on **SB 314**.

The House adopts the Conference Committee report to agree to disagree on **House Substitute for SB 177**, and has appointed Representatives Carlson, Kleeb and Dillmore as **second conferees** on the part of the House.

The House announced the appointment of Representatives Winn to replace Representative Ward as a conferee on **House Substitute for SB 28**.

The House announced the appointment of Representative O'Neal as a conferee to replace Representative Aurand on **House Substitute for SB 28**.

The House adopts the Conference Committee report on **Senate Substitute for Substitute HB 2333**.

On motion of Senator V. Schmidt the senate recessed until 10:45 a.m.

The Senate met pursuant to recess with President Morris in the chair.

ORIGINAL MOTION

Senator V. Schmidt moved that subsection 4(k) of the Joint Rules of the Senate and House of Representatives be suspended for the purpose of considering the following bills: **H Sub for SB 60, H Sub for SB 177; SB 314; HB 2175, HB 2435, HB 2453**.

COMMITTEE OF THE WHOLE

On motion of Senator V. Schmidt, the Senate resolved itself into Committee of the Whole, for consideration of bills on the calendar under the heading of General Orders with Senator Brungardt in the chair.

On motion of Senator Brungardt the following report was adopted:

Recommended **HB 2792** be amended by the adoption of the committee amendments, and **HB 2792** be passed as amended.

HB 2453 be amended by motion of Senator McGinn, on page 3, following line 3, by inserting the following:

"Sec. 6. On January 1, 2013, K.S.A. 2011 Supp. 75-3739 is hereby amended to read as follows: 75-3739. In the manner as provided in this act and rules and regulations established thereunder:

(a) All contracts for construction and repairs, and all purchases of and contracts for

supplies, materials, equipment and contractual services to be acquired for state agencies shall be based on competitive bids, except that competitive bids need not be required in the following instances:

(1) For contractual services, supplies, materials, or equipment when, in the judgment of the director of purchases, no competition exists;

(2) when, in the judgment of the director of purchases, chemicals and other material or equipment for use in laboratories or experimental studies by state agencies are best purchased without competition, or where rates are fixed by law or ordinance;

(3) when, in the judgment of the director of purchases, an agency emergency requires immediate delivery of supplies, materials or equipment, or immediate performance of services;

(4) when any statute authorizes another procedure or provides an exemption from the provisions of this section;

(5) when compatibility with existing contractual services, supplies, materials or equipment is the overriding consideration;

(6) when a used item becomes available and is subject to immediate sale; or

(7) when, in the judgment of the director of purchases and the head of the acquiring state agency, not seeking competitive bids is in the best interest of the state.

When the director of purchases approves a purchase of or contract for supplies, materials, equipment, or contractual services in any instance specified in this subsection, the director may delegate authority to make the purchase or enter the contract under conditions and procedures prescribed by the director. Except for purchases or contracts entered into without a competitive bid under subsection (a)(3), (a)(4), (a)(6) or subsection (h), no purchase or contract entered into without a competitive bid for an amount in excess of \$100,000 shall be entered into by the head of any state agency or approved by the director of purchases unless the director of purchases first posts an on-line notice of the proposed purchase or contract at least seven days before the purchase or contract is awarded. The director of purchases shall provide notice thereof to members of the legislature at the beginning of each calendar year that such information will be posted and the director of the division of purchases shall provide the uniform resource locator (URL) and the number of times such information shall be available. In the event a written protest of the awarding of such a contract occurs during the seven-day notice period, the director of purchases shall request from the protestor the contact information, including name and mailing address, of the person or entity that has expressed an interest in supplying the goods or services and provide a copy of the specification to the person or entity that has expressed an interest in supplying the goods or services and verify that such person or entity is interested and capable of supplying such goods or services.

Upon satisfaction of the director of purchases regarding the validity of the protest and the existence of competition, the director of purchases shall proceed with a competitive procurement. A competitive procurement shall not be required when, in the judgment of the director of purchases, the validity of the protest cannot be determined or competition for such goods or services cannot be verified by the director of purchases.

The director of purchases shall prepare a detailed report at least once in each calendar quarter of all contracts over \$5,000 entered into without competitive bids under subsection (a)(1), (2), (3), (5), (6) or (7). The director shall submit the report to the legislative coordinating council, the chairperson of the committee on ways and means

of the senate and the chairperson of the committee on appropriations of the house of representatives.

(b) (1) If the amount of the purchase is estimated to exceed \$50,000, sealed bids shall be solicited by notice published once in the Kansas register not less than 10 days before the date stated in the notice for the opening of the bids. The director of purchases may waive this publication of notice requirement when the director determines that a more timely procurement is in the best interest of the state. The director of purchases also may designate a trade journal for the publication. The director of purchases also shall solicit such bids by sending notices by mail to prospective bidders and by posting the notice on a public bulletin board for at least 10 business days before the date stated in the notice for the opening of the bids unless otherwise provided by law. All bids shall be sealed when received and shall be opened in public at the hour stated in the notice.

(2) The director of purchases shall prepare a detailed report at least once in each calendar quarter of all instances in which the director waived publication of the notice of bid solicitations in the Kansas register as provided in this subsection. The director shall submit the report to the legislative coordinating council, the chairperson of the committee on ways and means of the senate and the chairperson of the committee on appropriations of the house of representatives.

(c) All purchases estimated to exceed approximately \$25,000 but not more than \$50,000, shall be made after receipt of sealed bids following at least three days' notice posted on a public bulletin board.

(d) All purchases estimated to be more than \$5,000, but less than \$25,000, may be made after the receipt of three or more bid solicitations by telephone, telephone facsimile or sealed bid, following at least three days' notice posted on a public bulletin board. Such bids shall be recorded as provided in subsection ~~(e)~~(f) of K.S.A. 75-3740, and amendments thereto. Any purchase that is estimated to be less than \$5,000 may be purchased under conditions and procedures prescribed by the director of purchases. Purchases made in compliance with such conditions and procedures shall be exempt from other provisions of this section.

(e) With the approval of the secretary of administration, the director of purchases may delegate authority to any state agency to make purchases of less than \$25,000 under certain prescribed conditions and procedures. The director of purchases shall prepare a report at least once in each calendar quarter of all current and existing delegations of authority to state agencies as provided in this subsection. The director shall submit the report to the legislative coordinating council, the chairperson of the committee on ways and means of the senate and the chairperson of the committee on appropriations of the house of representatives.

(f) Subject to the provisions of subsection (e), contracts and purchases shall be based on specifications approved by the director of purchases. When deemed applicable and feasible by the director of purchases, such specifications shall include either energy efficiency standards or appropriate life cycle cost formulas, or both, for all supplies, materials, equipment and contractual services to be purchased by the state. The director of purchases may reject a contract or purchase on the basis that a product is manufactured or assembled outside the United States. No such specifications shall be fixed in a manner to effectively exclude any responsible bidder offering comparable supplies, materials, equipment or contractual services.

(g) Notwithstanding anything herein to the contrary, all contracts with independent

construction concerns for the construction, improvement, reconstruction and maintenance of the state highway system and the acquisition of rights-of-way for state highway purposes shall be advertised and let as now or hereafter provided by law.

(h) The director of purchases may authorize state agencies to contract for services and materials with other state agencies, or with federal agencies, political subdivisions of Kansas, agencies of other states or subdivisions thereof, or private nonprofit educational institutions, without competitive bids.

(i) The director of purchases may participate in, sponsor, conduct, or administer a cooperative purchasing agreement or consortium for purchases of supplies, materials, equipment, and contractual services with federal agencies or agencies of other states or local units of government. Cooperative purchasing agreements entered into under this subsection shall not be subject to K.S.A. 75-3739 through 75-3740a, and amendments thereto.

(j) The director of purchases may delegate authority to any state agency to make purchases under certain prescribed conditions and procedures when the acquisition is funded, in whole or in part, from a grant. Except as otherwise provided in subsection (k) of this section, purchases made in compliance with such conditions and procedures shall be exempt from other provisions of this section. As used in this subsection the term "grant" means a disbursement made from federal or private funds, or a combination of these sources, to a state agency. Nothing in this subsection shall allow federal grant moneys to be handled differently from any other moneys of the state unless the requirements of the applicable federal grant specifically require such federal moneys to be handled differently.

(k) The director of purchases shall prepare a detailed report at least once each calendar quarter of all contracts over \$5,000 for services, supplies, materials or equipment entered into pursuant to subsection (h), (i) or (j) and submit it to the legislative coordinating council, the chairperson of the committee on ways and means of the senate and the chairperson of the committee on appropriations of the house of representatives.

(l) Except as otherwise specifically provided by law, no state agency shall enter into any lease of real property without the prior approval of the secretary of administration. A state agency shall submit to the secretary of administration such information relating to any proposed lease of real property as the secretary may require. The secretary of administration shall either approve, modify and approve or reject any such proposed lease.

(m) The director of purchases shall require all bidders on state contracts to disclose all substantial interests held by the bidder in the state.

(n) As used in article 37 of chapter 75 of the Kansas Statutes Annotated, and amendments thereto, and other statutory provisions concerning state procurement, "sealed bids," "bulletin boards" and "mail" shall include electronic bids, electronic bulletin boards and electronic mail when such items are utilized in accordance with procedures prescribed by the director of purchases.

Sec. 7. On January 1, 2013, K.S.A. 2011 Supp. 75-3740 is hereby amended to read as follows: 75-3740. (a) Except as provided by subsection (b) and K.S.A. 75-3740b, and amendments thereto, all contracts and purchases made by or under the supervision of the director of purchases or any state agency for which competitive bids are required shall be awarded to the lowest responsible bidder, taking into consideration conformity

with the specifications, terms of delivery, and other conditions imposed in the call for bids.

(b) A contract shall be awarded to a certified business which is also a responsible bidder, whose total bid cost is not more than 10% higher than the lowest competitive bid. Such contract shall contain a promise by the certified business that the percentage of employees that are individuals with disabilities will be maintained throughout the contract term and a condition that the certified business shall not subcontract for goods or services in an aggregate amount of more than 25% of the total bid cost.

~~(b)(c)~~ The director of purchases shall have power to decide as to the lowest responsible bidder for all purchases, but if:

(1)(A) A responsible bidder purchases from a qualified vendor goods or services on the list certified by the director of purchases pursuant to K.S.A. 75-3317 et seq., and amendments thereto, the dollar amount of such purchases made during the previous fiscal year shall be deducted from the original bid received from such bidder for the purpose of determining the lowest responsible bid, except that such deduction shall not exceed 10% of the original bid received from such bidder; or

(B) a responsible bidder purchases from a certified business the dollar amount of such purchases made during the previous fiscal year shall be deducted from the original bid received from such bidder for the purpose of determining the lowest responsible bid, except that such deduction shall not exceed 10% of the original bid received from such bidder;

~~(1)(2)~~ The dollar amount of the bid received from the lowest responsible bidder from within the state is identical to the dollar amount of the bid received from the lowest responsible bidder from without the state, the contract shall be awarded to the bidder from within the state; and

~~(2)(3)~~ in the case of bids for paper products specified in K.S.A. 75-3740b, and amendments thereto, the dollar amounts of the bids received from two or more lowest responsible bidders are identical, the contract shall be awarded to the bidder whose bid is for those paper products containing the highest percentage of recycled materials.

~~(e)(d)~~ Any or all bids may be rejected, and a bid shall be rejected if it contains any material alteration or erasure made after the bid is opened. The director of purchases may reject the bid of any bidder who is in arrears on taxes due the state, who is not properly registered to collect and remit taxes due the state or who has failed to perform satisfactorily on a previous contract with the state. The secretary of revenue is hereby authorized to exchange such information with the director of purchases as is necessary to effectuate the preceding sentence notwithstanding any other provision of law prohibiting disclosure of the contents of taxpayer records or information. Prior to determining the lowest responsible bidder on contracts for construction of buildings or for major repairs or improvements to buildings for state agencies, the director of purchases shall consider: (1) The criteria and information developed by the secretary of administration, with the advice of the state building advisory commission to rate contractors on the basis of their performance under similar contracts with the state, local governmental entities and private entities, in addition to other criteria and information available, and (2) the recommendations of the project architect, or, if there is no project architect, the recommendations of the secretary of administration or the agency architect for the project as provided in K.S.A. 75-1254, and amendments thereto. In any case where competitive bids are required and where all bids are rejected, new bids shall

be called for as in the first instance, unless otherwise expressly provided by law or the state agency elects not to proceed with the procurement.

~~(d)~~(e) Before the awarding of any contract for construction of a building or the making of repairs or improvements upon any building for a state agency, the director of purchases shall receive written approval from the state agency for which the building construction project has been approved, that the bids generally conform with the plans and specifications prepared by the project architect, by the secretary of administration or by the agency architect for the project, as the case may be, so as to avoid error and mistake on the part of the contractors. In all cases where material described in a contract can be obtained from any state institution, the director of purchases shall exclude the same from the contract.

~~(e)~~(f) All bids with the names of the bidders and the amounts thereof, together with all documents pertaining to the award of a contract, shall be made a part of a file or record and retained by the director of purchases for five years, unless reproduced as provided in K.S.A. 75-3737, and amendments thereto, and shall be open to public inspection at all reasonable times.

~~(f)~~ As used in this section and in K.S.A. 75-3741, and amendments thereto, "project architect" shall have the meaning ascribed thereto in K.S.A. 75-1251, and amendments thereto.

(g) As used in this section:

(1) "Certified business" means any business certified annually by the department of administration that is a sole proprietorship, partnership, association or corporation domiciled in Kansas, or any corporation, even if a wholly owned subsidiary of a foreign corporation, that:

(A) Does business primarily in Kansas or substantially all of its production in Kansas;

(B) employs at least 20% of its employees who are individuals with disabilities and reside in Kansas;

(C) offers to contribute at least 75% of the premium cost for individual health insurance coverage for each employee. The level of such coverage shall be at least equal to the level of benefits offered by the state employee benefit program established by K.S.A. 75-6501 *et seq.*, and amendments thereto. The department of administration shall require a certification of these facts as a condition to the certified business being awarded a contract pursuant to subsection (b); and

(D) does not employ individuals under a certificate issued by the United States secretary of labor under subsection (c) of 29 U.S.C. § 214;

(2) "individuals with disabilities" or "individual with a disability" means any individual who:

(A) Is certified by the Kansas department for aging and disability services as having a physical or mental impairment which constitutes a substantial barrier to employment;

(B) works a minimum number of hours per week for a certified business necessary to qualify for health insurance coverage offered pursuant to subsection (g)(1); and

(C)(i) is receiving services, has received services or is eligible to receive services under a home and community based services program, as defined by K.S.A. 39-7,100, and amendments thereto;

(ii) is employed by a charitable organization domiciled in the state of Kansas and

exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, as amended; or

(iii) is an individual with a severe and persistent mental illness, as determined by a clinical or functional assessment approved by the Kansas department for aging and disability services;

(3) "physical or mental impairment" means:

(A) Any physiological disorder or condition, cosmetic disfigurement or anatomical loss substantially affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; or endocrine; or

(B) any mental or psychological disorder, such as intellectual disability, organic brain syndrome, mental illness and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairment, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis and intellectual disability; and

(4) "project architect" shall have the meaning ascribed thereto in K.S.A. 75-1251, and amendments thereto.

(h) Any state agency authorized by the director of purchases to make purchases pursuant to subsection (e) of K.S.A. 75-3739, and amendments thereto, shall consider any unsolicited proposal for goods or services under this section.

(i) The secretary of administration and the secretary for aging and disability services, jointly, shall adopt rules and regulations as necessary to effectuate the purpose of this section.

(j) On and after January 13, 2014, at the beginning of each regular session of the legislature, the secretary of administration and the secretary for aging and disability services shall submit to the social services budget committee of the house of representatives and the appropriate subcommittee of the committee on ways and means of the senate, a written report on:

(1) The number of certified businesses certified by the department of administration during the previous fiscal year;

(2) the number of certified businesses awarded contracts pursuant to subsection (b) during the previous fiscal year;

(3) the number of contracts awarded pursuant to subsection (b) to each certified business during the previous fiscal year;

(4) the number of individuals with disabilities removed from, reinstated to or not reinstated to home and community based services or other medicaid program services during the previous fiscal year as a result of employment with a certified business;

(5) the number of individuals employed by each certified business during the previous fiscal year; and

(6) the number of individuals with disabilities employed by each certified business during the previous fiscal year.

New Sec. 7. (a) As used in this section:

(1) "Certified business" shall have the meaning ascribed thereto in K.S.A. 75-3740, and amendments thereto;

(2) "home and community based services programs" shall have the meaning ascribed thereto in K.S.A. 39-7,100, and amendments thereto;

(3) "individuals with disabilities" or "individual with a disability" shall have the meaning ascribed thereto in K.S.A. 75-3740, and amendments thereto;

(4) "medicaid program" means the Kansas program of medical assistance for which federal or state moneys, or any combination thereof, are expended, or any successor federal or state, or both, health insurance program or waiver granted thereunder;

(5) "physical or mental impairment" shall have the meaning ascribed thereto in K.S.A. 75-3740, and amendments thereto; and

(6) "secretary" means the secretary for aging and disability services or the secretary's designee.

(b) There is a rebuttable presumption that an individual with a disability shall be eligible for reinstatement to the level of home and community based services or other medicaid program services such person was entitled to on the day preceding the day such person stopped receiving home and community based services or other medicaid program services if:

(1) Such individual had received home and community based services or other medicaid program services pursuant to an application filed with the Kansas department for aging and disability services, and entitlement to receive or receipt of home and community based services or other medicaid program services terminated due to employment for a certified business, not medical recovery or any other reason; and

(2) the individual with a disability is currently under a physical or mental impairment that was the basis for the finding of disability that gave rise to the entitlement for the services specified in subsection (b)(1). Upon reinstatement to the medicaid program to receive home and community based services or other medicaid program services, such individual shall receive services and not wait to receive services under such program.

(c) The secretary may promulgate rules and regulations as necessary to effectuate the purpose of this section.

(d) This section shall take effect on and after January 1, 2013.";

Also on page 3, following line 5, by inserting the following:

"Sec. 9. On January 1, 2013, K.S.A. 2011 Supp. 75-3739 and 75-3740 are hereby repealed.";

On page 1, in the title, in line 1, by striking "the commission on disability concerns" and inserting "individuals with disabilities";

Also on page 1, in line 2, by striking "and" and inserting a comma; also in line 2, following "74-6707" by inserting ", 75-3739 and 75-3740";

And by renumbering sections accordingly; and **HB 2453** be passed as amended.

HB 2515 be amended by the adoption of the committee amendments, and be further amended by motion of Senator McGinn, on page 294, in line 3, by striking the comma; by striking lines 4 and 5; in line 6, by striking all before the period.

HB 2515 be further amended by Senator Vratil on page 92, following line 32, by inserting the following:

"Southeast Kansas economic development \$500,000" and **HB 2515** be passed as further amended.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **House Substitute for SB 60** submits the following report:

The Senate accedes to all House amendments to the bill, and your committee on conference further agrees to amend the bill as printed with House Committee of the Whole amendments, as follows:

On page 1, by striking all in lines 9 through 34;

By striking all on pages 2 through 21 and inserting:

"New Section 1. On and after July 1, 2012, the amount of \$250 from each fine imposed for a violation of a city ordinance prohibiting the acts prohibited by K.S.A. 8-1567 or 8-2,144 or section 2, and amendments thereto, shall be remitted by the judge or clerk of the municipal court 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 credit the entire amount to the community corrections supervision fund established by K.S.A. 2011 Supp. 75-52,113, and amendments thereto.

