

SENATE BILL No. 453

By Committee on Federal and State Affairs

3-5

1 AN ACT concerning driving under the influence; ***creating the crime of***  
2 ***refusing to submit to a test to determine the presence of alcohol or***  
3 ***drugs***; relating to administrative penalties; crimes, punishment and  
4 criminal procedure; amending K.S.A. 8-241 and K.S.A. 2011 Supp. 8-  
5 2,144, 8-1008, 8-1014, 8-1015, 8-1020 and 8-1567, ***8-1501, 12-4413***  
6 ***and 22-2910 and K.S.A. 2011 Supp. 8-235, 8-262, 8-285, 8-2,144, 8-***  
7 ***1001, 8-1008, 8-1013, 8-1014, 8-1015, 8-1020, 8-1567, 12-4106, 12-***  
8 ***4414, 12-4415, 12-4416, 12-4517, 21-5203, 21-6804, 22-2802, 22-***  
9 ***2908, 22-2909, 22-4704, 60-427 and 74-2012*** and repealing the  
10 existing sections; also repealing K.S.A. 2011 Supp. 8-1020b ***and 22-***  
11 ***2909c.***  
12

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

14 *New Section 1. On and after July 1, 2012, the amount of \$250 from*  
15 *each fine imposed for a violation of a city ordinance prohibiting the acts*  
16 *prohibited by K.S.A. 8-1567 or 8-2,144 or section 2, and amendments*  
17 *thereto, shall be remitted by the judge or clerk of the municipal court to*  
18 *the state treasurer in accordance with the provisions of K.S.A. 75-4215,*  
19 *and amendments thereto. Upon receipt of such remittance, the state*  
20 *treasurer shall credit the entire amount to the community corrections*  
21 *supervision fund established by K.S.A. 2011 Supp. 75-52,113, and*  
22 *amendments thereto.*

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

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

29 *(A) On a first conviction a class B, nonperson misdemeanor. The*  
30 *person convicted shall be sentenced to not less than 48 consecutive*  
31 *hours nor more than six months' imprisonment, or in the court's*  
32 *discretion 100 hours of public service, and fined not less than \$750 nor*  
33 *more than \$1,000. The person convicted shall serve at least 48*  
34 *consecutive hours' imprisonment or 100 hours of public service either*  
35 *before or as a condition of any grant of probation or suspension,*  
36 *reduction of sentence or parole. The court may place the person*

1 convicted under a house arrest program pursuant to K.S.A. 2011 Supp.  
2 21-6609, and amendments thereto, to serve the remainder of the  
3 minimum sentence only after such person has served 48 consecutive  
4 hours' imprisonment;

5 (B) on a second conviction a class A, nonperson misdemeanor. The  
6 person convicted shall be sentenced to not less than 90 days nor more  
7 than one year's imprisonment and fined not less than \$1,250 nor more  
8 than \$1,750. The person convicted shall serve at least five consecutive  
9 days' imprisonment before the person is granted probation, suspension  
10 or reduction of sentence or parole or is otherwise released. The five  
11 days' imprisonment mandated by this subsection may be served in a  
12 work release program only after such person has served 48 consecutive  
13 hours' imprisonment, provided such work release program requires such  
14 person to return to confinement at the end of each day in the work  
15 release program. The person convicted, if placed into a work release  
16 program, shall serve a minimum of 120 hours of confinement. Such 120  
17 hours of confinement shall be a period of at least 48 consecutive hours  
18 of imprisonment followed by confinement hours at the end of and  
19 continuing to the beginning of the offender's work day. The court may  
20 place the person convicted under a house arrest program pursuant to  
21 K.S.A. 2011 Supp. 21-6609, and amendments thereto, to serve the  
22 remainder of the minimum sentence only after such person has served  
23 48 consecutive hours' imprisonment. The person convicted, if placed  
24 under house arrest, shall be monitored by an electronic monitoring  
25 device, which verifies the offender's location. The offender shall serve a  
26 minimum of 120 hours of confinement within the boundaries of the  
27 offender's residence. Any exceptions to remaining within the boundaries  
28 of the offender's residence provided for in the house arrest agreement  
29 shall not be counted as part of the 120 hours;

30 (C) on a third conviction a class A, nonperson misdemeanor, except  
31 as provided in subsection (b)(1)(D). The person convicted shall be  
32 sentenced to not less than 90 days nor more than one year's  
33 imprisonment and fined not less than \$1,750 nor more than \$2,500. The  
34 person convicted shall not be eligible for release on probation,  
35 suspension or reduction of sentence or parole until the person has  
36 served at least 90 days' imprisonment. The 90 days' imprisonment  
37 mandated by this subsection may be served in a work release program  
38 only after such person has served 48 consecutive hours' imprisonment,  
39 provided such work release program requires such person to return to  
40 confinement at the end of each day in the work release program. The  
41 person convicted, if placed into a work release program, shall serve a  
42 minimum of 2,160 hours of confinement. Such 2,160 hours of  
43 confinement shall be a period of at least 48 consecutive hours of