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, if such person has:

(1) Any prior test refusal as defined in K.S.A. 8-1013, and amendments thereto, which occurred: (A) On or after July 1, 2001; and (B) when such person was 18 years of age or older; or

(2) any prior conviction for a violation of K.S.A. 8-1567 or 8-2,144, 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, which occurred: (A) On or after July 1, 2001; and (B) when such person was 18 years of age or older.

(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 \$1,250 nor more than \$1,750. 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 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 person convicted, if placed into a work release program, shall serve a minimum of 120 hours of confinement. Such 120 hours of confinement shall be a period of at least 48 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program pursuant to K.S.A. 2011 Supp. 21-6609, and amendments thereto, to serve the five days' imprisonment mandated by this subsection only after such person has served 48 consecutive hours' imprisonment. The person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of 120 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the 120 hours;

(B) on a second conviction a class A, nonperson misdemeanor, except as provided

in subsection (b)(1)(C). The person convicted shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,750 nor more than \$2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The 90 days' imprisonment mandated by this 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 person convicted, if placed into a work release program, shall serve a minimum of 2,160 hours of confinement. Such 2,160 hours of confinement shall be a period of at least 48 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program pursuant to K.S.A. 2011 Supp. 21-6609, and amendments thereto, to serve the 90 days' imprisonment mandated by this subsection only after such person has served 48 consecutive hours' imprisonment. The person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of 2,160 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the 2,160 hours;

(C) on a second 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 not less than \$1,750 nor more than \$2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The 90 days' imprisonment mandated by this 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 person convicted, if placed into a work release program, shall serve a minimum of 2,160 hours of confinement. Such 2,160 hours of confinement shall be a period of at least 48 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program pursuant to K.S.A. 2011 Supp. 21-6609, and amendments thereto, to serve the 90 days' imprisonment mandated by this subsection only after such person has served 48 consecutive hours' imprisonment. The person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of 2,160 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the 2,160 hours; and

(D) on a third or subsequent conviction a nonperson felony. 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 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 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. The person convicted, if placed into a work release program, shall serve a minimum of 2,160 hours of confinement. Such 2,160 hours of confinement shall be a period of at least 72 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program pursuant to K.S.A. 2011 Supp. 21-6609, and amendments thereto, to serve the 90 days' imprisonment mandated by this subsection only after such person has served 72 consecutive hours' imprisonment. The person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of 2,160 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the 2,160 hours.

(2) The court may order that the term of imprisonment imposed pursuant to 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. 2011 Supp. 21-6804, 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.

(3) In addition, for any conviction pursuant to subsection (b)(1)(B), (b)(1)(C) or (b)(1)(D), at the time of the filing of the judgment form or journal entry as required by K.S.A. 22-3426 or K.S.A. 2011 Supp. 21-6711, and amendments thereto, the court shall cause a certified copy to be sent to the officer having the offender in charge. The court shall determine whether the offender, upon release from imprisonment, shall be supervised by community correctional services or court services based upon the risk and needs of the offender. The risk and needs of the offender shall be determined by use of a risk assessment tool specified by the Kansas sentencing commission. 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 supervision office designated by the court and upon expiration of the term of imprisonment shall deliver the defendant to a location designated by the supervision office designated by the court. After the term of imprisonment imposed by the court, the

person shall be placed on supervision to community correctional services or court services, as determined by the court, for a mandatory one-year period of supervision, which such period of supervision shall not be reduced. During such supervision, the person shall be required to participate in a multidisciplinary model of services for substance use disorders facilitated by a department of social and rehabilitation services designated care coordination agency to include assessment and, if appropriate, referral to a community based substance use disorder treatment including recovery management and mental health counseling as needed. The multidisciplinary team shall include the designated care coordination agency, the supervision officer, the social and rehabilitation services department designated treatment provider and the offender. Any violation of the conditions of such supervision may subject such person to revocation of supervision and imprisonment in jail for the remainder of the period of imprisonment, the remainder of the supervision period, or any combination or portion thereof.

(4) In addition, prior to sentencing for any conviction pursuant to subsection (b)(1) (A), the court shall order the person to participate in an alcohol and drug evaluation conducted by a provider in accordance with 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 violating this section or an ordinance which prohibits the acts that this section prohibits who had one or more children under the age of 14 years in the vehicle at the time of the offense shall have such person's punishment enhanced by one month of imprisonment. This imprisonment must be served consecutively to any other minimum mandatory penalty imposed for a violation of this section or an ordinance which prohibits the acts that this section prohibits. Any enhanced penalty imposed shall not exceed the maximum sentence allowable by law. During the service of the enhanced penalty, the judge may order the person on house arrest, work release or other conditional release.

(d) The court may establish the terms and time for payment of any fines, fees, assessments and costs imposed pursuant to this section. Any assessments 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.

(e) 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.

(f) 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.

(g) 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.

(h) For the purpose of determining whether a conviction is a first, second, third, fourth or subsequent conviction in sentencing under 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: (A) On or after July 1, 2001; and (B) when such person was 18 years of age or older. 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, fourth or subsequent offense;

(2) any convictions for a violation of the following sections which occurred during a person's lifetime shall be taken into account, but only convictions occurring when such person was 18 years of age or older: (A) This section; (B) driving a commercial motor vehicle under the influence, K.S.A. 8-2,144, and amendments thereto; (C) operating a vessel under the influence of alcohol or drugs, K.S.A. 32-1131, and amendments thereto; (D) involuntary manslaughter while driving under the influence of alcohol or drugs, K.S.A. 21-3442, prior to its repeal, or subsection (a)(3) of K.S.A. 2011 Supp. 21-5405, and amendments thereto; and (E) 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 (h)(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 (h)(1) or (h)(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 (h)(1) or (h)(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;

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

(6) the prior conviction that is an element of the crime of refusing to submit to a test to determine the presence of alcohol or drugs shall not be used for the purpose of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section and shall not be considered in determining the sentence to be imposed within the limits provided for a first, second, third or subsequent offense; and

(7) a person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section, or an ordinance which prohibits the acts of

this section, only once during the person's lifetime.

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

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

(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) 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.

(4) 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) (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; 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.

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

(m) As used in this section, "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.

(n) On and after July 1, 2012, the amount of \$250 from each fine imposed pursuant to 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 each such remittance, the state treasurer shall credit the entire amount to the community corrections supervision fund established by K.S.A. 2011 Supp. 75-52,113, and amendments thereto.

Sec. 3. K.S.A. 2011 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 such person: (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, and amendments thereto, or a second or subsequent violation of K.S.A. 8-1567 or 8-1567a or section 2, and amendments thereto, and such person has completed the mandatory period of suspension as provided in K.S.A. 8-1014, 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; or (4) has had their driving privileges revoked under K.S.A. 8-286, and amendments thereto, has not had a test refusal or test failure or alcohol or drug-related conviction, as those terms are defined in K.S.A. 8-1013, and amendments thereto, in the last five years, has not been convicted of a violation of subsection (b) of K.S.A. 8-1568, and amendments thereto, in the last five years and has made application to the division for issuance of a class C license for the operation of motorized bicycles, in accordance with paragraph (2), in which case the division shall issue 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. 4. 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, 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, 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 or subsequent 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 or subsequent 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. 5. K.S.A. 2011 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 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 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 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, prior to its repeal, or K.S.A. 2011 Supp. 21-5406, and amendments thereto, involuntary manslaughter while driving under the influence of alcohol or drugs, K.S.A. 21-3442, prior to its repeal, or involuntary manslaughter as defined in subsection (a)(3) of K.S.A. 2011 Supp. 21-5405, 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. 2011 Supp. 21-6609, 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. 6. K.S.A. 2011 Supp. 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, prior to its repeal, or K.S.A. 2011 Supp. 21-5406, 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 in 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 (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. 7. K.S.A. 8-286 is hereby amended to read as follows: 8-286. Whenever the files and records of the division shall disclose that the record of convictions of any person is such that the person is an habitual violator, as prescribed by K.S.A. 8-285, and amendments thereto, the division promptly shall revoke the person's driving privileges for a period of three years, except as allowed under subsection (d)(4) of K.S.A. 8-235, and amendments thereto.

Sec. 8. K.S.A. 2011 Supp. 8-287 is hereby amended to read as follows: 8-287. Except as allowed under subsection (d)(4) of K.S.A. 8-235, and amendments thereto, operation of a motor vehicle in this state while one's driving privileges are revoked pursuant to K.S.A. 8-286, and amendments thereto, is a class A nonperson misdemeanor. The person found guilty of 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. 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. 2011 Supp. 21-6609, 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.

Sec. 9. K.S.A. 8-288 is hereby amended to read as follows: 8-288. Except as allowed under subsection (d)(4) of K.S.A. 8-235, and amendments thereto, no license to operate a motor vehicle in Kansas shall be issued to a person for a period of three years from the date of the division's order revoking such person's driving privileges pursuant to K.S.A. 8-286, and amendments thereto, and until the person's driving privileges have been restored.

Sec. 10. K.S.A. 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;
 - (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
 - (2) while operating a noncommercial motor vehicle:
 - (A) The person is convicted of a violation of K.S.A. 8-1567 or 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) 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. 11. K.S.A. 2011 Supp. 8-2,144 is hereby amended to read as follows: 8-2,144.
(a) 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 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) (1) Driving a commercial motor vehicle under the influence is:

(A) On a first conviction a class B, nonperson misdemeanor. The person convicted shall be 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 \$750 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, suspension or reduction of sentence or parole or other release;

(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 not less than \$1,250 nor more than \$1,750. 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 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 person convicted, if placed into a work release program, shall serve a minimum of 120 hours of confinement. Such 120 hours of confinement shall be a period of at least 48 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program pursuant to K.S.A. 2011 Supp. 21-6609, and amendments thereto, to serve the ~~remainder of the minimum sentence~~ five days' imprisonment mandated by this subsection only after such person has served 48 consecutive hours' imprisonment. The person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of 120 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the 120 hours; and

(C) on a third or subsequent conviction a nonperson felony. The person convicted shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,750 nor more than \$2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The 90 days' imprisonment mandated by this 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 person convicted, if placed into a work release program, shall serve a minimum of ~~240~~ 2,160 hours of confinement. Such ~~240~~ 2,160 hours of confinement shall be a period of at least 48 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program pursuant to K.S.A. 2011 Supp. 21-6609, and amendments thereto, to serve the ~~remainder of the minimum sentence~~ 90 days' imprisonment mandated by this subsection only after such person has served 48 consecutive hours' imprisonment. The person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of ~~240~~ 2,160 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the ~~240~~ 2,160 hours.

(2) In addition, for any conviction pursuant to subsection (b)(1)(C), at the time of the filing of the judgment form or journal entry as required by K.S.A. 22-3426 or K.S.A. 2011 Supp. 21-6711, and amendments thereto, the court shall cause a certified copy to be sent to the officer having the offender in charge. The court shall determine whether the offender, upon release from imprisonment, shall be supervised by community correctional services or court services based upon the risk and needs of the offender. The risk and needs of the offender shall be determined by use of a risk assessment tool specified by the Kansas sentencing commission. 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 supervision office designated by the court and upon expiration of the term of imprisonment shall deliver the defendant to a location designated by the supervision office designated by the court. After the term of imprisonment imposed by the court, the person shall be placed on supervision to community correctional services or court services, as determined by the court, for a mandatory one-year period of supervision, which such period of supervision shall not be reduced. During such supervision, the person shall be required to participate in a multidisciplinary model of services for substance use disorders facilitated by a department of social and rehabilitation services designated care coordination agency to include assessment and, if appropriate, referral to a community based substance use disorder treatment including recovery management and mental health counseling as needed. The multidisciplinary team shall include the designated care coordination agency, the supervision officer, the social and rehabilitation services department designated treatment provider and the offender. Any violation of the conditions of such supervision may subject such person to revocation of supervision and imprisonment in jail for the remainder of the period of imprisonment, the remainder of the supervision period, or any combination or portion thereof.

~~(2)(3)~~ (3) In addition, prior to sentencing for any conviction pursuant to subsection (b) (1)(A) or (b)(1)(B), the court shall order the person to participate in an alcohol and drug evaluation conducted by a provider in accordance with 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.

(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: (1) Division a record of all prior convictions obtained against such person for any violation 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.

(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) 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) (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.

(l) 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.

(m) 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.

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

~~(1) "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;~~

~~(2) 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 or subsequent offender; and~~

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

(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, 2001. 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, fourth or subsequent offense;

(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) refusing to submit to a test to determine the presence of alcohol or drugs, section 2, and amendments thereto; (C) operating a vessel under the influence of alcohol or drugs, K.S.A. 32-1131, and amendments thereto; (D) involuntary manslaughter while driving under the influence of alcohol or drugs, K.S.A. 21-3442, prior to its repeal, or subsection (a)(3) of K.S.A. 2011 Supp. 21-5405, and amendments thereto; and (E) 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 (n)(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 (n)(1) or (n)(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 (n)(1) or (n)(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 (n)(1) or (n)(2) arising from the same arrest shall only be counted as one conviction.

(o) 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. 2011 Supp. 21-5712, and amendments thereto.

(p) On and after July 1, 2011, the amount of \$250 from each fine imposed pursuant to 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 each such remittance, the state treasurer shall credit the entire amount to the community corrections supervision fund established by K.S.A. 2011 Supp. 75-52,113, and amendments thereto.

Sec. 12. K.S.A. 2011 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 (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: (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 greater than or equal to the criminal penalties for the crime of driving under the influence, if such person has:

(A) Any prior test refusal as defined in K.S.A. 8-1013, and amendments thereto, which occurred: (i) On or after July 1, 2001; and (ii) when such person was 18 years of

age or older; or

(B) any prior conviction for a violation of K.S.A. 8-1567 or 8-2,144, 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, which occurred: (i) On or after July 1, 2001; and (ii) when such person was 18 years of age or older;

(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 or subsequent occurrence;

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

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

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

~~(6) 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;~~

(7) 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;

(8) 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

(9) 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 amendments 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. 13. K.S.A. 2011 Supp. 8-1008 is hereby amended to read as follows: 8-1008.
(a) As used in this section, "provider" means: (1) A professional licensed by the behavioral sciences regulatory board to diagnose and treat mental or substance use disorders at the independent level who is compliant with the requirements set forth by the secretary of social and rehabilitation services as described in subsection (f); or (2) a professional licensed by the behavioral sciences regulatory board who is working in an alcohol and drug treatment facility licensed by the secretary of social and rehabilitation services as meeting the requirements described in subsection (f).

(b) A provider shall provide:

(1) 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 those statutes; and

(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. 8-1567 ~~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.

(c) A provider shall be capable of providing, within the judicial district: (1) The evaluations required under subsection (b); (2) the alcohol and drug evaluation report required under subsection (d) or (e); (3) the follow-up duties specified under subsection (d) or (e) for persons who prepare the alcohol and drug evaluation report; and (4) any other functions and duties specified by law. The secretary of social and rehabilitation services shall provide each judicial district with an electronic list of providers, and except as provided further, such list shall be used when selecting a provider to be used as described in subsections (d) and (e). The secretary of social and rehabilitation services shall also make all such lists ~~of providers~~ publicly available on the official website of the department of social and rehabilitation services. Any provider performing services in any judicial district under this section prior to July 1, 2011, may continue to perform those services until July 1, ~~2012~~2013.

(d) (1) Except as provided further, 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 those statutes. The alcohol and drug evaluation report shall be made available to and shall be considered by the court prior to sentencing. Except as provided further, the court shall order that ~~the~~ cost of any alcohol and drug evaluation for any person shall be paid by such person to the provider at the time of service, and shall not exceed \$150. If the court finds that such person is indigent, the provider shall agree to accept payment as ordered by the court and the court shall order that the cost of any alcohol and drug evaluation be paid to the provider by such person as part of the judgment. The cost of any such evaluation shall be not less than \$150.

(2) The provisions of this subsection shall not apply to any person convicted pursuant to subsection (b)(1)(C) of K.S.A. 8-2,144, subsection (b)(1)(C), (b)(1)(D) or (b)(1)(E) of K.S.A. 8-1567 or subsection (b)(1)(B), (b)(1)(C) or (b)(1)(D) of section 2, and amendments thereto.

(e) 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. 8-1567 ~~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. The alcohol and drug evaluation report shall be made available to the prosecuting attorney and shall be considered by the prosecuting attorney. The cost of any alcohol and drug evaluation for any person shall be paid by such person to the provider at the time of service, and shall not exceed ~~be not less than~~ \$150.

(f) On and after July 1, 2013, all alcohol and drug evaluations conducted pursuant to this section shall utilize a standardized substance use evaluation approved by the secretary of social and rehabilitation services and be submitted in a format approved by the secretary of social and rehabilitation services. On or before July 1, ~~2012~~2013, the secretary of social and rehabilitation services shall promulgate rules and regulations to implement this section.

Sec. 14. K.S.A. 2011 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 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 K.S.A. 2011 Supp. 75-712h, and amendments thereto.~~

Sec. 15. K.S.A. 2011 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 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. 8-2,144 or 8-1567-~~or section 2~~, 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. 8-2,144 or 8-1567-~~or section 2~~, 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.

(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 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. 2011 Supp. 21-5111, 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 or section 2, and amendments thereto, if committed off a military reservation in this state.

Sec. 16. K.S.A. 2011 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 two years 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 one year and at the end of the suspension, restrict the person's driving privileges for two three 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 one year and at the end of the suspension, restrict the person's driving privileges for four four 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 one year and at the end of the suspension, restrict the person's driving privileges for four five years to driving only a motor vehicle equipped with an ignition interlock device; and

(5) on the person's fifth or subsequent occurrence, suspend the person's driving privileges for one year and at the end of the suspension, restrict the person's driving privileges for 10 years to driving only a motor vehicle equipped with an ignition interlock device.

(b) (1) Except as provided by subsections (b)(2), ~~(e)~~ 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, restrict the person's driving privileges as provided by subsection (b) of K.S.A. 8-1015, and amendments thereto;

(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 one year 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 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

(E) on the person's fifth or subsequent occurrence, suspend the person's driving privileges for one year and at the end of the suspension, restrict the person's driving privileges for 10 years to driving only a motor vehicle equipped with an ignition interlock device.

(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, suspend the person's driving privileges for one year and at the end of the suspension, restrict the person's driving privileges for 10 years to driving only a motor vehicle equipped with an ignition interlock device.

(3) Whenever a person's driving privileges have been restricted to driving only a motor vehicle equipped with an ignition interlock device for 10 years under this section, such person may petition any district court for relief from such restriction after five years of such restriction have been served. The court shall consider, but not be limited to, whether: (A) Such person's driving privileges have been restricted, suspended, revoked or disqualified pursuant to another action by the division or a court; and (B) such person proves installation, maintenance and use of an ignition interlock device approved by the division throughout the five-year period. If the court finds that the person's driving privileges should be restored, then the court shall electronically report such order to the division. The division, upon receiving such order, shall restore such person's driving privileges, unless such person's driving privileges have been restricted, suspended, revoked or disqualified pursuant to another action by the division or a court.

(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 a provider, as defined in K.S.A. 8-1008, and amendments thereto, or a court that the person has failed to follow any recommendation made by the provider or otherwise ordered by a court for a conviction of a violation of K.S.A. 8-1567 or section 2, 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 recommendation.~~

(e) 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 (e)~~ or (b), 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 (e)~~ or (b), 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.

If a person's driving privileges are subject to restriction pursuant to this section for a 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) If the division has taken action under subsection (a) for a test refusal or under subsection (b) ~~or (e)~~ 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 (e)~~ for an alcohol or drug-related conviction.

(g) The provisions of subsections (a), (b) and (c), as amended by this act and section 14 of chapter 105 of the 2011 Session Laws of Kansas, 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 (f) ~~(e)~~ of K.S.A. 8-1015, and amendments thereto.

(h) When modifying penalties pursuant to subsection (g), the division shall credit any suspension or revocation time in excess of one year which was imposed and served prior to retroactive application of the provisions of subsections (a), (b) and (c), as amended by this act and section 14 of chapter 105 of the 2011 Session Laws of Kansas, toward the required ignition interlock restriction period imposed pursuant to the retroactive application of such provisions if: (1) The person's driving record indicates no driving by the person during the applicable suspension or revocation period; and (2) the person completes a form prescribed by the division indicating that the person did not drive during the applicable suspension or revocation period.

~~(h)~~(i) 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. 17. K.S.A. 2011 Supp. 8-1015 is hereby amended to read as follows: 8-1015.

(a) (1) Except as provided in subsection (a)(2), whenever a person's driving privileges have been suspended for one year as provided in subsection (a) of K.S.A. 8-1014, and amendments thereto, after 90 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 device 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) Whenever a person's driving privileges have been suspended for one year as

provided in subsection (a)(1) of K.S.A. 8-1014, and amendments thereto, after 90 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 device and only under the circumstances provided by subsections (a)(1), (2), (3) and (4) of K.S.A. 8-292, and amendments thereto.

(3) Except as provided in subsection (a)(4), 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 device 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.

(4) Whenever a person's driving privileges have been suspended for one year as provided in subsection (b)(2)(A) 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 device and only under the circumstances provided by subsections (a)(1), (2), (3) and (4) of K.S.A. 8-292, and amendments thereto.

(5) The division shall assess an application fee of \$100 for a person to apply to modify the suspension to restricted ignition interlock status.

~~(2)(6)~~ (6) The division shall approve the request for such restricted license unless such person's driving privileges have been restricted, suspended, revoked or disqualified 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. Except as provided in K.S.A. 8-1017, and amendments thereto, if such person is convicted of a violation of 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)~~ or (b) of K.S.A. 8-1014, and amendments thereto.

(b) (1) On and after July 1, 2011, through June 30, 2015:

(A) Except as provided in subsection (b)(1)(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 for 180 days to driving only a motor vehicle equipped with an ignition interlock device.

(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 for one year to driving only a motor vehicle equipped with an ignition interlock device if the records maintained by the division indicate that such person has previously: (A) Been convicted of a violation of K.S.A. 8-1599, and amendments thereto; (B) been convicted of a violation of K.S.A. 41-727, and amendments thereto; (C) been convicted of any violations listed in subsection (a) of K.S.A. 8-285, and amendments thereto; (D) been convicted of three or more moving traffic violations

committed on separate occasions within a 12-month period; or (E) had such person's driving privileges revoked, suspended, canceled or withdrawn.

(2) On and after July 1, 2015:

(A) Except as provided in subsection (b)(2)(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 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 (b)(2)(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.

(c) Except as provided in subsection (b), when a person has completed the suspension pursuant to subsection ~~(a), (b) or (e)~~ or (b) of K.S.A. 8-1014, and amendments thereto, the division shall restrict the person's driving privileges pursuant to subsection ~~(a), (b) or (e)~~ or (b) of K.S.A. 8-1014, and amendments thereto, to driving only a motor vehicle equipped with an ignition interlock device. 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.

(d) Whenever an ignition interlock device is required by law, such ignition interlock device shall be approved by the division 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.

(e) 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)-(a)(1) or (a)(3)~~.

(f) 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.

(g) Any person who has had the person's driving privileges suspended ~~or~~-restricted ~~or~~-revoked pursuant to subsection (a), (b) or (c) of K.S.A. 8-1014, prior to the amendments by this act and section 14 of chapter 105 of the 2011 Session Laws of Kansas, may apply to the division to have the suspension ~~and~~-restriction or revocation 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 \$100 for a person to apply to modify the suspension and; restriction ~~or revocation~~-penalties previously issued. The division shall modify the suspension, restriction or

revocation penalties, unless such person's driving privileges have been restricted, suspended, revoked or disqualified pursuant to another action by the division or a court.

(h) The division shall remit all application fees collected pursuant to subsections (a) and (g) to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury and shall credit such moneys to the division of vehicles operating fund until an aggregate amount of \$100,000 is credited to the division of vehicles operating fund each fiscal year. On and after an aggregate amount of \$100,000 is credited to such fund each fiscal year, the entire amount of such remittance shall be credited to the community corrections supervision fund created by K.S.A. 2011 Supp. 75-52,113, and amendments thereto. 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 restricted, suspended, revoked or disqualified pursuant to another action by the division or a court.~~

Sec. 18. K.S.A. 2011 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 and makes a timely payment of the required hearing fee, 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 together with the required hearing fee, 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 together with the required hearing fee, 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, to be paid within the time period for making a timely request 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 Kansas judicial review act. 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 revocation 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. 19. 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 amendments thereto, shall apply upon highways and elsewhere throughout the state.

Sec. 20. K.S.A. 2011 Supp. 8-1567 is hereby amended to read as follows: 8-1567.

(a) 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 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~~

~~(6) The person is a habitual user of any narcotic, hypnotic, somnifacient or stimulating drug.~~

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

(A) On a first conviction a class B, nonperson misdemeanor. The person convicted shall be 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 \$750 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. The court may place the person convicted under a house arrest program pursuant to K.S.A. 2011 Supp. 21-6609, and amendments thereto, to serve the remainder of the ~~minimum~~ sentence 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 not less than \$1,250 nor more than \$1,750. 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 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 person convicted, if placed into a work release program, shall serve a minimum of 120 hours of confinement. Such 120 hours of confinement shall be a period of at least 48 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program pursuant to K.S.A. 2011 Supp. 21-6609, and amendments thereto, to serve the ~~remainder of the minimum sentence~~ five days' imprisonment mandated by this subsection only after such person has served 48 consecutive hours' imprisonment. The person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of 120 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the 120 hours;

(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 not less than \$1,750 nor more than \$2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The 90 days' imprisonment mandated by this 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 person convicted, if placed into a work release program, shall serve a minimum of ~~240~~ 2,160 hours of confinement. Such ~~240~~ 2,160 hours of confinement shall be a period of at least 48 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program pursuant to K.S.A. 2011 Supp. 21-6609, and amendments thereto, to serve the remainder of the minimum sentence 90 days' imprisonment mandated by this subsection only after such person has served 48 consecutive hours' imprisonment. The person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of ~~240~~ 2,160 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the ~~240~~ 2,160 hours;

(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 not less than \$1,750 nor more than \$2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The 90 days' imprisonment mandated by this 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 person convicted, if placed into a work release program, shall serve a minimum of ~~240~~ 2,160 hours of confinement. Such ~~240~~ 2,160 hours of confinement shall be a period of at least 48 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program pursuant to K.S.A. 2011 Supp. 21-6609, and amendments thereto, to serve the remainder of the minimum sentence 90 days' imprisonment mandated by this subsection only after such person has served 48 consecutive hours' imprisonment. The person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of ~~240~~ 2,160 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the ~~240~~ 2,160 hours; and

(E) on a fourth or subsequent conviction a nonperson ~~felon~~ felony. 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 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~~ subsection 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. The person convicted, if placed into a work release program, shall serve a minimum of ~~240~~ 2,160 hours of confinement. Such ~~240~~ 2,160 hours of confinement shall be a period of at least 72 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program pursuant to K.S.A. 2011 Supp. 21-6609, and amendments thereto, to serve the ~~remainder of the minimum sentence~~ 90 days' imprisonment mandated by this subsection only after such person has served 72 consecutive hours' imprisonment. The person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of ~~240~~ 2,160 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the ~~240~~ 2,160 hours.

(2) The court may order that the term of imprisonment imposed pursuant to subsection (b)(1)(D) or (b)(1)(E) 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. 2011 Supp. 21-6804, 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.

(3) In addition, for any conviction pursuant to subsection (b)(1)(C), (b)(1)(D) or (b)(1)(E), at the time of the filing of the judgment form or journal entry as required by K.S.A. 22-3426 or K.S.A. 2011 Supp. 21-6711, and amendments thereto, the court shall cause a certified copy to be sent to the officer having the offender in charge. The court shall determine whether the offender, upon release from imprisonment, shall be supervised by community correctional services or court services based upon the risk and needs of the offender. The risk and needs of the offender shall be determined by use of a risk assessment tool specified by the Kansas sentencing commission. 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

supervision office designated by the court and upon expiration of the term of imprisonment shall deliver the defendant to a location designated by the supervision office designated by the court. After the term of imprisonment imposed by the court, the person shall be placed on supervision to community correctional services or court services, as determined by the court, for a mandatory one-year period of supervision, which such period of supervision shall not be reduced. During such supervision, the person shall be required to participate in a multidisciplinary model of services for substance use disorders facilitated by a department of social and rehabilitation services designated care coordination agency to include assessment and, if appropriate, referral to a community based substance use disorder treatment including recovery management and mental health counseling as needed. The multidisciplinary team shall include the designated care coordination agency, the supervision officer, the social and rehabilitation services department designated treatment provider and the offender. Any violation of the conditions of such supervision may subject such person to revocation of supervision and imprisonment in jail for the remainder of the period of imprisonment, the remainder of the supervision period, or any combination or portion thereof.

(4) In addition, prior to sentencing for any conviction pursuant to subsection (b)(1)(A) or (b)(1)(B), the court shall order the person to participate in an alcohol and drug evaluation conducted by a provider in accordance with 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 violating this section or an ordinance which prohibits the acts that this section prohibits who had one or more children under the age of 14 years in the vehicle at the time of the offense shall have such person's punishment enhanced by one month of imprisonment. This imprisonment must be served consecutively to any other minimum mandatory penalty imposed for a violation of this section or an ordinance which prohibits the acts that this section prohibits. Any enhanced penalty imposed shall not exceed the maximum sentence allowable by law. During the service of the enhanced penalty, the judge may order the person on house arrest, work release or other conditional release.

(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) (1) Except as provided in paragraph (5), in addition to any other penalty which~~

may be imposed upon a first conviction of a violation of this section, the court may order that the convicted person's motor vehicle or vehicles be impounded or immobilized for a period not to exceed one year and that the convicted person pay all towing, impoundment and storage fees or other immobilization costs.

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

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

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

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

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

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

(h)(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.

(h)(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 violations of any of the motor vehicle laws of this state.

(h)(i) 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) only convictions occurring on or after July 1, 2001, shall be taken into account when determining the sentence to be imposed for a first, second, third, fourth or subsequent offender;

(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, 2001. 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, fourth or subsequent offense;

(2) any convictions for a violation of the following sections occurring during a person's lifetime shall be taken into account: (A) Refusing to submit to a test to determine the presence of alcohol or drugs, section 2, and amendments thereto; (B) driving a commercial motor vehicle under the influence, K.S.A. 8-2,144, and amendments thereto; (C) operating a vessel under the influence of alcohol or drugs, K.S.A. 32-1131, and amendments thereto; (D) involuntary manslaughter while driving under the influence of alcohol or drugs, K.S.A. 21-3442, prior to its repeal, or subsection (a)(3) of K.S.A. 2011 Supp. 21-5405, and amendments thereto; and (E) 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 (i)(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 (i)(1) or (i)(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 (i)(1) or (i)(2) if committed off a military reservation in this state;

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

~~(4)(5)~~ it is irrelevant whether an offense occurred before or after conviction for a previous offense; and

~~(5)(6)~~ 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.

~~(4)(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.

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

(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) 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.

(4) 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.

~~(5) Any such ordinance or resolution may require or authorize the court to order that the convicted person's motor vehicle or vehicles be impounded or immobilized in accordance with subsection (g).~~

~~(m)(1)~~(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; 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.

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

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

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

~~(q)~~(o) 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. 2011 Supp. 21-5712, and amendments thereto.

~~(p)~~(1) 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.

(2) On and after July 1, 2011, the amount of \$250 from each fine imposed pursuant to 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 each such remittance, the state treasurer shall credit the entire amount to the community corrections supervision fund established by K.S.A. 2011 Supp. 75-52,113, and amendments thereto.

Sec. 21. K.S.A. 2011 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 the municipal court reports the filing and disposition of such case to the Kansas bureau of investigation central repository, and, on and after July 1, 2013, reports the filing and disposition of such case electronically to the Kansas bureau of investigation central repository.

(g) In all cases in which a fine is imposed for 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 the municipal court remits the appropriate amount of such fine to the state treasurer as provided in section 1, and amendments thereto.

Sec. 22. K.S.A. 12-4413 is hereby amended to read as follows: 12-4413. As used in K.S.A. 8-1009, ~~and~~ 12-4413 to 12-4418, inclusive ~~and 22-3609~~:

- (a) "City attorney" means a city attorney of a city of this state.
- (b) "Complaint" means complaint, citation or notice to appear in a municipal court.
- (c) "Diversion" means referral of a defendant in a criminal case charging an alcohol related offense to a supervised performance program prior to adjudication.
- (d) "Diversion agreement" means the specification of formal terms and conditions which a defendant must fulfill in order to have the charges against such person dismissed.
- (e) "Alcohol related offense" means violation of an ordinance of a city of this state that prohibits the acts prohibited by K.S.A. 8-1567 or section 2, and amendments thereto, or violation of such statute.

Sec. 23. K.S.A. 2011 Supp. 12-4414 is hereby amended to read as follows: 12-4414. (a) Except as provided in K.S.A. 8-1567 and section 2, and amendments thereto, after a complaint has been filed charging a defendant with violation of an alcohol or drug related offense and prior to conviction thereof, and after the city attorney has considered the factors listed in K.S.A. 12-4415, and amendments thereto, if it appears to the city attorney that diversion of the defendant would be in the interests of justice and of benefit to the defendant and the community, the city attorney may propose a diversion agreement to the defendant. The terms of each diversion agreement shall be established by the city attorney in accordance with K.S.A. 12-4416, and amendments thereto.

(b) Each city attorney shall adopt written policies and guidelines for the implementation of a diversion program in accordance with K.S.A. 8-1009 and 12-4412 to 12-4417, inclusive, and amendments thereto. Such policies and guidelines shall provide for a diversion conference and other procedures in those cases where the city attorney elects to offer diversion in lieu of further criminal proceedings on the complaint.

(c) Each defendant shall be informed in writing of the diversion program and the policies and guidelines adopted by the city attorney. The city attorney may require any defendant requesting diversion to provide information regarding prior criminal charges, education, work experience and training, family, residence in the community, medical history, including any psychiatric or psychological treatment or counseling, and other information relating to the diversion program. In all cases, the defendant shall be present and shall have the right to be represented by counsel at the diversion conference with the city attorney.

Sec. 24. K.S.A. 2011 Supp. 12-4415 is hereby amended to read as follows: 12-4415. (a) In determining whether diversion of a defendant is in the interests of justice and of benefit to the defendant and the community, the city attorney shall consider at least the following factors among all factors considered:

- (1) The nature of the crime charged and the circumstances surrounding it;
- (2) any special characteristics or circumstances of the defendant;
- (3) whether the defendant is a first-time offender of an alcohol related offense and

if the defendant has previously participated in diversion, according to the certification of the division of vehicles of the state department of revenue;

(4) whether there is a probability that the defendant will cooperate with and benefit from diversion;

(5) whether the available diversion program is appropriate to the needs of the defendant;

(6) the impact of the diversion of the defendant upon the community;

(7) recommendations, if any, of the involved law enforcement agency;

(8) recommendations, if any, of the victim;

(9) provisions for restitution; and

(10) any mitigating circumstances.

(b) A city attorney shall not enter into a diversion agreement in lieu of further criminal proceedings on a complaint alleging an alcohol related offense if the defendant:

(1) Has previously participated in diversion of an alcohol related offense;

(2) has previously been convicted of or pleaded *nolo contendere* to an alcohol related offense in this state or has previously been convicted of or pleaded *nolo contendere* to a violation of K.S.A. 8-2,144 or 8-1567 or section 2, and amendments thereto, or of a law of another state, or of a political subdivision thereof, which prohibits the acts prohibited by those statutes; or

(3) during the time of the alleged alcohol related offense was involved in a motor vehicle accident or collision resulting in personal injury or death.

Sec. 25. K.S.A. 2011 Supp. 12-4416 is hereby amended to read as follows: 12-4416. (a) A diversion agreement shall provide that if the defendant fulfills the obligations of the program described therein, as determined by the city attorney, the city attorney shall act to have the criminal charges against the defendant dismissed with prejudice. The diversion agreement shall include specifically the waiver of all rights under the law or the constitution of Kansas or of the United States to counsel, a speedy arraignment, a speedy trial, and the right to trial by jury. The diversion agreement may include, but is not limited to, provisions concerning payment of restitution, including court costs and diversion costs, residence in a specified facility, maintenance of gainful employment, and participation in programs offering medical, educational, vocational, social and psychological services, corrective and preventive guidance and other rehabilitative services. The diversion agreement shall state:

(1) The defendant's full name;

(2) the defendant's full name at the time the complaint was filed, if different from the defendant's current name;

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

(4) the crime with which the defendant is charged;

(5) the date the complaint was filed; and

(6) the municipal court with which the agreement is filed.

(b) If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging an alcohol related offense, the diversion agreement shall include a stipulation, agreed to by the defendant and the city attorney, of the facts upon which the charge is based and a provision that if the defendant fails to fulfill the terms of the specific diversion agreement and the criminal proceedings on the complaint are resumed, the proceedings, including any proceedings on appeal, shall be conducted on

the record of the stipulation of facts relating to the complaint. In addition, the agreement shall include a requirement that the defendant:

(1) Pay a fine specified by the agreement in an amount equal to an amount authorized by K.S.A. 8-1567 or section 2, and amendments thereto, for a first offense or, in lieu of payment of the fine, perform community service specified by the agreement, consonant with K.S.A. 8-1567 or section 2, and amendments thereto; and

(2) participate in an alcohol and drug evaluation conducted by a licensed provider pursuant to K.S.A. 8-1008, and amendments thereto, and follow any recommendation made by the provider after such evaluation.

(c) If the person entering into a diversion agreement is a nonresident, the city attorney shall transmit a copy of the diversion agreement to the division. The division shall forward a copy of the diversion agreement to the motor vehicle administrator of the person's state of residence.

(d) If the city attorney elects to offer diversion in lieu of further criminal proceedings on the complaint and the defendant agrees to all of the terms of the proposed agreement, the diversion agreement shall be filed with the municipal court and the municipal court shall stay further proceedings on the complaint. If the defendant declines to accept diversion, the municipal court shall resume the criminal proceedings on the complaint.

(e) The city attorney shall forward to the division of vehicles of the state department of revenue a copy of the diversion agreement at the time such agreement is filed with the municipal court. The copy of the agreement shall be made available upon request to any county, district or city attorney or court.

Sec. 26. K.S.A. 2011 Supp. 12-4517 is hereby amended to read as follows: 12-4517. (a) (1) The municipal court judge shall ensure that all persons convicted of violating municipal ordinance provisions that prohibit conduct comparable to a class A or B misdemeanor or assault as defined in subsection (a) of K.S.A. 2011 Supp. 21-5412, and amendments thereto, under a Kansas criminal statute are fingerprinted and processed.