1 *imprisonment followed by confinement hours at the end of and*  
2 *continuing to the beginning of the offender's work day. The court may*  
3 *place the person convicted under a house arrest program pursuant to*  
4 *K.S.A. 2011 Supp. 21-6609, and amendments thereto, to serve the*  
5 *remainder of the minimum sentence only after such person has served*  
6 *48 consecutive hours' imprisonment. The person convicted, if placed*  
7 *under house arrest, shall be monitored by an electronic monitoring*  
8 *device, which verifies the offender's location. The offender shall serve a*  
9 *minimum of 2,160 hours of confinement within the boundaries of the*  
10 *offender's residence. Any exceptions to remaining within the boundaries*  
11 *of the offender's residence provided for in the house arrest agreement*  
12 *shall not be counted as part of the 2,160 hours;*

13 *(D) on a third conviction a nonperson felony if the person has a*  
14 *prior conviction which occurred within the preceding 10 years, not*  
15 *including any period of incarceration. The person convicted shall be*  
16 *sentenced to not less than 90 days nor more than one year's*  
17 *imprisonment and fined not less than \$1,750 nor more than \$2,500. The*  
18 *person convicted shall not be eligible for release on probation,*  
19 *suspension or reduction of sentence or parole until the person has*  
20 *served at least 90 days' imprisonment. The 90 days' imprisonment*  
21 *mandated by this subsection may be served in a work release program*  
22 *only after such person has served 48 consecutive hours' imprisonment,*  
23 *provided such work release program requires such person to return to*  
24 *confinement at the end of each day in the work release program. The*  
25 *person convicted, if placed into a work release program, shall serve a*  
26 *minimum of 2,160 hours of confinement. Such 2,160 hours of*  
27 *confinement shall be a period of at least 48 consecutive hours of*  
28 *imprisonment followed by confinement hours at the end of and*  
29 *continuing to the beginning of the offender's work day. The court may*  
30 *place the person convicted under a house arrest program pursuant to*  
31 *K.S.A. 2011 Supp. 21-6609, and amendments thereto, to serve the*  
32 *remainder of the minimum sentence only after such person has served*  
33 *48 consecutive hours' imprisonment. The person convicted, if placed*  
34 *under house arrest, shall be monitored by an electronic monitoring*  
35 *device, which verifies the offender's location. The offender shall serve a*  
36 *minimum of 2,160 hours of confinement within the boundaries of the*  
37 *offender's residence. Any exceptions to remaining within the boundaries*  
38 *of the offender's residence provided for in the house arrest agreement*  
39 *shall not be counted as part of the 2,160 hours; and*

40 *(E) on a fourth or subsequent conviction a nonperson felony. The*  
41 *person convicted shall be sentenced to not less than 90 days nor more*  
42 *than one year's imprisonment and fined \$2,500. The person convicted*  
43 *shall not be eligible for release on probation, suspension or reduction of*

1 *sentence or parole until the person has served at least 90 days'*  
2 *imprisonment. The 90 days' imprisonment mandated by this paragraph*  
3 *may be served in a work release program only after such person has*  
4 *served 72 consecutive hours' imprisonment, provided such work release*  
5 *program requires such person to return to confinement at the end of*  
6 *each day in the work release program. The person convicted, if placed*  
7 *into a work release program, shall serve a minimum of 2,160 hours of*  
8 *confinement. Such 2,160 hours of confinement shall be a period of at*  
9 *least 72 consecutive hours of imprisonment followed by confinement*  
10 *hours at the end of and continuing to the beginning of the offender's*  
11 *work day. The court may place the person convicted under a house*  
12 *arrest program pursuant to K.S.A. 2011 Supp. 21-6609, and*  
13 *amendments thereto, to serve the remainder of the minimum sentence*  
14 *only after such person has served 72 consecutive hours' imprisonment.*  
15 *The person convicted, if placed under house arrest, shall be monitored*  
16 *by an electronic monitoring device, which verifies the offender's*  
17 *location. The offender shall serve a minimum of 2,160 hours of*  
18 *confinement within the boundaries of the offender's residence. Any*  
19 *exceptions to remaining within the boundaries of the offender's*  
20 *residence provided for in the house arrest agreement shall not be*  
21 *counted as part of the 2,160 hours.*