(2) The municipal court judge shall ensure that all persons arrested or charged with a violation of a city ordinance prohibiting the acts prohibited by K.S.A. 8-2,144 or 8-1567 or section 2, and amendments thereto, are fingerprinted and processed at the time of booking or first appearance, whichever occurs first.

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

Sec. 27. K.S.A. 2011 Supp. 21-5203 is hereby amended to read as follows: 21-5203. 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 K.S.A. 8-1567 or 8-1567a, and amendments thereto;
- (d) a violation of K.S.A. 8-2,144, and amendments thereto; ~~or~~
- (e) a violation of section 2, and amendments thereto; or
- ~~(e)(f)~~ a violation of K.S.A. 22-4901 *et seq.*, and amendments thereto.

Sec. 28. K.S.A. 2011 Supp. 21-6604, as amended by section 1 of 2012 House Bill No. 2465 is hereby amended to read as follows: 21-6604. K.S.A. 2011 Supp. 21-6604 is hereby amended to read as follows: 21-6604. (a) Whenever any person has been found guilty of a crime, the court may adjudge any of the following:

(1) Commit the defendant to the custody of the secretary of corrections if the current crime of conviction is a felony and the sentence presumes imprisonment, or the sentence imposed is a dispositional departure to imprisonment; or, if confinement is for a misdemeanor, to jail for the term provided by law;

(2) impose the fine applicable to the offense and may impose the provisions of subsection (q);

(3) release the defendant on probation if the current crime of conviction and criminal history fall within a presumptive nonprison category or through a departure for substantial and compelling reasons subject to such conditions as the court may deem appropriate. In felony cases except for violations of K.S.A. 8-1567, 8-2,144 and section 2, and amendments thereto, the court may include confinement in a county jail not to exceed 60 days, which need not be served consecutively, as a condition of an original probation sentence and up to 60 days in a county jail upon each revocation of the probation sentence, or community corrections placement;

(4) assign the defendant to a community correctional services program as provided in K.S.A. 75-5291, and amendments thereto, or through a departure for substantial and compelling reasons subject to such conditions as the court may deem appropriate, including orders requiring full or partial restitution;

(5) assign the defendant to a conservation camp for a period not to exceed six months as a condition of probation followed by a six-month period of follow-up through adult intensive supervision by a community correctional services program, if the offender successfully completes the conservation camp program;

(6) assign the defendant to a house arrest program pursuant to K.S.A. 2011 Supp. 21-6609, and amendments thereto;

(7) order the defendant to attend and satisfactorily complete an alcohol or drug education or training program as provided by subsection (c) of K.S.A. 2011 Supp. 21-6602, and amendments thereto;

(8) order the defendant to repay the amount of any reward paid by any crime stoppers chapter, individual, corporation or public entity which materially aided in the apprehension or conviction of the defendant; repay the amount of any costs and expenses incurred by any law enforcement agency in the apprehension of the defendant, if one of the current crimes of conviction of the defendant includes escape from custody or aggravated escape from custody, as defined in K.S.A. 2011 Supp. 21-5911, and amendments thereto; repay expenses incurred by a fire district, fire department or fire company responding to a fire which has been determined to be arson or aggravated arson as defined in K.S.A. 2011 Supp. 21-5812, and amendments thereto, if the defendant is convicted of such crime; repay the amount of any public funds utilized by a law enforcement agency to purchase controlled substances from the defendant during the investigation which leads to the defendant's conviction; or repay the amount of any

medical costs and expenses incurred by any law enforcement agency or county. Such repayment of the amount of any such costs and expenses incurred by a county, law enforcement agency, fire district, fire department or fire company or any public funds utilized by a law enforcement agency shall be deposited and credited to the same fund from which the public funds were credited to prior to use by the county, law enforcement agency, fire district, fire department or fire company;

(9) order the defendant to pay the administrative fee authorized by K.S.A. 22-4529, and amendments thereto, unless waived by the court;

(10) order the defendant to pay a domestic violence special program fee authorized by K.S.A. 20-369, and amendments thereto;

(11) if the defendant is convicted of a misdemeanor or convicted of a felony specified in subsection (i) of K.S.A. 2011 Supp. 21-6804, and amendments thereto, assign the defendant to work release program, other than a program at a correctional institution under the control of the secretary of corrections as defined in K.S.A. 75-5202, and amendments thereto, provided such work release program requires such defendant to return to confinement at the end of each day in the work release program. On a second or subsequent conviction of K.S.A. 8-1567, and amendments thereto, an offender placed into a work release program ~~must serve a total of 120 hours of confinement. Such 120 hours of confinement shall be a period of at least 48 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. On a third or subsequent conviction of K.S.A. 8-1567, and amendments thereto, an offender placed into a work release program must serve a total of 240 hours of confinement. Such 240 hours of confinement shall be a period of at least 48 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day shall serve the total number of hours of confinement mandated by that section;~~

(12) order the defendant to pay the full amount of unpaid costs associated with the conditions of release of the appearance bond under K.S.A. 22-2802, and amendments thereto;

(13) impose any appropriate combination of (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11) and (12); or

(14) suspend imposition of sentence in misdemeanor cases.

(b) (1) In addition to or in lieu of any of the above, the court shall order the defendant to pay restitution, which shall include, but not be limited to, damage or loss caused by the defendant's crime, unless the court finds compelling circumstances which would render a plan of restitution unworkable. In regard to a violation of K.S.A. 2011 Supp. 21-6107, and amendments thereto, such damage or loss shall include, but not be limited to, attorney fees and costs incurred to repair the credit history or rating of the person whose personal identification documents were obtained and used in violation of such section, and to satisfy a debt, lien or other obligation incurred by the person whose personal identification documents were obtained and used in violation of such section. If the court finds a plan of restitution unworkable, the court shall state on the record in detail the reasons therefor.

(2) If the court orders restitution, the restitution shall be a judgment against the defendant which may be collected by the court by garnishment or other execution as on judgments in civil cases. If, after 60 days from the date restitution is ordered by the court, a defendant is found to be in noncompliance with the plan established by the

court for payment of restitution, and the victim to whom restitution is ordered paid has not initiated proceedings in accordance with K.S.A. 60-4301 et seq., and amendments thereto, the court shall assign an agent procured by the attorney general pursuant to K.S.A. 75-719, and amendments thereto, to collect the restitution on behalf of the victim. The chief judge of each judicial district may assign such cases to an appropriate division of the court for the conduct of civil collection proceedings.

(c) In addition to or in lieu of any of the above, the court shall order the defendant to submit to and complete an alcohol and drug evaluation, and pay a fee therefor, when required by subsection (d) of K.S.A. 2011 Supp. 21-6602, and amendments thereto.

(d) In addition to any of the above, the court shall order the defendant to reimburse the county general fund for all or a part of the expenditures by the county to provide counsel and other defense services to the defendant. Any such reimbursement to the county shall be paid only after any order for restitution has been paid in full. In determining the amount and method of payment of such sum, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of such sum will impose. A defendant who has been required to pay such sum and who is not willfully in default in the payment thereof may at any time petition the court which sentenced the defendant to waive payment of such sum or any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may waive payment of all or part of the amount due or modify the method of payment.

(e) In releasing a defendant on probation, the court shall direct that the defendant be under the supervision of a court services officer. If the court commits the defendant to the custody of the secretary of corrections or to jail, the court may specify in its order the amount of restitution to be paid and the person to whom it shall be paid if restitution is later ordered as a condition of parole, conditional release or postrelease supervision.

(f) (1) When a new felony is committed while the offender is incarcerated and serving a sentence for a felony, or while the offender is on probation, assignment to a community correctional services program, parole, conditional release or postrelease supervision for a felony, a new sentence shall be imposed pursuant to the consecutive sentencing requirements of K.S.A. 2011 Supp. 21-6606, and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.

(2) When a new felony is committed while the offender is incarcerated in a juvenile correctional facility pursuant to K.S.A. 38-1671, prior to its repeal, or K.S.A. 2011 Supp. 38-2373, and amendments thereto, for an offense, which if committed by an adult would constitute the commission of a felony, upon conviction, the court shall sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure. The conviction shall operate as a full and complete discharge from any obligations, except for an order of restitution, imposed on the offender arising from the offense for which the offender was committed to a juvenile correctional facility.

(3) When a new felony is committed while the offender is on release for a felony pursuant to the provisions of article 28 of chapter 22 of the Kansas Statutes Annotated,

and amendments thereto, or similar provisions of the laws of another jurisdiction, a new sentence may be imposed pursuant to the consecutive sentencing requirements of K.S.A. 2011 Supp. 21-6606, and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.

(g) Prior to imposing a dispositional departure for a defendant whose offense is classified in the presumptive nonprison grid block of either sentencing guideline grid, prior to sentencing a defendant to incarceration whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes, prior to sentencing a defendant to incarceration whose offense is classified in grid blocks 4-E or 4-F of the sentencing guideline grid for drug crimes and whose offense does not meet the requirements of K.S.A. 2011 Supp. 21-6824, and amendments thereto, prior to revocation of a nonprison sanction of a defendant whose offense is classified in grid blocks 4-E or 4-F of the sentencing guideline grid for drug crimes and whose offense does not meet the requirements of K.S.A. 2011 Supp. 21-6824, and amendments thereto, or prior to revocation of a nonprison sanction of a defendant whose offense is classified in the presumptive nonprison grid block of either sentencing guideline grid or grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes, the court shall consider placement of the defendant in the Labette correctional conservation camp, conservation camps established by the secretary of corrections pursuant to K.S.A. 75-52,127, and amendment thereto, or a community intermediate sanction center. Pursuant to this paragraph the defendant shall not be sentenced to imprisonment if space is available in a conservation camp or a community intermediate sanction center and the defendant meets all of the conservation camp's or a community intermediate sanction center's placement criteria unless the court states on the record the reasons for not placing the defendant in a conservation camp or a community intermediate sanction center.

(h) The court in committing a defendant to the custody of the secretary of corrections shall fix a term of confinement within the limits provided by law. In those cases where the law does not fix a term of confinement for the crime for which the defendant was convicted, the court shall fix the term of such confinement.

(i) In addition to any of the above, the court shall order the defendant to reimburse the state general fund for all or a part of the expenditures by the state board of indigents' defense services to provide counsel and other defense services to the defendant. In determining the amount and method of payment of such sum, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of such sum will impose. A defendant who has been required to pay such sum and who is not willfully in default in the payment thereof may at any time petition the court which sentenced the defendant to waive payment of such sum or any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may waive payment of all or part of the amount due or modify the method of payment. The amount of attorney fees to be included in the court order for reimbursement shall be 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.

(j) This section shall not deprive the court of any authority conferred by any other Kansas statute to decree a forfeiture of property, suspend or cancel a license, remove a person from office or impose any other civil penalty as a result of conviction of crime.

(k) An application for or acceptance of probation or assignment to a community correctional services program shall not constitute an acquiescence in the judgment for purpose of appeal, and any convicted person may appeal from such conviction, as provided by law, without regard to whether such person has applied for probation, suspended sentence or assignment to a community correctional services program.

(l) The secretary of corrections is authorized to make direct placement to the Labette correctional conservation camp or a conservation camp established by the secretary pursuant to K.S.A. 75-52,127, and amendments thereto, of an inmate sentenced to the secretary's custody if the inmate:

(1) Has been sentenced to the secretary for a probation revocation, as a departure from the presumptive nonimprisonment grid block of either sentencing grid, for an offense which is classified in grid blocks 5-H, 5-I, or 6-G of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes, or for an offense which is classified in grid blocks 4-E or 4-F of the sentencing guidelines grid for drug crimes and such offense does not meet the requirements of K.S.A. 2011 Supp. 21-6824, and amendments thereto; and

(2) otherwise meets admission criteria of the camp.

If the inmate successfully completes a conservation camp program, the secretary of corrections shall report such completion to the sentencing court and the county or district attorney. The inmate shall then be assigned by the court to six months of follow-up supervision conducted by the appropriate community corrections services program. The court may also order that supervision continue thereafter for the length of time authorized by K.S.A. 2011 Supp. 21-6608, and amendments thereto.

(m) When it is provided by law that a person shall be sentenced pursuant to K.S.A. 1993 Supp. 21-4628, prior to its repeal, the provisions of this section shall not apply.

(n) Except as provided by subsection (f) of K.S.A. 2011 Supp. 21-6805, and amendments thereto, in addition to any of the above, for felony violations of K.S.A. 2011 Supp. 21-5706, and amendments thereto, the court shall require the defendant who meets the requirements established in K.S.A. 2011 Supp. 21-6824, and amendments thereto, to participate in a certified drug abuse treatment program, as provided in K.S.A. 2011 Supp. 75-52,144, and amendments thereto, including, but not limited to, an approved after-care plan. If the defendant fails to participate in or has a pattern of intentional conduct that demonstrates the offender's refusal to comply with or participate in the treatment program, as established by judicial finding, the defendant shall be subject to revocation of probation and the defendant shall serve the underlying prison sentence as established in K.S.A. 2011 Supp. 21-6805, and amendments thereto. For those offenders who are convicted on or after July 1, 2003, upon completion of the underlying prison sentence, the defendant shall not be subject to a period of postrelease supervision. The amount of time spent participating in such program shall not be credited as service on the underlying prison sentence.

(o) (1) Except as provided in paragraph (3), in addition to any other penalty or

disposition imposed by law, upon a conviction for unlawful possession of a controlled substance or controlled substance analog in violation of K.S.A. 2011 Supp. 21-5706, and amendments thereto, in which the trier of fact makes a finding that the unlawful possession occurred while transporting the controlled substance or controlled substance analog in any vehicle upon a highway or street, the offender's driver's license or privilege to operate a motor vehicle on the streets and highways of this state shall be suspended for one year.

(2) Upon suspension of a license pursuant to this subsection, the court shall require the person to surrender the license to the court, which shall transmit the license to the division of motor vehicles of the department of revenue, to be retained until the period of suspension expires. At that time, the licensee may apply to the division for return of the license. If the license has expired, the person may apply for a new license, which shall be issued promptly upon payment of the proper fee and satisfaction of other conditions established by law for obtaining a license unless another suspension or revocation of the person's privilege to operate a motor vehicle is in effect.

(3) (A) In lieu of suspending the driver's license or privilege to operate a motor vehicle on the highways of this state of any person as provided in paragraph (1), the judge of the court in which such person was convicted may enter an order which places conditions on such person's privilege of operating a motor vehicle on the highways of this state, a certified copy of which such person shall be required to carry any time such person is operating a motor vehicle on the highways of this state. Any such order shall prescribe the duration of the conditions imposed, which in no event shall be for a period of more than one year.

(B) Upon entering an order restricting a person's license hereunder, the judge shall require such person to surrender such person's driver's license to the judge who shall cause it to be transmitted to the division of vehicles, together with a copy of the order. Upon receipt thereof, the division of vehicles shall issue without charge a driver's license which shall indicate on its face that conditions have been imposed on such person's privilege of operating a motor vehicle and that a certified copy of the order imposing such conditions is required to be carried by the person for whom the license was issued any time such person is operating a motor vehicle on the highways of this state. If the person convicted is a nonresident, the judge shall cause a copy of the order to be transmitted to the division and the division shall forward a copy of it to the motor vehicle administrator, of such person's state of residence. Such judge shall furnish to any person whose driver's license has had conditions imposed on it under this paragraph a copy of the order, which shall be recognized as a valid Kansas driver's license until such time as the division shall issue the restricted license provided for in this paragraph.

(C) Upon expiration of the period of time for which conditions are imposed pursuant to this subsection, the licensee may apply to the division for the return of the license previously surrendered by such licensee. In the event such license has expired, such person may apply to the division for a new license, which shall be issued immediately by the division upon payment of the proper fee and satisfaction of the other conditions established by law, unless such person's privilege to operate a motor vehicle on the highways of this state has been suspended or revoked prior thereto. If any person shall violate any of the conditions imposed under this paragraph, such person's driver's license or privilege to operate a motor vehicle on the highways of this state shall be revoked for a period of not less than 60 days nor more than one year by the

judge of the court in which such person is convicted of violating such conditions.

(4) As used in this subsection, "highway" and "street" means the same as in K.S.A. 8-1424 and 8-1473, and amendments thereto.

(p) In addition to any of the above, for any criminal offense that includes the domestic violence designation pursuant to K.S.A. 2011 Supp. 22-4616, and amendments thereto, the court shall require the defendant to undergo a domestic violence offender assessment and follow all recommendations unless otherwise ordered by the court or the department of corrections. The court may order a domestic violence offender assessment and any other evaluation prior to sentencing if the assessment or evaluation would assist the court in determining an appropriate sentence. The entity completing the assessment or evaluation shall provide the assessment or evaluation and recommendations to the court and the court shall provide the domestic violence assessment and any other evaluation to any entity responsible for supervising such defendant. A defendant ordered to undergo a domestic violence offender assessment shall be required to pay for the assessment and, unless otherwise ordered by the court or the department of corrections, for completion of all recommendations.

(q) In imposing a fine, the court may authorize the payment thereof in installments. In lieu of payment of any fine imposed, 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 by the later of one year after the fine is imposed or one year after release from imprisonment or jail, 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 shall become due on that date. If conditional reduction of any fine is rescinded by the court for any reason, then pursuant to the court's order the person may be ordered to perform community service by one year after the date of such rescission 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. All credits for community service shall be subject to review and approval by the court.

(r) In addition to any other penalty or disposition imposed by law, for any defendant sentenced to imprisonment pursuant to K.S.A. 21-4643, prior to its repeal, or K.S.A. 2011 Supp. 21-6627, and amendments thereto, for crimes committed on or after July 1, 2006, the court shall order that the defendant be electronically monitored upon release from imprisonment for the duration of the defendant's natural life and that the defendant shall reimburse the state for all or part of the cost of such monitoring as determined by the prisoner review board.

Sec. 29. K.S.A. 2011 Supp. 21-6609, as amended by section 5 of 2012 House Bill No. 2535 is hereby amended to read as follows: 21-6609. (a) The court or the secretary of corrections may implement a house arrest program for defendants or inmates being sentenced by the court or in the custody of the secretary of corrections or as a sanction for offenders who have failed to comply with the conditions of probation, parole or postrelease supervision, except:

(1) No defendant shall be placed by the court under house arrest if found guilty of:

(A) Any crime designated as a class A or B felony in article 34 or 35 of the Kansas

Statutes Annotated, prior to their repeal;

- (B) subsection (b) of K.S.A. 2011 Supp. 21-5604, and amendments thereto;
 - (C) K.S.A. 2011 Supp. 21-5602, and amendments thereto;
 - (D) any off-grid felony; or
 - (E) any nondrug crime ranked in severity levels 1 through 5 or any felony ranked in severity levels 1 through 3 of the drug grid, unless the offender has been sentenced to probation;
- (2) no inmate shall be placed under house arrest if such inmate's security status is greater than minimum security; or
 - (3) no inmate shall be placed under house arrest who has been denied parole by the prisoner review board within the last six months. Any inmate who, while participating in the house arrest program, is denied parole by the prisoner review board shall be allowed to remain under house arrest until the completion of the sentence or until the inmate is otherwise removed from the program.
- (b) At the time of placement of an inmate under house arrest, the court, secretary or house arrest staff shall provide written notification to the sheriff and district or county attorney of the county in which any person under house arrest is to be placed and to the chief law enforcement officer of any incorporated city or town in which such person is to be placed of the placement of the person under house arrest within the county or incorporated city or town.
- (c) House arrest sanctions shall be administered by the court and the secretary of corrections, respectively, through rules and regulations, and may include, but are not limited to, rehabilitative restitution in money or in kind, curfew, revocation or suspension of the driver's license, community service, deprivation of nonessential activities or privileges, or other appropriate restraints on the inmate's liberty.
- (d) Upon placement in a house arrest program, the court, secretary or house arrest staff shall inform the offender, and any other people residing with such offender, of the nature and extent of such house arrest monitoring, and shall obtain the written agreement of such offender to comply with all requirements of the program.
- (e) The offender shall remain within the property boundaries of the offender's residence at all times during the term of house arrest, except as provided under the house arrest agreement with such offender.
- (f) The offender shall allow any law enforcement officer, community corrections officer, court services officer or duly authorized agent of the department of corrections, to enter such offender's residence at any time to verify the offender's compliance with the conditions of the house release.
- (g) As a condition of house arrest, the court or secretary may require an offender placed under house arrest to pay any supervision costs associated with the house arrest program.
- (h) The offender shall consent to be monitored by:
- (1) An electronic monitoring device on such offender's person;
 - (2) an electronic monitoring device in such offender's home;
 - (3) a remote blood alcohol monitoring device;
 - (4) a home telephone verification procedure;
 - (5) radio frequency devices; or
 - (6) any combination of monitoring methods as the court, secretary or house arrest staff finds necessary.

(i) The secretary or the court may contract for independent monitoring services. Such independent monitoring service shall be able to provide monitoring 24 hours a day, every day of the year, and any other services as determined by the secretary or the court.

(j) An offender violating the provisions of K.S.A. 8-1567, and amendments thereto, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. On a second or subsequent conviction of K.S.A. 8-1567, and amendments thereto, an offender placed under house arrest shall serve a total of 120 hours of confinement within the boundaries of the offender's residence. ~~Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the 120 hours. On a third or subsequent conviction of K.S.A. 8-1567, and amendments thereto, an offender placed under house arrest shall serve a total of 240 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the 240 hours~~ the total number of hours of confinement mandated by that section.

(k) As used in this section:

(1) "House arrest staff" means an independent contractor or government entity, and agents thereof, utilized by the secretary or court to administer the provisions of a house arrest program;

(2) "electronic monitoring device" means:

(A) An active or passive global positioning system-enabled device capable of recording and transmitting an offender's location at all times or at designated intervals. Such monitoring device may record or transmit sound, visual images or other information regarding such offender's location, via wireless communication; or

(B) a radio frequency device capable of monitoring an offender's location; and

(3) "remote alcohol monitoring device" means a device capable of monitoring an offender's blood alcohol content via micro fuel cell or deep lung tissue sample. Such monitoring devices shall be of comparable accuracy to roadside breath alcohol testing devices utilized by law enforcement, and shall have wireless or landline telephone transmission capabilities. Such device may be used in conjunction with an alcohol and drug-sensing bracelet to monitor such offender's compliance with the terms of house arrest.

Sec. 30. K.S.A. 2011 Supp. 21-6804 is hereby amended to read as follows: 21-6804. (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:

SENTENCING RANGE - NON-DRUG OFFENSES

Category	A	B	C	D	E	F	G	H	I
Severity Level	3+ Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3+ Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2+ Misdemeanors	1 Misdemeanor No Record
I	653 620 592	618 586 554	285 272 258	267 253 240	246 234 221	226 214 203	203 195 184	186 176 166	165 155 147
II	493 467 442	460 438 416	216 205 194	200 190 181	184 174 165	168 160 152	154 146 138	138 131 123	123 117 109
III	247 233 221	228 216 206	107 102 96	100 94 89	92 88 82	83 79 74	77 72 68	71 66 61	61 59 55
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	34 32 30
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 22	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	6 5 5

LEGEND
Presumptive Probation
Presumptive Fine
Presumptive Imprisonment

(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 K.S.A. 21-3415, prior to its repeal, aggravated battery against a law enforcement officer committed prior to July 1, 2006, or a violation of subsection (d) of K.S.A. 2011 Supp. 21-5412, 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) (l) The sentence for the violation of the felony provision of K.S.A. 8-1567, subsection (b)(3) of K.S.A. 2011 Supp. 21-5414, subsections (b)(3) and (b)(4) of K.S.A. 2011 Supp. 21-5823, 21-6412 and 21-6416, 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 K.S.A. 2011 Supp. 21-6807, 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 K.S.A. 2011 Supp. 21-6807, and amendments thereto, shall apply and the offender shall not be subject to the mandatory sentence as provided in K.S.A. 2011 Supp. 21-5823, and amendments thereto.

(3) Notwithstanding the provisions of any other section, the term of imprisonment imposed for the violation of the felony provision of section 2, K.S.A. 8-2,144, K.S.A. 8-1567, subsection (b)(3) of K.S.A. 2011 Supp. 21-5414, subsections (b)(3) and (b)(4) of K.S.A. 2011 Supp. 21-5823, 21-6412 and 21-6416, 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 section 2 or K.S.A. 8-2,144 or 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. Prior to imposing any sentence pursuant to this subsection, the court may consider assigning the defendant to a house arrest program pursuant to K.S.A. 2011 Supp. 21-6609, 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 subsection (j)(2)(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 K.S.A. 2011 Supp. 21-5503, and amendments thereto; and

(ii) at the time of the conviction under subsection (j)(2)(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 subsection (j)(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 article 57 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, K.S.A. 2010 Supp. 21-36a01 through 21-36a17, ~~and amendments thereto prior to their transfer~~, or any felony violation of any provision of the uniform controlled substances act prior to July 1, 2009; 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 article 57 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, K.S.A. 2010 Supp. 21-36a01 through 21-36a17, ~~and amendments thereto prior to their transfer~~, any felony violation of any provision of the uniform controlled substances act prior to July 1, 2009, 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 K.S.A. 2011 Supp. 21-5807, and amendments thereto, or any attempt or conspiracy, as defined in K.S.A. 2011 Supp. 21-5301 and 21-5302, and amendments thereto, to commit such offense, 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 K.S.A. 2011 Supp. 21-5807, or subsection (b) of K.S.A. 2011 Supp. 21-5807, and amendments thereto, or any attempt or conspiracy to commit such offense, shall be presumptive imprisonment.
- (m) The sentence for a violation of K.S.A. 22-4903 or subsection (a)(2) of K.S.A. 2011 Supp. 21-5913, 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 K.S.A. 2011 Supp. 21-5803, 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 K.S.A. 2011 Supp. 21-5803, 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 K.S.A. 2011 Supp. 21-5801, and amendments thereto, or burglary as defined in subsection (a) of K.S.A. 2011 Supp. 21-5807, 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 K.S.A. 2011 Supp. 21-5801, and amendments thereto, or burglary as defined in subsection (a) of K.S.A. 2011 Supp. 21-5807, and amendments thereto; or the sentence for a felony violation of theft of property as defined in K.S.A. 2011 Supp. 21-5801, 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 K.S.A. 2011 Supp. 21-5801, and amendments thereto, or burglary or aggravated burglary as defined in K.S.A. 2011 Supp. 21-5807, and amendments thereto; or the sentence for a felony violation of burglary as defined in subsection (a) of K.S.A. 2011

Supp. 21-5807, 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 K.S.A. 2011 Supp. 21-5801, and amendments thereto, or burglary or aggravated burglary as defined in K.S.A. 2011 Supp. 21-5807, 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 K.S.A. 2011 Supp. 21-6824, 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 K.S.A. 2011 Supp. 21-5801, 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 K.S.A. 2011 Supp. 21-5801, and amendments thereto, or burglary or aggravated burglary as defined in K.S.A. 2011 Supp. 21-5807, and amendments thereto; or the sentence for a violation of burglary as defined in subsection (a) of K.S.A. 2011 Supp. 21-5807, 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 K.S.A. 2011 Supp. 21-5801, and amendments thereto, or burglary or aggravated burglary as defined in K.S.A. 2011 Supp. 21-5807, 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 K.S.A. 2011 Supp. 21-5413, 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 K.S.A. 2011 Supp. 21-5512, and amendments thereto, shall be presumptive imprisonment. Such sentence shall not be considered a departure and shall not be subject to appeal.

(t) (1) If the trier of fact makes a finding that an offender wore or used ballistic resistant material in the commission of, or attempt to commit, or flight from any felony, in addition to the sentence imposed pursuant to the Kansas sentencing guidelines act, the offender shall be sentenced to an additional 30 months' imprisonment.

(2) The sentence imposed pursuant to subsection (t)(1) 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.

(3) As used in this subsection, "ballistic resistant material" means: (A) Any commercially produced material designed with the purpose of providing ballistic and trauma protection, including, but not limited to, bulletproof vests and kevlar vests; and (B) any homemade or fabricated substance or item designed with the purpose of providing ballistic and trauma protection.

(u) The sentence for a violation of K.S.A. 2011 Supp. 21-6107, and amendments thereto, or any attempt or conspiracy, as defined in K.S.A. 2011 Supp. 21-5301 and 21-5302, and amendments thereto, to commit such offense, when such person being sentenced has a prior conviction for a violation of K.S.A. 21-4018, prior to its repeal, or K.S.A. 2011 Supp. 21-6107, and amendments thereto, or any attempt or conspiracy to commit such offense, shall be presumptive imprisonment. Such sentence shall not be considered a departure and shall not be subject to appeal.

Sec. 31. K.S.A. 2011 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. 2011 Supp. 21-6609, 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. The magistrate may order the person to pay for any costs associated with the supervision provided by the court services department in an amount not to exceed \$15 per week of such supervision. The magistrate may also order the person to pay for all other costs associated with the supervision and conditions for compliance in addition to the \$15 per week.

(2) 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 and alcohol 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 or alcohol abuser or is incapacitated by drugs or alcohol, to submit to treatment for such drug or alcohol abuse, as a condition of release.

(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 subsection (3). Except as provided in 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 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 or section 2, 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; whether the defendant is lawfully present in the United States; 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. As a condition of sentencing under K.S.A. 2011 Supp. 21-6604, and amendments thereto, the court may impose the full amount of any such costs in addition to the \$15 per week, including, but not limited to, costs for treatment and evaluation under subsection (2).

Sec. 32. K.S.A. 2011 Supp. 22-2908 is hereby amended to read as follows: 22-2908. (a) In determining whether diversion of a defendant is in the interests of justice and of benefit to the defendant and the community, the county or district attorney shall consider at least the following factors among all factors considered:

- (1) The nature of the crime charged and the circumstances surrounding it;
- (2) any special characteristics or circumstances of the defendant;
- (3) whether the defendant is a first-time offender and if the defendant has previously participated in diversion, according to the certification of the Kansas bureau of investigation or the division of vehicles of the department of revenue;
- (4) whether there is a probability that the defendant will cooperate with and benefit from diversion;
- (5) whether the available diversion program is appropriate to the needs of the defendant;
- (6) the impact of the diversion of the defendant upon the community;
- (7) recommendations, if any, of the involved law enforcement agency;
- (8) recommendations, if any, of the victim;
- (9) provisions for restitution; and
- (10) any mitigating circumstances.

(b) A county or district attorney shall not enter into a diversion agreement in lieu of further criminal proceedings on a complaint if:

(1) The complaint alleges a violation of K.S.A. 8-1567 or section 2, and amendments thereto, and the defendant: (A) Has previously participated in diversion upon a complaint alleging a violation of that statute or an ordinance of a city in this state which prohibits the acts prohibited by that statute; (B) has previously been convicted of or pleaded *nolo contendere* to a violation of that statute or a violation of a law of another state or of a political subdivision of this or any other state, which law prohibits the acts prohibited by that statute; or (C) during the time of the alleged violation was involved in a motor vehicle accident or collision resulting in personal injury or death;

(2) the complaint alleges that the defendant committed a class A or B felony or for

crimes committed on or after July 1, 1993, an off-grid crime, a severity level 1, 2 or 3 felony for nondrug crimes or drug severity level 1 or 2 felony for drug crimes; or

(3) the complaint alleges a domestic violence offense, as defined in K.S.A. 2011 Supp. 21-5111, and amendments thereto, and the defendant has participated in two or more diversions in the previous five year period upon complaints alleging a domestic violence offense.

(c) A county or district attorney may enter into a diversion agreement in lieu of further criminal proceedings on a complaint for violations of article 10 of chapter 32 of the Kansas Statutes Annotated, and amendments thereto, if such diversion carries the same penalties as the conviction for the corresponding violations. If the defendant has previously participated in one or more diversions for violations of article 10 of chapter 32 of the Kansas Statutes Annotated, and amendments thereto, then each subsequent diversion shall carry the same penalties as the conviction for the corresponding violations.

Sec. 33. K.S.A. 2011 Supp. 22-2909 is hereby amended to read as follows: 22-2909. (a) A diversion agreement shall provide that if the defendant fulfills the obligations of the program described therein, as determined by the attorney general or county or district attorney, such attorney shall act to have the criminal charges against the defendant dismissed with prejudice. The diversion agreement shall include specifically the waiver of all rights under the law or the constitution of Kansas or of the United States to a speedy arraignment, preliminary examinations and hearings, and a speedy trial, and in the case of diversion under subsection (c) waiver of the rights to counsel and trial by jury. The diversion agreement may include, but is not limited to, provisions concerning payment of restitution, including court costs and diversion costs, residence in a specified facility, maintenance of gainful employment, and participation in programs offering medical, educational, vocational, social and psychological services, corrective and preventive guidance and other rehabilitative services. If a county creates a local fund under the property crime restitution and compensation act, a county or district attorney may require in all diversion agreements as a condition of diversion the payment of a diversion fee in an amount not to exceed \$100. Such fees shall be deposited into the local fund and disbursed pursuant to recommendations of the local board under the property crime restitution and victims compensation act.

(b) The diversion agreement shall state: (1) The defendant's full name; (2) the defendant's full name at the time the complaint was filed, if different from the defendant's current name; (3) the defendant's sex, race and date of birth; (4) the crime with which the defendant is charged; (5) the date the complaint was filed; and (6) the district court with which the agreement is filed.

(c) If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging a violation of K.S.A. 8-1567 or section 2, and amendments thereto, the diversion agreement shall include a stipulation, agreed to by the defendant, the defendant's attorney if the defendant is represented by an attorney and the attorney general or county or district attorney, of the facts upon which the charge is based and a provision that if the defendant fails to fulfill the terms of the specific diversion agreement and the criminal proceedings on the complaint are resumed, the proceedings, including any proceedings on appeal, shall be conducted on the record of the stipulation of facts relating to the complaint. In addition, the agreement shall include a requirement that the defendant:

(1) Pay a fine specified by the agreement in an amount equal to an amount authorized by K.S.A. 8-1567 or section 2, and amendments thereto, for a first offense or, in lieu of payment of the fine, perform community service specified by the agreement, in accordance with K.S.A. 8-1567 or section 2, and amendments thereto; and

(2) participate in an alcohol and drug evaluation conducted by a licensed provider pursuant to K.S.A. 8-1008, and amendments thereto, and follow any recommendation made by the provider after such evaluation.

(d) If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging a domestic violence offense, as defined in K.S.A. 2011 Supp. 21-5111, and amendments thereto, the diversion agreement shall include a requirement that the defendant undergo a domestic violence offender assessment and follow all recommendations unless otherwise agreed to with the prosecutor in the diversion agreement. The defendant shall be required to pay for such assessment and, unless otherwise agreed to with the prosecutor in the diversion agreement, for completion of all recommendations.

(e) If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging a violation other than K.S.A. 8-1567 or section 2, and amendments thereto, the diversion agreement may include a stipulation, agreed to by the defendant, the defendant's attorney if the defendant is represented by an attorney and the attorney general or county or district attorney, of the facts upon which the charge is based and a provision that if the defendant fails to fulfill the terms of the specific diversion agreement and the criminal proceedings on the complaint are resumed, the proceedings, including any proceedings on appeal, shall be conducted on the record of the stipulation of facts relating to the complaint.

(f) If the person entering into a diversion agreement is a nonresident, the attorney general or county or district attorney shall transmit a copy of the diversion agreement to the division. The division shall forward a copy of the diversion agreement to the motor vehicle administrator of the person's state of residence.

(g) If the attorney general or county or district attorney elects to offer diversion in lieu of further criminal proceedings on the complaint and the defendant agrees to all of the terms of the proposed agreement, the diversion agreement shall be filed with the district court and the district court shall stay further proceedings on the complaint. If the defendant declines to accept diversion, the district court shall resume the criminal proceedings on the complaint.

(h) Except as provided in subsection ~~(h)~~(i), if a diversion agreement is entered into in lieu of further criminal proceedings alleging commission of a misdemeanor by the defendant, while under 21 years of age, under K.S.A. 2011 Supp. 21-5701 through 21-5717, and amendments thereto, or K.S.A. 41-719, 41-727, 41-804, 41-2719 or 41-2720, and amendments thereto, the agreement shall require the defendant to participate in an alcohol and drug evaluation conducted by a licensed provider pursuant to K.S.A. 8-1008, and amendments thereto, and follow any recommendation made by the provider after such evaluation.

(i) If the defendant is 18 or more years of age but less than 21 years of age and allegedly committed a violation of K.S.A. 41-727, and amendments thereto, involving cereal malt beverage, the provisions of subsection ~~(g)~~(h) are permissive and not mandatory.

(j) Except diversion agreements reported under subsection ~~(j)~~(k), the attorney general or county or district attorney shall forward to the Kansas bureau of investigation a copy of the diversion agreement at the time such agreement is filed with the district court. The copy of the agreement shall be made available upon request to the attorney general or any county, district or city attorney or court.

(k) At the time of filing the diversion agreement with the district court, the attorney general or county or district attorney shall forward to the division of vehicles of the state department of revenue a copy of any diversion agreement entered into in lieu of further criminal proceedings on a complaint alleging a violation of K.S.A. 8-1567, and amendments thereto. The copy of the agreement shall be made available upon request to the attorney general or any county, district or city attorney or court.

Sec. 34. K.S.A. 22-2910 is hereby amended to read as follows: 22-2910. No defendant shall be required to enter any plea to a criminal charge as a condition for diversion. No statements made by the defendant or counsel in any diversion conference or in any other discussion of a proposed diversion agreement shall be admissible as evidence in criminal proceedings on crimes charged or facts alleged in the complaint. Except for sentencing proceedings and as otherwise provided in subsection (c) of K.S.A. 22-2909, and amendments thereto, and as otherwise provided in K.S.A. 8-285 and 8-1567 and section 2, and amendments ~~to these sections~~ thereto, the following shall not be admissible as evidence in criminal proceedings which are resumed under K.S.A. 22-2911: (1) Participation in a diversion program; (2) the facts of such participation; or (3) the diversion agreement entered into.

Sec. 35. K.S.A. 2011 Supp. 22-4704 is hereby amended to read as follows: 22-4704. (a) In accordance with the provisions of K.S.A. 77-415 *et seq.*, and amendments thereto, the director shall adopt appropriate rules and regulations for agencies in the executive branch of government and for criminal justice agencies other than those that are part of the judicial branch of government to implement the provisions of this act.

(b) The director shall develop procedures to permit and encourage the transfer of criminal history record information among and between courts and affected agencies in the executive branch, and especially between courts and the central repository.

(c) The rules and regulations adopted by the director shall include those: (1) Governing the collection, reporting, and dissemination of criminal history record information by criminal justice agencies;

(2) necessary to insure the security of all criminal history record information reported, collected and disseminated by and through the criminal justice information system;

(3) necessary for the coordination of all criminal justice data and information processing activities as they relate to criminal history record information;

(4) governing the dissemination of criminal history record information;

(5) governing the procedures for inspection and challenging of criminal history record information;

(6) governing the auditing of criminal justice agencies to insure that criminal history record information is accurate and complete and that it is collected, reported, and disseminated in accordance with this act;

(7) governing the development and content of agreements between the central repository and criminal justice and noncriminal justice agencies;

(8) governing the exercise of the rights of inspection and challenge provided in this

act.

(d) The rules and regulations adopted by the director shall not include any provision that allows the charging of a fee for information requests for the purpose of participating in a block parent program, including, but not limited to, the McGruff house program.

(e) Rules and regulations adopted by the director may not be inconsistent with the provisions of this act.

(f) (1) On or before July 1, 2012, the director shall adopt rules and regulations requiring district courts to report the filing of all cases alleging a violation of K.S.A. 8-1567, and amendments thereto, to the central repository.

(2) On or before July 1, 2013, the director shall adopt rules and regulations requiring district courts to electronically report all case filings for violations of K.S.A. 8-1567 or section 2, and amendments thereto, to the central repository.

Sec. 36. K.S.A. 2011 Supp. 60-427 is hereby amended to read as follows: 60-427. (a) As used in this section:

(1) "Patient" means a person who, for the sole purpose of securing preventive, palliative, or curative treatment, or a diagnosis preliminary to such treatment, of such person's physical or mental condition, consults a physician, or submits to an examination by a physician.

(2) "Physician" means a person licensed or reasonably believed by the patient to be licensed to practice medicine or one of the healing arts as defined in K.S.A. 65-2802, and amendments thereto, in the state or jurisdiction in which the consultation or examination takes place.

(3) "Holder of the privilege" means the patient while alive and not under guardianship or conservatorship or the guardian or conservator of the patient, or the personal representative of a deceased patient.

(4) "Confidential communication between physician and patient" means such information transmitted between physician and patient, including information obtained by an examination of the patient, as is transmitted in confidence and by a means which, so far as the patient is aware, discloses the information to no third persons other than those reasonably necessary for the transmission of the information or the accomplishment of the purpose for which it is transmitted.

(b) Except as provided by subsections (c), (d), (e) and (f), a person, whether or not a party, has a privilege in a civil action or in a prosecution for a misdemeanor, other than a prosecution for a violation of K.S.A. 8-2,144 or 8-1567 or section 2, and amendments thereto, or a city ordinance or county resolution which prohibits the acts prohibited by those statutes, to refuse to disclose, and to prevent a witness from disclosing, a communication, if the person claims the privilege and the judge finds that:

(1) The communication was a confidential communication between patient and physician; (2) the patient or the physician reasonably believed the communication necessary or helpful to enable the physician to make a diagnosis of the condition of the patient or to prescribe or render treatment therefor; (3) the witness (i) is the holder of the privilege, (ii) at the time of the communication was the physician or a person to whom disclosure was made because reasonably necessary for the transmission of the communication or for the accomplishment of the purpose for which it was transmitted or (iii) is any other person who obtained knowledge or possession of the communication as the result of an intentional breach of the physician's duty of nondisclosure by the

physician or the physician's agent or servant; and (4) the claimant is the holder of the privilege or a person authorized to claim the privilege for the holder of the privilege.

(c) There is no privilege under this section as to any relevant communication between the patient and the patient's physician: (1) Upon an issue of the patient's condition in an action to commit the patient or otherwise place the patient under the control of another or others because of alleged incapacity or mental illness, in an action in which the patient seeks to establish the patient's competence or in an action to recover damages on account of conduct of the patient which constitutes a criminal offense other than a misdemeanor; (2) upon an issue as to the validity of a document as a will of the patient; or (3) upon an issue between parties claiming by testate or intestate succession from a deceased patient.

(d) There is no privilege under this section in an action in which the condition of the patient is an element or factor of the claim or defense of the patient or of any party claiming through or under the patient or claiming as a beneficiary of the patient through a contract to which the patient is or was a party.

(e) There is no privilege under this section: (1) As to blood drawn at the request of a law enforcement officer pursuant to K.S.A. 8-1001, and amendments thereto; and (2) as to information which the physician or the patient is required to report to a public official or as to information required to be recorded in a public office, unless the statute requiring the report or record specifically provides that the information shall not be disclosed.

(f) No person has a privilege under this section if the judge finds that sufficient evidence, aside from the communication has been introduced to warrant a finding that the services of the physician were sought or obtained to enable or aid anyone to commit or to plan to commit a crime or a tort, or to escape detection or apprehension after the commission of a crime or a tort.

(g) A privilege under this section as to a communication is terminated if the judge finds that any person while a holder of the privilege has caused the physician or any agent or servant of the physician to testify in any action to any matter of which the physician or the physician's agent or servant gained knowledge through the communication.

(h) Providing false information to a physician for the purpose of obtaining a prescription-only drug shall not be a confidential communication between physician and patient and no person shall have a privilege in any prosecution for unlawfully obtaining or distributing a prescription-only drug under K.S.A. 2011 Supp. 21-5708, and amendments thereto.

Sec. 37. K.S.A. 2011 Supp. 74-2012 is hereby amended to read as follows: 74-2012. (a) (1) All motor vehicle records shall be subject to the provisions of the open records act, except as otherwise provided under the provisions of this section and by K.S.A. 74-2022, and amendments thereto.

(2) For the purpose of this section, "motor vehicle records" means any record that pertains to a motor vehicle drivers license, motor vehicle certificate of title, motor vehicle registration or identification card issued by the division of vehicles.

(b) All motor vehicle records which relate to the physical or mental condition of any person, have been expunged or are photographs or digital images maintained in connection with the issuance of drivers' licenses shall be confidential and shall not be disclosed except in accordance with a proper judicial order or as otherwise more

specifically provided in this section or by other law. Photographs or digital images maintained by the division of vehicles in connection with the issuance of drivers' licenses may be disclosed to any federal, state or local agency, including any court or law enforcement agency, to assist such agency in carrying out the functions required of such governmental agency. In January of each year the division shall report to the house committee on veterans, military and homeland security regarding the utilization of the provisions of this subsection. Motor vehicle records relating to diversion agreements for the purposes of K.S.A. 8-1567, 12-4415 and 22-2908 and section 2, and amendments thereto, shall be confidential and shall not be disclosed except in accordance with a proper judicial order or by direct computer access to:

(1) A city, county or district attorney, for the purpose of determining a person's eligibility for diversion or to determine the proper charge for a violation of K.S.A. 8-2,144 or 8-1567 or section 2, and amendments thereto, or any ordinance of a city or resolution of a county in this state which prohibits any acts prohibited by those statutes;

(2) a municipal or district court, for the purpose of using the record in connection with any matter before the court;

(3) a law enforcement agency, for the purpose of supplying the record to a person authorized to obtain it under paragraph (1) or (2) of this subsection; or

(4) an employer when a person is required to retain a commercial driver's license due to the nature of such person's employment.

(c) Lists of persons' names and addresses contained in or derived from motor vehicle records shall not be sold, given or received for the purposes prohibited by K.S.A. 2011 Supp. 45-230, and amendments thereto, except that:

(1) The director of vehicles may provide to a requesting party, and a requesting party may receive, such a list and accompanying information from motor vehicle records upon written certification that the requesting party shall use the list solely for the purpose of:

(A) Assisting manufacturers of motor vehicles in compiling statistical reports or in notifying owners of vehicles believed to:

(i) Have safety-related defects;.

(ii) fail to comply with emission standards; or

(iii) have any defect to be remedied at the expense of the manufacturer;

(B) assisting an insurer authorized to do business in this state, or the insurer's authorized agent:

(i) In processing an application for, or renewal or cancellation of, a motor vehicle liability insurance policy; or

(ii) in conducting antifraud activities by identifying potential undisclosed drivers of a motor vehicle currently insured by an insurer licensed to do business in this state by providing only the following information: drivers license number, license type, date of birth, name, address, issue date and expiration date;

(C) assisting the selective service system in the maintenance of a list of persons 18 to 26 years of age in this state as required under the provisions of section 3 of the federal military selective service act;

(D) assisting any federal, state or local agency, including any court or law enforcement agency, or any private person acting on behalf of such agencies in carrying out the functions required of such governmental agency, except that such records shall not be redisclosed;

(E) assisting businesses with the verification or reporting of information derived from the title and registration records of the division to prepare and assemble vehicle history reports, except that such vehicle history reports shall not include the names or addresses of any current or previous owners;

(F) assisting businesses in producing motor vehicle title or motor vehicle registration, or both, statistical reports, so long as personal information is not published, redisclosed or used to contact individuals; or

(G) assisting an employer or an employer's authorized agent in monitoring the driving record of the employees required to drive in the course of employment to ensure driver behavior, performance or safety.

(2) Any law enforcement agency of this state which has access to motor vehicle records may furnish to a requesting party, and a requesting party may receive, such a list and accompanying information from such records upon written certification that the requesting party shall use the list solely for the purpose of assisting an insurer authorized to do business in this state, or the insurer's authorized agent, in processing an application for, or renewal or cancellation of, a motor vehicle liability insurance policy.

(d) If a law enforcement agency of this state furnishes information to a requesting party pursuant to paragraph (2) of subsection (c), the law enforcement agency shall charge the fee prescribed by the secretary of revenue pursuant to K.S.A. 74-2022, and amendments thereto, for any copies furnished and may charge an additional fee to be retained by the law enforcement agency to cover its cost of providing such copies. The fee prescribed pursuant to K.S.A. 74-2022, and amendments thereto, shall be paid monthly to the secretary of revenue and upon receipt thereof shall be deposited in the state treasury to the credit of the electronic databases fee fund, except for the \$1 of the fee for each record required to be credited to the highway patrol training center fund under subsection (f).

(e) The secretary of revenue, the secretary's agents or employees, the director of vehicles or the director's agents or employees shall not be liable for damages caused by any negligent or wrongful act or omission of a law enforcement agency in furnishing any information obtained from motor vehicle records.

(f) A fee in an amount fixed by the secretary of revenue pursuant to K.S.A. 74-2022, and amendments thereto, of not less than \$2 for each full or partial motor vehicle record shall be charged by the division, except that the director may charge a lesser fee pursuant to a contract between the secretary of revenue and any person to whom the director is authorized to furnish information under paragraph (1) of subsection (c), and such fee shall not be less than the cost of production or reproduction of any full or partial motor vehicle record requested. Except for the fees charged pursuant to a contract for motor vehicle records authorized by this subsection pertaining to motor vehicle titles or motor vehicle registrations or pursuant to subsection (c)(1)(B)(ii) or (c)(1)(D), \$1 shall be credited to the highway patrol training center fund for each motor vehicle record provided by the division of vehicles.

(g) The secretary of revenue may adopt such rules and regulations as are necessary to implement the provisions of this section.

Sec. 38. K.S.A. 2011 Supp. 75-712h is hereby amended to read as follows: 75-712h. ~~On or before July 1, 2012,~~ The director of the Kansas bureau of investigation ~~shall be authorized to~~ 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. 39. K.S.A. 8-241, 8-286, 8-288, 8-1501, 12-4413 and 22-2910 and K.S.A. 2011 Supp. 8-235, 8-262, 8-285, 8-287, 8-2,142, 8-2,144, 8-1001, 8-1008, 8-1012, 8-1013, 8-1014, 8-1015, 8-1020, 8-1020b, 8-1567, 12-4106, 12-4414, 12-4415, 12-4416, 12-4517, 21-5203, 21-6604, as amended by section 1 of 2012 House Bill No. 2465, 21-6609, as amended by section 5 of 2012 House Bill No. 2535, 21-6804, 22-2802, 22-2908, 22-2909, 22-2909c, 22-4704, 60-427, 74-2012 and 75-712h are hereby repealed.

Sec. 40. This act shall take effect and be in force from and after its publication in the statute book.";

On page 1, in the title, by striking all in lines 1 through 6 and inserting:

"AN ACT concerning driving; relating to fines; creating the crime of refusing to submit to a test to determine the presence of alcohol or drugs; relating to driver's licenses; driving under the influence; administrative penalties; crimes, punishment and criminal procedure; amending K.S.A. 8-241, 8-286, 8-288, 8-1501, 12-4413 and 22-2910 and K.S.A. 2011 Supp. 8-235, 8-262, 8-285, 8-287, 8-2,142, 8-2,144, 8-1001, 8-1008, 8-1012, 8-1013, 8-1014, 8-1015, 8-1020, 8-1567, 12-4106, 12-4414, 12-4415, 12-4416, 12-4517, 21-5203, 21-6604, as amended by section 1 of 2012 House Bill No. 2465, 21-6609, as amended by section 5 of 2012 House Bill No. 2535, 21-6804, 22-2802, 22-2908, 22-2909, 22-4704, 60-427, 74-2012 and 75-712h and repealing the existing sections; also repealing K.S.A. 2011 Supp. 8-1020b and 22-2909c.";

And your committee on conference recommends the adoption of this report.

PAT COLLOTON

LANCE KINZER

MELODY McCRAY-MILLER

Conferees on part of House

THOMAS C. OWENS

JEFF KING

DAVID HALEY

Conferees on part of Senate

Senator Owens moved the Senate adopt the Conference Committee Report on **H Sub for SB 60**.

On roll call, the vote was: Yeas 38; Nays 0; Present and Passing 0; Absent or Not Voting 2.

Yeas: Abrams, Apple, Bruce, Brungardt, Donovan, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelly, Kelsey, King, Kultala, Longbine, Love, Lynn, Marshall, Masterson, McGinn, Merrick, Morris, Olson, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, A. Schmidt, V. Schmidt, Schodorf, Taddiken, Teichman, Umbarger, Vratil, Wagle.

Absent or Not Voting: Emler, Steineger.

The Conference Committee Report was adopted.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **H Sub for SB 177** submits the following report:

Your committee on conference agrees to disagree and recommends that a new conference committee be appointed;

And your committee on conference recommends the adoption of this report.

RICHARD CARLSON

MARVIN KLEEB

Conferees on part of House

LES DONOVAN

PAT APPLE

Conferees on part of Senate

Senator Donovan moved to adopt the conference committee report on **H Sub for SB 177** to agree to disagree and a new conference committee be appointed.

On roll call, the vote was: Yeas 18; Nays 21; Present and Passing 0; Absent or Not Voting 1.

Yeas: Abrams, Apple, Bruce, Donovan, Kelsey, King, Love, Lynn, Masterson, Merrick, Olson, Ostmeyer, Petersen, Pilcher-Cook, Pyle, Steineger, Taddiken, Wagle.

Nays: Brungardt, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelly, Kultala, Longbine, Marshall, McGinn, Morris, Owens, Reitz, A. Schmidt, V. Schmidt, Schodorf, Teichman, Umbarger, Vratil.

Absent or Not Voting: Emler.

The motion did not prevail and the bill remains in conference.

EXPLANATION OF VOTE

MR. PRESIDENT: The Conference Committee Report **H Sub for SB 177** on the Governor's desk is not fiscally responsible. I respect the efforts of Senator Donovan, Senator Apple and Senator Holland, but the current compromise is not acceptable for Kansas needs. I vote no.

A responsible tax plan is still possible. – PETE BRUNGARDT

Senators Owens, Reitz, Schodorf, Teichman, Umbarger and Vratil request the record to show they concur with the "Explanation of Vote" offered by Senator Brungardt on **H Sub for SB 177**.

EXPLANATION OF VOTE

MR. PRESIDENT: Like most of us in this Chamber, I want a tax structure for Kansas that is responsible, pro-growth and competitive. But, at the same time, we need to maintain a balanced budget. We need to take care of our responsibilities. And, we need to look out for the future of our state.

Kansas is emerging from this economic recession in a better position than most states. But, we are not out of the woods yet. This particular plan could turn our balanced budget into a deficit in just five years. I don't think that is the kind of tax relief that will move Kansas forward.

As I've said before, a reasonable plan involves lowering our individual income tax rates and eliminating the income tax on businesses up to \$100,000. We also need to reduce property taxes, reduce sales taxes and adjust HPIP.

Let me reiterate: I want a tax structure for Kansas that is responsible, pro-growth and competitive. I greatly appreciate the hard work that has gone into this plan. But, I hope the conference committee will reconvene today and come back to us with a more reasonable plan that's right for Kansas. – STEPHEN MORRIS

Senators Schodorf, Teichman, Umbarger and Vratil request the record to show they concur with the "Explanation of Vote" offered by Senator Morris on **H Sub for SB 177**.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 314** submits the following report:

The Senate accedes to all House amendments to the bill, and your committee on conference further agrees to amend the bill as printed with House Committee amendments, as follows:

On page 1, in line 7, before "The" by inserting "On and after January 1, 2013,"; following line 12, by inserting:

"New Sec. 2. Nothing in the provisions of K.S.A. 58-3201 *et seq.*, and amendments thereto, shall be construed as the granting of an easement over such land by the owner thereof, nor as the granting of an easement over such land by adverse possession.

Sec. 3. K.S.A. 2011 Supp. 21-5808 is hereby amended to read as follows: 21-5808. (a) Criminal trespass is entering or remaining upon or in any:

(1) Land, nonnavigable body of water, structure, vehicle, aircraft or watercraft by a person who knows such person is not authorized or privileged to do so, and:

(A) Such person enters or remains therein in defiance of an order not to enter or to leave such premises or property personally communicated to such person by the owner thereof or other authorized person;

(B) such premises or property are posted ~~in a~~ as provided in K.S.A. 32-1013, and amendments thereto, or in any other manner reasonably likely to come to the attention of intruders, or are locked or fenced or otherwise enclosed, or shut or secured against passage or entry; or

(C) such person enters or remains therein in defiance of a restraining order issued pursuant to K.S.A. 60-1607, 60-3105, 60-3106, 60-3107, 60-31a05 or 60-31a06 or K.S.A. 2011 Supp. 38-2243, 38-2244 or 38-2255, and amendments thereto, and the restraining order has been personally served upon the person so restrained; or

(2) public or private land or structure in a manner that interferes with access to or from any health care facility by a person who knows such person is not authorized or privileged to do so and such person enters or remains thereon or therein in defiance of an order not to enter or to leave such land or structure personally communicated to such person by the owner of the health care facility or other authorized person.

(b) Criminal trespass is a class B nonperson misdemeanor. Upon a conviction of a violation of subsection (a)(1)(C), a person shall be sentenced to not less than 48 consecutive hours of imprisonment which shall be served either before or as a condition of any grant of probation or suspension, reduction of sentence or parole.

(c) As used in this section:

(1) "Health care facility" means any licensed medical care facility, certificated

health maintenance organization, licensed mental health center or mental health clinic, licensed psychiatric hospital or other facility or office where services of a health care provider are provided directly to patients; and

(2) "health care provider" means any person:

- (A) Licensed to practice a branch of the healing arts;
- (B) licensed to practice psychology;
- (C) licensed to practice professional or practical nursing;
- (D) licensed to practice dentistry;
- (E) licensed to practice optometry;
- (F) licensed to practice pharmacy;
- (G) registered to practice podiatry;
- (H) licensed as a social worker; or
- (I) registered to practice physical therapy.

(d) This section shall not apply to:

(1) A land surveyor, licensed pursuant to article 70 of chapter 74 of the Kansas Statutes Annotated, and amendments thereto, and such surveyor's authorized agents and employees who enter upon lands, waters and other premises in the making of a survey; or

(2) railroad property as defined in K.S.A. 2011 Supp. 21-5809, and amendments thereto, or nuclear generating facility as defined in K.S.A. 2011 Supp. 66-2302, and amendments thereto.";

Also on page 1, by striking all in lines 13 through 32;

By striking all in page 2;

On page 3, by striking all in lines 1 through 28 and inserting:

"Sec. 4. On and after January 1, 2013, K.S.A. 2011 Supp. 32-906, as amended by section 45 of 2012 Senate Bill No. 316, is hereby amended to read as follows: 32-906.

(a) Except as otherwise provided by law or rules and regulations of the secretary, a valid Kansas fishing license is required to fish or to take any bullfrog in this state.

(b) The provisions of subsection (a) do not apply to fishing by:

(1) A person, or a member of a person's immediate family domiciled with such person, on land owned by such person or on land leased or rented by such person for agricultural purposes;

(2) ~~a resident of this state~~ person who is less than 16 years of age ~~or who is 65 or more years of age;~~

(3) ~~a nonresident who is less than 16 years of age~~ a resident of this state who is 75 years of age or more;

(4) a person fishing in a private water fishing impoundment unless waived pursuant to K.S.A. 32-975, and amendments thereto;

(5) a resident of an adult care home, as defined by K.S.A. 39-923, and amendments thereto, licensed by the secretary of aging;

(6) ~~an inmate in an honor camp operated by the secretary of corrections, pursuant to an agreement between the secretary of corrections and the secretary of wildlife, parks and tourism;~~

~~(7)~~ a person on dates designated pursuant to subsection (f);

~~(8)~~ (7) a person fishing under a valid institutional group fishing license issued pursuant to subsection (g); or

~~(9)~~ (8) a participant in a fishing clinic sponsored or cosponsored by the department,

during the period of time that the fishing clinic is being conducted.

(c) The fee for a fishing license shall be the amount prescribed pursuant to K.S.A. 32-988, and amendments thereto.

(d) Unless otherwise provided by law or rules and regulations of the secretary, a fishing license is valid throughout the state.

(e) Unless otherwise provided by law or rules and regulations of the secretary, a fishing license is valid from the date of issuance and expires on December 31 following its issuance, except that the secretary may issue a:

- (1) Permanent license pursuant to K.S.A. 32-929, and amendments thereto;
- (2) lifetime license pursuant to K.S.A. 32-930, and amendments thereto;
- (3) nonresident fishing license valid for a period of five days; and
- (4) resident or nonresident fishing license valid for a period of 24 hours.

(f) The secretary may designate by resolution two days each calendar year during which persons may fish by legal means without having a valid fishing license.

(g) The secretary shall issue an annual institutional group fishing license to each facility operating under the jurisdiction of or licensed by the secretary of social and rehabilitation services and to any veterans administration medical center in the state of Kansas upon application by such facility or center to the secretary of wildlife, parks and tourism for such license.

All applications for facilities under the jurisdiction of the secretary of social and rehabilitation services shall be made with the approval of the secretary of social and rehabilitation services and shall provide such information as the secretary of wildlife, parks and tourism requires. All applications for any veterans administration medical center shall be made with the approval of the director of such facility and shall provide such information as the secretary of wildlife, parks and tourism requires. Persons who have been admitted to and are currently residing at the facility or center, not to exceed 20 at any one time, may fish under an institutional group fishing license within the state while on a group trip, group outing or other group activity which is supervised by the facility or center. Persons fishing under an institutional group fishing license shall not be required to obtain a fishing license but shall be subject to all other laws and to all rules and regulations relating to fishing.

The staff personnel of the facility or center supervising the group trip, group outing or other group activity shall have in their possession the institutional license when engaged in supervising any activity requiring the license. Such staff personnel may assist group members in all aspects of their fishing activity.

(h) The secretary may issue a special nonprofit group fishing license to any community, civic or charitable organization which is organized as a not-for-profit corporation, for use by such community, civic or charitable organization for the sole purpose of conducting group fishing activities for handicapped or developmentally disabled individuals. All applications for a special nonprofit group fishing license shall be made to the secretary or the secretary's designee and shall provide such information as required by the secretary.

Handicapped or developmentally disabled individuals, not to exceed 20 at any one time, may fish under a special nonprofit group fishing license while on a group trip, outing or activity which is supervised by the community, civic or charitable organization. Individuals fishing under a special nonprofit group fishing license shall not be required to obtain a fishing license but shall be subject to all other laws and rules

and regulations relating to fishing.

The staff personnel of the community, civic or charitable organization supervising the group trip, outing or activity shall have in their possession the special nonprofit group fishing license when engaged in supervising any activity requiring the special nonprofit group fishing license. Such staff personnel may assist group members in all aspects of their fishing activity.

(i) The provisions of paragraph (b)(3) shall expire on June 30, 2020.;

On page 3, in line 29, before "K.S.A." by inserting "On and after January 1, 2013,";

On page 4, by striking all in lines 29 through 43;

On page 5, by striking all in lines 1 and 2;

On page 7, in line 8, by striking "(1)"; in line 14, by striking "(A)" and inserting "(1)"; in line 16, by striking "(B)" and inserting "(2)"; in line 17, by striking "(C)" and inserting "(3)"; in line 19, by striking "(D)" and inserting "(4)"; by striking all in lines 21 through 23;

On page 8, in line 17, after "(n)" by inserting "(1)"; also in line 17, by striking "1" and inserting "30"; following line 19, by inserting:

"(2) Prior to April 30, 2013, the secretary shall develop and implement a pre-rut antlerless deer rifle season by deer management unit. The provisions of this paragraph shall expire on July 1, 2015.

(3) The secretary shall develop and implement a deer crossbow hunting pilot project. Such pilot project shall be implemented in no more than four deer management units. The secretary of wildlife, parks and tourism shall study the effects of such pilot project on the deer population and the number of crossbow users in such deer management units and report to the house committee on agriculture and natural resources and the senate committee on natural resources prior to January 31, 2014. The provisions of this paragraph shall expire on January 31, 2014.";

Also on page 8, in line 31, before "K.S.A." by inserting "On and after January 1, 2013,";

On page 10, in line 31, by striking "(1)"; by striking all in lines 34 through 38; in line 40, by striking "equal to" and inserting "not to exceed";

On page 11, by striking all in lines 17 through 43;

On page 12, by striking all in lines 1 through 29 and inserting:

"Sec. 8. On and after January 1, 2013, K.S.A. 2011 Supp. 32-1005, as amended by section 58 of 2012 Senate Bill No. 316, is hereby amended to read as follows: 32-1005.

(a) Commercialization of wildlife is knowingly committing any of the following, except as permitted by statute or rules and regulations:

(1) Capturing, killing or possessing, for profit or commercial purposes, all or any part of any wildlife protected by this section;

(2) selling, bartering, purchasing or offering to sell, barter or purchase, for profit or commercial purposes, all or any part of any wildlife protected by this section;

(3) shipping, exporting, importing, transporting or carrying; causing to be shipped, exported, imported, transported or carried; or delivering or receiving for shipping, exporting, importing, transporting or carrying all or any part of any wildlife protected by this section, for profit or commercial purposes; or

(4) purchasing, for personal use or consumption, all or any part of any wildlife protected by this section.

(b) The wildlife protected by this section and the minimum value thereof are as

follows:

- (1) Eagles, \$1,000;
- (2) deer or antelope, \$1,000;
- (3) elk or buffalo, \$1,500;
- (4) furbearing animals, except bobcats, \$25;
- (5) bobcats, \$200;
- (6) wild turkey, \$200;
- (7) owls, hawks, falcons, kites, harriers or ospreys, \$500;
- (8) game birds, migratory game birds, resident and migratory nongame birds, game animals and nongame animals, \$50 unless a higher amount is specified above;
- (9) fish and mussels, the value for which shall be no less than the value listed for the appropriate fish or mussels species in the monetary values of freshwater fish or mussels and fish kill counting guidelines of the American fisheries society, special publication number 30;
- (10) turtles, \$25 each for unprocessed turtles or \$16 per pound or fraction of a pound for processed turtle parts;
- (11) bullfrogs, \$4, whether dressed or not dressed;
- (12) any wildlife classified as threatened or endangered, \$500 unless a higher amount is specified above; and
- (13) any other wildlife not listed above, \$25.

(c) Possession of wildlife, in whole or in part, captured or killed in violation of law and having an aggregate value of \$1,000 or more, as specified in subsection (b), is *prima facie* evidence of possession for profit or commercial purposes.

(d) Commercialization of wildlife having an aggregate value of \$1,000 or more, as specified in subsection (b), is a severity level 10, nonperson felony. Commercialization of wildlife having an aggregate value of less than \$1,000, as specified in subsection (b), is a class A nonperson misdemeanor.

(e) In addition to any other penalty provided by law, a court convicting a person of the crime of commercialization of wildlife may:

(1) Confiscate all equipment used in the commission of the crime and may revoke for a period of up to ~~10~~ 20 years all licenses and permits issued to the convicted person by the Kansas department of wildlife, parks and tourism; and

(2) order restitution to be paid to the Kansas department of wildlife, parks and tourism for the wildlife taken, which restitution shall be in an amount not less than the aggregate value of the wildlife, as specified in subsection (b).

(f) The provisions of this section shall apply only to wildlife illegally harvested and possessed by any person having actual knowledge that such wildlife was illegally harvested.

Sec. 9. On and after January 1, 2013, K.S.A. 2011 Supp. 32-1032, as amended by section 60 of 2012 Senate Bill No. 316, is hereby amended to read as follows: 32-1032.

(a) Violation of any provision of the wildlife, parks and tourism laws of this state or rules and regulations of the secretary relating to big game or wild turkey permits and game tags, taking big game or wild turkey during a closed season, taking big game or wild turkey in violation of subsections (a)(1), (2) or (7) of K.S.A. 32-1003, and amendments thereto, or taking big game or wild turkey in violation of subsection (a)(2) or (3) of K.S.A. 32-1004, and amendments thereto, or taking big game or wild turkey in violation of K.S.A. 32-1013, and amendments thereto, is a misdemeanor, subject to the

provisions of subsection (b), punishable by a fine or by imprisonment in the county jail, or by both.

(1) Upon a first or second conviction for a violation of the wildlife, parks and tourism laws of this state or the rules and regulations of the secretary relating to this section, the violator shall not be fined less than \$500 nor more than \$1,000 or be imprisoned in the county jail for not more than six months, or both.

(2) Upon a third conviction for a violation of the wildlife, parks and tourism laws of this state or the rules and regulations of the secretary relating to this section, the violator shall not be fined less than \$1,000 and shall be imprisoned in the county jail for not less than 30 days. A third conviction shall be a class B nonperson misdemeanor.

(3) Upon a fourth conviction for a violation of the wildlife, parks and tourism laws of this state or the rules and regulations of the secretary relating to this section, the violator shall not be fined less than \$1,000 and shall be imprisoned in the county jail for not less than 60 days. A fourth conviction shall be a class A nonperson misdemeanor.

(4) Upon the fifth or subsequent convictions for a violation of the wildlife, parks and tourism laws of the state or the rules and regulations of the secretary relating to this section, the violator shall not be fined less than \$1,000 and shall be imprisoned in the county jail for not less than 90 days. A fifth or subsequent conviction shall be a class A nonperson misdemeanor.

Any conviction for a wildlife violation that occurs before July 1, 2005, shall not be considered for purposes of this subsection.

(b) (1) In addition to any other penalty prescribed by law, the unlawful intentional taking of a trophy big game animal shall be punishable by a fine of not less than \$5,000.

(2) A trophy big game animal shall include any animal meeting the following criteria:

(A) An antlered whitetail deer having an inside spread measurement of at least ~~17~~ 16 inches;

(B) an antlered mule deer having an inside spread measurement of at least ~~22~~ 20 inches;

(C) an antlered elk having at least six points on one antler; or

(D) an antelope having at least one horn greater than 14 inches in length.

(3) In addition to any other penalty prescribed by law, the defendant shall pay the restitution value of any deer, elk or antelope taken in violation of K.S.A. 32-1001, 32-1002, 32-1003, 32-1004, 32-1005 or 32-1013, and amendments thereto, with a gross score of more than 125 inches for deer, 250 inches for elk and 75 inches for antelope. Such restitution value shall be in an amount not less than the value prescribed for such animal in K.S.A. 32-1005, and amendments thereto. The restitution value for deer shall equal: $(\text{gross score} - 100)^2 \times \2 . The restitution value for elk shall equal: $(\text{gross score} - 200)^2 \times \2 . The restitution value for antelope shall equal: $(\text{gross score} - 40)^2 \times \2 . The gross score shall be determined by taking measurements as provided by rules and regulations of the secretary, which shall be made to the nearest $\frac{1}{8}$ of an inch using a $\frac{1}{4}$ inch wide flexible steel tape. All restitution collected pursuant to this subparagraph shall be paid into the state treasury and shall be credited to the wildlife fee fund created by K.S.A. 32-990, and amendments thereto.

(4) Antlers or horns may be measured pursuant to the manner described in subsection (b)(3) at any time; no drying time is required.

(5) The secretary may adopt, in accordance with K.S.A. 32-805, and amendments

thereto, such rules and regulations that the secretary deems necessary to implement and define the terms of this section.

(c) In addition to any other penalty imposed by the convicting court, if a person is convicted of a violation of K.S.A. 32-1001, 32-1002, 32-1003, 32-1004 or 32-1013, and amendments thereto, that involves taking of a big game animal or wild turkey, or if a person is convicted of a violation of K.S.A. 32-1005, and amendments thereto, that involves commercialization of a big game animal or wild turkey:

(1) Upon the first such conviction, the court may order forfeiture of the person's hunting privileges for one year from the date of conviction and: (A) Revocation of the person's hunting license, unless such license is a lifetime hunting license; or (B) if the person possesses a lifetime hunting license, suspension of such license for one year from the date of conviction.

(2) Upon the second such conviction, the court shall order forfeiture of the person's hunting privileges for three years from the date of conviction and: (A) Revocation of the person's hunting license, unless such license is a lifetime hunting license; or (B) if the person possesses a lifetime hunting license, suspension of such license for three years from the date of conviction.

(3) Upon the third or a subsequent such conviction, the court shall order forfeiture of the person's hunting privileges for five years from the date of conviction and: (A) Revocation of the person's hunting license, unless such license is a lifetime hunting license; or (B) if the person possesses a lifetime hunting license, suspension of such license for five years from the date of conviction.

(d) If a person convicted of a violation described in subsection (c) has been issued a combination hunting and fishing license or a combination lifetime license, only the hunting portion of such license shall be revoked or suspended pursuant to subsection (c).

(e) Nothing in this section shall be construed to prevent a convicting court from suspending a person's hunting privileges or ordering the forfeiture or suspension of the person's license, permit, stamp or other issue of the department for a period longer than provided in this section, if such forfeiture or suspension is otherwise provided for by law.

Sec. 10. K.S.A. 2011 Supp. 21-5808 and 32-937 are hereby repealed.

Sec. 11. On and after January 1, 2013, K.S.A. 2011 Supp. 32-906, as amended by section 45 of 2012 Senate Bill No. 316, 32-919, 32-937, 32-988, 32-1005, as amended by section 58 of 2012 Senate Bill No. 316, and 32-1032, as amended by section 60 of 2012 Senate Bill No. 316, are hereby repealed.

And by renumbering sections accordingly;

Also on page 12, in line 31, by striking "January 1, 2013 and";

On page 1, in the title, in line 1, by striking all after "concerning" and inserting "hunting and fishing; relating to use of land; relating to penalties;"; in line 2, by striking all following the first semicolon; by striking all in line 3, and inserting "amending K.S.A. 2011 Supp. 21-5808, 32-906, as amended by section 45 of 2012 Senate Bill No. 316, 32-919, 32-937, 32-988, 32-1005, as amended by section 58 of 2012 Senate Bill No. 316, and 32-1032, as amended by section 60 of 2012 Senate Bill No. 316";

And your committee on conference recommends the adoption of this report.

DANIEL J. KERSCHEN
 JERRY D. WILLIAMS
Conferees on part of House

RALPH OSTMEYER
 CAROLYN MCGINN
 MARCI FRANCISCO
Conferees on part of Senate

Senator Ostmeyer moved the Senate adopt the Conference Committee Report on **SB 314**.

Senator Olson made a substitute motion to not adopt the Conference Committee Report. The motion failed.

On roll call, the vote was: Yeas 30; Nays 8; Present and Passing 0; Absent or Not Voting 2.

Yeas: Abrams, Apple, Bruce, Brungardt, Donovan, Francisco, Haley, Hensley, Holland, Kelly, Kelsey, King, Kultala, Longbine, Love, Lynn, Masterson, McGinn, Merrick, Morris, Ostmeyer, Petersen, Reitz, A. Schmidt, Schodorf, Taddiken, Teichman, Umbarger, Vratil, Wagle.

Nays: Faust-Goudeau, Huntington, Marshall, Olson, Owens, Pilcher-Cook, Pyle, V. Schmidt.

Absent or Not Voting: Emler, Steineger.

The Conference Committee Report was adopted.

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2175** submits the following report:

The House accedes to all Senate amendments to the bill, and your committee on conference further agrees to amend the bill as printed with Senate Committee amendments, as follows:

On page 1, by striking all in lines 5 through 7, and inserting:

"Section 1. Sections 1 through 9, and amendments thereto, may be known and cited as the Kansas one map act.

Sec. 2. Kansas one map requires the implementation of an overall Kansas land and geographic resources program through the use of a geographic information system which requires cooperative methods for development and maintenance of spatial data between state and local governments in Kansas.

Sec. 3. As used in sections 2 through 9, and amendments thereto, unless the context shows otherwise:

(a) "Board" means the Kansas geographic information systems policy board.

(b) "Geographic information" means data and datasets containing location information including, but not limited to, remotely sensed imagery, global positioning systems files, geospatially referenced computer-aided design files, digital cartographic products, spatially enabled databases, and geospatial datasets locating and describing features and their attributes on, above or under the earth.

(c) "Geographic information systems" or "GIS" is an information system capable of capturing, integrating, storing, editing, analyzing, managing, sharing and displaying

geographic information. A GIS involves computer hardware, software, networks and applications, as well as the people to operate, develop, administer and use them.

(d) "Spatial data" is also known as geospatial data or geographic information and means the data or information that identifies the geographic location of features and boundaries on earth, such as natural or constructed features, oceans and more. Spatial data is usually stored as coordinates and topology and is data that can be mapped. Spatial data is often accessed, manipulated or analyzed through geographic information systems (GIS).

Sec. 4. (a) There is hereby established the Kansas geographic information systems policy board within the office of information technology services.

(b) The board shall consist of 23 members:

(1) The governor shall appoint 11 members as follows: Five representatives of local government, including cities, counties or local government consortia of cities, counties, non-profit and private sector enterprises. Such members may include, but are not limited to, representatives from city and county commissions or planning councils, tribal government, law enforcement, county clerks, county appraisers and emergency planning divisions; two representatives of the board of regents institutions; and two executives representing the private sector. Members from the private sector may include, but are not limited to, representatives from the trucking industry, utilities, telecommunications, publishers, agriculturalists, oil and gas industry, chambers of commerce, aircraft and auto industry and the banking community; and two representatives from relevant statewide businesses or professional organizations, such as statewide associations of groundwater management districts, emergency planning, law enforcement, licensed surveyors and other relevant technical professions or agriculture-related businesses.

(2) The remaining 12 members shall be:

(A) The executive chief information technology officer of the office of information technology services or such officer's designee;

(B) the director of the Kansas water office or such director's designee;

(C) the state biologist of the Kansas biological survey or the state biologist's designee;

(D) the state geologist of the Kansas geological survey or the state geologist's designee;

(E) the executive director of the Kansas historical society or such executive director's designee;

(F) the secretary of agriculture or such secretary's designee;

(G) the secretary of health and environment or such secretary's designee;

(H) the director of legislative research of the legislative research department or such director's designee;

(I) the secretary of revenue or such secretary's designee;

(J) the secretary of transportation or such secretary's designee;

(K) the state librarian or such librarian's designee; and

(L) the executive director of the information network of Kansas or such executive director's designee.

(c) Members appointed by the governor under subsection (b)(1) shall be appointed for a four-year term and until such member's successors are appointed and qualified, except as provided in subsection (d). Members not appointed by the governor under

subsection (b)(1) shall serve consistent with their terms of office, employment or appointment.

(d) The governor may remove a member from the board for lack of attendance or lack of participation.

(e) The governor shall select a chairperson and vice-chairperson from among the members of the board who shall serve as chairperson and vice-chairperson at the discretion of the governor. The board may elect other officers among its members and may establish any committees deemed necessary to discharge its duties.

(f) Board members shall not receive compensation, subsistence allowance, mileage or associated expenses from the state. Officers or employees of state agencies who serve on the board shall be authorized to serve on the board as part of their duties.

Sec. 5. The board shall:

(a) Establish public and private partnerships throughout Kansas to maximize value, minimize cost and avoid redundant activities in the development and implementation of geographic information systems;

(b) foster efficient and secure methods for data sharing at all levels of government;

(c) coordinate, review and provide recommendations on geographic information systems programs and investments and provide assistance with dispute resolution among geographic systems partners;

(d) continue to establish Kansas' leadership role in the national effort to improve capabilities for sharing geographic information and ideas with other states;

(e) promote the use of geographic information systems technologies as tools to break through structural and administrative boundaries to collaborate on shared problems and enhance information analysis and decision-making processes within all levels of government;

(f) shall be a standing advisory committee to the information technology executive council and shall provide a copy of its annual report to the council, as well as to the governor and both houses of the legislature; and

(g) shall work jointly with officials from other state agencies, organizations and county, municipal and tribal governments, as well as with businesses and organizations in the private sector who are concerned with the efficient management of the state's geographic information systems resources.

Sec. 6. (a) There is hereby established the office of state geographic information systems officer who shall be appointed by the governor and who shall serve in the office of information technology services.

(b) The state geographic information systems officer shall:

(1) Implement Kansas one map, an enterprise statewide mapping strategy that: (A) Supports Kansas state entities and local governments as they foster economic vitality, manage resources, educate, save and restore the natural environment, advance health initiatives, ensure public safety and support science; and (B) enables state entities and local governments to better implement and coordinate policies and programs across Kansas;

(2) implement and maintain the Kansas data access and support center, an enterprise geospatial data clearinghouse to include a central store and catalog of Kansas data and mapping services available to all state entities and the public;

(3) recruit a technical committee and appoint the technical committee chair;

(4) provide oversight for the development of the Kansas one map program and

monitor Kansas one map metrics;

(5) establish and manage a Kansas one map communications plan and provide for Kansas one map education;

(6) maintain a liaison relationship with state, federal, regional, county and municipal organizations;

(7) promote, advertise and market applications, capabilities, benefits and results of the Kansas one map program;

(8) assist in the identification and capturing of funding to support the Kansas one map program; and

(9) recommend to the executive chief information technology officer rules and regulations as may be necessary to implement the provisions of the Kansas one map act.

(c) The executive chief information technology officer may adopt rules and regulations to implement the provisions of the Kansas one map act.

Sec. 7. All state departments, agencies, commissions and boards shall cooperate with the Kansas geographic information systems policy board and the state geographic information systems officer in implementing the initiatives of Kansas one map.

Sec. 8. Funding for the Kansas data access and support center shall be continued through the office of information technology services and shall be directed to the Kansas geological survey which currently houses and supports this function.

Sec. 9. In order for the state geographic information systems officer to meet the goals set out in section 5, and amendments thereto, such officer will be supported with other office of information services as needed and available for coordination, standards development and implementation of workshops to research and promote effective uses of the geographic information systems assets and tools to achieve economic and operational benefits from the Kansas one map resource.

Sec. 10. This act shall take effect and be in force from and after its publication in the Kansas register.";

Also on page 1, in the title, in line 1, by striking all after "ACT"; by striking all in line 2, and inserting "concerning geographic information, systems and services; establishing the Kansas geographic information systems policy board and the office of state geographic information systems officer.";

And your committee on conference recommends the adoption of this report.

DWAYNE UMBARGER

BOB MARSHALL

KELLY KULTALA

Conferees on part of Senate

MIKE BURGESS

GARY K. HAYZLETT

ED TRIMMER

Conferees on part of House

Senator Umbarger moved the Senate adopt the Conference Committee Report on **HB 2175**.

On roll call, the vote was: Yeas 38; Nays 0; Present and Passing 0; Absent or Not Voting 2.

Yeas: Abrams, Apple, Bruce, Brungardt, Donovan, Faust-Goudeau, Francisco, Haley,

Hensley, Holland, Huntington, Kelly, Kelsey, King, Kultala, Longbine, Love, Lynn, Marshall, Masterson, McGinn, Merrick, Morris, Olson, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, A. Schmidt, V. Schmidt, Schodorf, Taddiken, Teichman, Umbarger, Vratil, Wagle.

Absent or Not Voting: Emler, Steineger.

The Conference Committee Report was adopted.

CONFERENCE COMMITTEE REPORTS

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on Senate amendments to **HB 2435** submits the following report:

Your committee on conference agrees to disagree and recommends that a new conference committee be appointed;

And your committee on conference recommends the adoption of this report.

JEAN SCHODORF

JOHN VRATIL

ANTHONY HENSLEY

Conferees on part of Senate

LANA GORDON

VALDENIA WINN

Conferees on part of House

On motion of Senator Schodorf the Senate adopted the conference committee report on **HB 2435**, and requested a new conference be appointed.

The President appointed Senators Schodorf, Vratil and Hensley as a second Conference Committee on the part of the Senate on **HB 2435**.

FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS

On motion of Senator V. Schmidt an emergency was declared by a 2/3 constitutional majority, and **HB 2453**, **HB 2515** and **HB 2792** were advanced to Final Action and roll call.

HB 2453, AN ACT concerning the commission on disability concerns; amending K.S.A. 2011 Supp. 74-6701, 74-6702, 74-6703, 74-6706 and 74-6707 and repealing the existing sections; also repealing K.S.A. 2011 Supp. 74-6709.

On roll call, the vote was: Yeas 38; Nays 0; Present and Passing 0; Absent or Not Voting 2.

Yeas: Abrams, Apple, Bruce, Brungardt, Donovan, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelly, Kelsey, King, Kultala, Longbine, Love, Lynn, Marshall, Masterson, McGinn, Merrick, Morris, Olson, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, A. Schmidt, V. Schmidt, Schodorf, Taddiken, Teichman, Umbarger, Vratil, Wagle.

Absent or Not Voting: Emler, Steineger.

The bill passed, as amended.

HB 2515, AN ACT making and concerning appropriations for fiscal years ending June 30, 2012, June 30, 2013, June 30, 2014, June 30, 2015, and June 30, 2016, for state agencies; authorizing and directing payment of certain claims against the state;

authorizing certain transfers, capital improvement projects and fees imposing certain restrictions and limitations, and directing or authorizing certain receipts, disbursements, procedures and acts incidental to the foregoing; amending K.S.A. 2011 Supp. 2-223, 12-5256, 55-193, 72-8814, 74-50,107, 74-99b34, 75-2319, 75-6702, 76-775, 76-783, 76-7,107, 79-2959, 79-2964, 79-2978, 79-2979, 79-3425i, as amended by Section 10 of 2012 House Bill No. 2557, 79-34,156, 79-34,171 and 82a-953a and repealing the existing sections.

On roll call, the vote was: Yeas 32; Nays 6; Present and Passing 0; Absent or Not Voting 2.

Yeas: Abrams, Apple, Bruce, Brungardt, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelly, Kelsey, King, Kultala, Longbine, Love, Marshall, Masterson, McGinn, Morris, Olson, Ostmeyer, Owens, Petersen, Reitz, A. Schmidt, V. Schmidt, Schodorf, Taddiken, Teichman, Umbarger, Vratil.

Nays: Donovan, Lynn, Merrick, Pilcher-Cook, Pyle, Wagle.

Absent or Not Voting: Emler, Steineger.

The bill passed, as amended.

HB 2792, AN ACT reconciling amendments to certain statutes and making certain technical changes related thereto; amending K.S.A. 2011 Supp. 16-1602, 21-5428, 21-6811, 22-3437, 22-4705, 44-703, 44-706, 59-2132, 65-516, as amended by section 5 of 2012 House Bill No. 2660, 65-1626, as amended by section 1 of 2012 Senate Bill No. 134, 65-4915, as amended by section 51 of 2012 Substitute for Senate Bill No. 397, 65-6805, as amended by section 54 of 2012 Substitute for Senate Bill No. 397, 68-1051, as amended by section 2 of 2012 House Bill No. 2441, 72-1397, 72-5445, 74-5602, as amended by section 2 of 2012 House Bill No. 2496, 75-2935, as amended by section 115 of 2012 Senate Bill No. 316, 75-37,121, as amended by section 117 of 2012 Senate Bill No. 316, 76-11a13, 77-421, as amended by section 38 of 2012 House Bill No. 2535, 79-201a, as amended by section 1 of 2012 House Bill No. 2769 and 79-3234, as amended by section 127 of 2012 Senate Bill No. 316 and repealing the existing sections; also repealing K.S.A. 2011 Supp. 21-5428a, 21-6811a, 22-3437b, 22-4705a, 32-1049a, as amended by section 64 of 2012 Senate Bill No. 316, 44-703a, 44-706b, 65-1436a, 65-1626, as amended by section 42 of 2012 Substitute for Senate Bill No. 397, 65-4915, as amended by section 1 of 2012 House Bill No. 2428, 65-6805, as amended by section 28 of 2012 House Bill No. 2416, 68-1051, as amended by section 2 of 2012 House Bill No. 2509, 72-5445a, 74-4911f, as amended by section 95 of 2012 Senate Bill No. 316, 74-5089, as amended by section 6 of 2012 Senate Bill No. 417, 74-5602, as amended by section 105 of 2012 Senate Bill No. 316, 74-5602, as amended by section 2 of 2012 Senate Bill No. 424, 75-2935, as amended by section 28 of 2012 Senate Bill No. 417, 75-3372, 75-37,121, as amended by section 33 of 2012 House Bill No. 2416, 77-415, as amended by section 1 of 2012 Senate Bill No. 252, 77-421, as amended by section 123 of 2012 Senate Bill No. 316, 77-421, as amended by section 55 of 2012 House Bill No. 2416, 77-421, as amended by section 2 of 2012 Senate Bill No. 252, 79-201a, as amended by section 124 of 2012 Senate Bill No. 316 and 79-3234b, as amended by section 128 of 2012 Senate Bill No. No. and 316.

On roll call, the vote was: Yeas 38; Nays 0; Present and Passing 0; Absent or Not Voting 2.

Yeas: Abrams, Apple, Bruce, Brungardt, Donovan, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelly, Kelsey, King, Kultala, Longbine, Love, Lynn,

Marshall, Masterson, McGinn, Merrick, Morris, Olson, Ostmeyer, Owens, Petersen, Pilcher-Cook, Pyle, Reitz, A. Schmidt, V. Schmidt, Schodorf, Taddiken, Teichman, Umbarger, Vratil, Wagle.

Absent or Not Voting: Emler, Steineger.

The bill passed, as amended.

REPORTS OF STANDING COMMITTEES

Committee on **Ways and Means** recommends **HB 2619** be amended by substituting a new bill to be designated as "Senate Substitute for HOUSE BILL No. 2619," as follows:

"SENATE Substitute for HOUSE BILL No. 2619

By Committee on Ways and Means

"AN ACT creating the joint committee on KanCare oversight; amending K.S.A. 2011 Supp. 39-7,161 and 39-7,162 and repealing the existing sections; also repealing K.S.A. 2011 Supp. 39-7,160 and 46-3501, as amended by section 22 of 2012 House Bill No. 2416.";

And the substitute bill be passed.

Also, **SB 444** be amended on page 5, in line 24, by striking "calendar" and inserting "fiscal"; in line 29, by striking "calendar" and inserting "fiscal";

On page 7, by striking all in lines 4 and 5 and inserting "(B) employs at least 20% of its employees who are individuals with disabilities and reside in Kansas;"; in line 6, by striking "70%" and inserting "75%"; by striking all in lines 15 through 30 and inserting:

"(2) "individuals with disabilities" or "individual with a disability" means any individual who:

(A) Is certified by the Kansas department for aging and disability services as having a physical or mental impairment which constitutes a substantial barrier to employment;

(B) works a minimum number of hours per week for a certified business necessary to qualify for health insurance coverage offered pursuant to subsection (g)(1); and

(C)(i) is receiving services, has received services or is eligible to receive services under a home and community based services program, as defined by K.S.A. 39-7,100, and amendments thereto;

(ii) is employed by a charitable organization domiciled in the state of Kansas and exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, as amended; or

(iii) is an individual with a severe and persistent mental illness, as determined by a clinical or functional assessment approved by the Kansas department for aging and disability services;";

And by renumbering paragraphs accordingly;

On page 8, in line 7, by striking "of social and"; in line 8, by striking "rehabilitation" and inserting "for aging and disability"; in line 10, by striking "January 1, 2014" and inserting "January 13, 2014"; in line 12, by striking "of social and rehabilitation" and inserting "for aging and disability"; in line 17, by striking "calendar" and inserting

"fiscal"; in line 19, by striking "calendar" and inserting "fiscal";

Also on page 8, following line 19, by inserting the following:

"(3) the number of contracts awarded pursuant to subsection (b) to each certified business during the previous fiscal year;"; in line 20, by striking "or" and inserting a comma; in line 21, after "to" by inserting "or not reinstated to"; in line 22, by striking "calendar" and inserting "fiscal"; also in line 22, by striking "full-time"; in line 23, by striking "and" and inserting the following:

"(5) the number of individuals employed by each certified business during the previous fiscal year; and

(6) the number of individuals with disabilities employed by each certified business during the previous fiscal year.";

Also on page 8, by striking all in lines 24 through 39; by striking all in line 43;

And by renumbering paragraphs accordingly;

On page 9, by striking all in line 1; in line 9, by striking all after "expended"; in line 10, by striking "rehabilitation services, or its fiscal agent"; in line 14, by striking "of social and rehabilitation" and inserting "for aging and disability"; in line 24, by striking "department of social and rehabilitation" and inserting "Kansas department for aging and disability"; in line 26, by striking "full-time";

And by renumbering paragraphs accordingly; and the bill be passed as amended.

On motion of Senator V. Schmidt, the Senate recessed until 3:00 p.m.

The Senate met pursuant to recess with President Morris in the chair.

ORIGINAL MOTION

Senator V. Schmidt moved that subsection 4(k) of the Joint Rules of the Senate and House of Representatives be suspended for the purpose of considering the following bill: **S Sub for HB 2087**.

COMMITTEE OF THE WHOLE

On motion of Senator V. Schmidt, the Senate resolved itself into Committee of the Whole, for consideration of bills on the calendar under the heading of General Orders with Senator Brungardt in the chair.

On motion of Senator Brungardt the following report was adopted:

Recommended **S Sub for HB 2087** be amended by adoption of the committee amendments, and **S Sub for HB 2087** be passed as amended.

FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS

On motion of Senator V. Schmidt an emergency was declared by a 2/3 constitutional majority, and **HB 2087** was advanced to Final Action and roll call.

HB 2087, AN ACT concerning reapportionment; relating to state senate districts and state board of education member districts; providing for the reapportionment thereof; repealing K.S.A. 2011 Supp. 4-4,451, 4-4,452, 4-4,453, 4-4,454, 4-4,455, 4-4,456, 4-4,457, 4-4,458, 4-4,459, 4-4,460, 4-4,461, 4-4,462, 4-4,463, 4-4,464, 4-4,465, 4-4,466, 4-4,467, 4-4,468, 4-4,469, 4-4,470, 4-4,471, 4-4,472, 4-4,473, 4-4,474, 4-4,475, 4-4,476, 4-4,477, 4-4,478, 4-4,479, 4-4,480, 4-4,481, 4-4,482, 4-4,483, 4-4,484, 4-4,485,

4-4,486, 4-4,487, 4-4,488, 4-4,489, 4-4,490, 4-4,491, 4-4,492, 4-4,493, 4-514, 4-515, 4-516, 4-517, 4-518, 4-519, 4-520, 4-521, 4-522, 4-523, 4-524, 4-525.

On roll call, the vote was: Yeas 21; Nays 17; Present and Passing 0; Absent or Not Voting 2.

Yeas: Brungardt, Faust-Goudeau, Francisco, Haley, Hensley, Holland, Huntington, Kelly, Kultala, Longbine, Marshall, McGinn, Morris, Owens, Reitz, A. Schmidt, V. Schmidt, Schodorf, Teichman, Umbarger, Vratil.

Nays: Abrams, Apple, Bruce, Donovan, Kelsey, King, Love, Masterson, Merrick, Olson, Ostmeyer, Petersen, Pilcher-Cook, Pyle, Steineger, Taddiken, Wagle.

Absent or Not Voting: Emler, Lynn.

The substitute bill passed, as amended.

EXPLANATION OF VOTE

MR. PRESIDENT: The reapportionment map being considered today is being presented merely to create evidence and dicta for courts & Judges to consider. It should be considered as manufactured evidence. This map was drawn in secret by a very limited number of Senators likely fewer than five.

The Abrams map: “For the People #12” was reviewed and given input by a majority of Republican Senators, and perhaps several Democrat Senators, and was altered to include said input. The Steineger map: “Mona Lisa” was reviewed and given input by all 32 Senate Republicans, and at least 4 Senate Democrats, and said map was altered to agree with said input. Neither map involves consolidation of Senate Districts.

Openness and inclusiveness are clear signs of a desire to be fair and non partisan.

The Bison map, drawn by few, without input from any majority of Senators, and which results in a consolidation of districts, clearly is gerrymandering and should be rejected. – CHRIS STEINEGER

Senators Masterson and Pilcher-Cook request the record to show they concur with the “Explanation of Vote” offered by Senator Steineger on **S Sub for HB 2087**.

REPORT ON ENROLLED BILLS

SR 1884 reported correctly enrolled, properly signed and presented to the Secretary of the Senate on May 18, 2012.

H Sub for Sub SB 148; SB 306, SB 334 reported correctly enrolled, properly signed and presented to the Governor on May 18, 2012.

MESSAGE FROM THE HOUSE

The House concurs in Senate amendments to **HB 2729**, and requests return of the bill.

The House announced the appointment of Representative Schwartz to replace Representative Rhoades as a conferee on **House Substitute for SB 294**.

The House announced the appointment of Representative Aurand to replace Representative O’Neal as a conferee on **House Substitute for SB 28**.

The House announced the appointment of Representatives Kinzer, Patton and Pauls to replace Representatives Shultz, Hermanson and Grant as conferees on **HB 2494**.

On motion of Senator V. Schmidt, the Senate adjourned until 10:00 a.m., Saturday, May 19, 2012.

HELEN MORELAND, ROSE MARIE GLATT, SHIRLEY LAMOTT, *Journal Clerks.*

PAT SAVILLE, *Secretary of the Senate.*