22 (2) *The court may order that the term of imprisonment imposed*  
23 *pursuant to subsection (b)(1)(D) or (b)(1)(E) be served in a state facility*  
24 *in the custody of the secretary of corrections in a facility designated by*  
25 *the secretary for the provision of substance abuse treatment pursuant to*  
26 *the provisions of K.S.A. 2011 Supp. 21-6804, and amendments thereto.*  
27 *The person shall remain imprisoned at the state facility only while*  
28 *participating in the substance abuse treatment program designated by*  
29 *the secretary and shall be returned to the custody of the sheriff for*  
30 *execution of the balance of the term of imprisonment upon completion*  
31 *of or the person's discharge from the substance abuse treatment*  
32 *program. Custody of the person shall be returned to the sheriff for*  
33 *execution of the sentence imposed in the event the secretary of*  
34 *corrections determines: (A) That substance abuse treatment resources or*  
35 *the capacity of the facility designated by the secretary for the*  
36 *incarceration and treatment of the person is not available; (B) the*  
37 *person fails to meaningfully participate in the treatment program of the*  
38 *designated facility; (C) the person is disruptive to the security or*  
39 *operation of the designated facility; or (D) the medical or mental health*  
40 *condition of the person renders the person unsuitable for confinement at*  
41 *the designated facility. The determination by the secretary that the*  
42 *person either is not to be admitted into the designated facility or is to be*  
43 *transferred from the designated facility is not subject to review. The*

1 *sheriff shall be responsible for all transportation expenses to and from*  
2 *the state correctional facility.*

3 *(3) In addition, for any conviction pursuant to subsection (b)(1)(C),*  
4 *(b)(1)(D) or (b)(1) (E), at the time of the filing of the judgment form or*  
5 *journal entry as required by K.S.A. 22-3426 or K.S.A. 2011 Supp. 21-*  
6 *6711, and amendments thereto, the court shall cause a certified copy to*  
7 *be sent to the officer having the offender in charge. The court shall*  
8 *determine whether the offender, upon release from imprisonment, shall*  
9 *be supervised by community correctional services or court services based*  
10 *upon the risk and needs of the offender. The risk and needs of the*  
11 *offender shall be determined by use of a risk assessment tool specified by*  
12 *the Kansas sentencing commission. The law enforcement agency*  
13 *maintaining custody and control of a defendant for imprisonment shall*  
14 *cause a certified copy of the judgment form or journal entry to be sent to*  
15 *the supervision office designated by the court and upon expiration of the*  
16 *term of imprisonment shall deliver the defendant to a location*  
17 *designated by the supervision office designated by the court. After the*  
18 *term of imprisonment imposed by the court, the person shall be placed*  
19 *on supervision to community correctional services or court services, as*  
20 *determined by the court, for a mandatory one-year period of supervision,*  
21 *which such period of supervision shall not be reduced. During such*  
22 *supervision, the person shall be required to participate in a*  
23 *multidisciplinary model of services for substance use disorders*  
24 *facilitated by a department of social and rehabilitation services*  
25 *designated care coordination agency to include assessment and, if*  
26 *appropriate, referral to a community based substance use disorder*  
27 *treatment including recovery management and mental health counseling*  
28 *as needed. The multidisciplinary team shall include the designated care*  
29 *coordination agency, the supervision officer, the social and*  
30 *rehabilitation services department designated treatment provider and the*  
31 *offender. Any violation of the conditions of such supervision may subject*  
32 *such person to revocation of supervision and imprisonment in jail for*  
33 *the remainder of the period of imprisonment, the remainder of the*  
34 *supervision period, or any combination or portion thereof.*

35 *(4) In addition, prior to sentencing for any conviction, the court*  
36 *shall order the person to participate in an alcohol and drug evaluation*  
37 *conducted by a provider in accordance with K.S.A. 8-1008, and*  
38 *amendments thereto. The person shall be required to follow any*  
39 *recommendation made by the provider after such evaluation, unless*  
40 *otherwise ordered by the court.*

41 *(c) Any person convicted of violating this section or an ordinance*  
42 *which prohibits the acts that this section prohibits who had one or more*  
43 *children under the age of 14 years in the vehicle at the time of the*

1 *offense shall have such person's punishment enhanced by one month of*  
2 *imprisonment. This imprisonment must be served consecutively to any*  
3 *other minimum mandatory penalty imposed for a violation of this*  
4 *section or an ordinance which prohibits the acts that this section*  
5 *prohibits. Any enhanced penalty imposed shall not exceed the maximum*  
6 *sentence allowable by law. During the service of the enhanced penalty,*  
7 *the judge may order the person on house arrest, work release or other*  
8 *conditional release.*

9 *(d) The court may establish the terms and time for payment of any*  
10 *finest, fees, assessments and costs imposed pursuant to this section. Any*  
11 *assessments and costs shall be required to be paid not later than 90 days*  
12 *after imposed, and any remainder of the fine shall be paid prior to the*  
13 *final release of the defendant by the court.*

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

24 *(f) Prior to filing a complaint alleging a violation of this section, a*  
25 *prosecutor shall request and shall receive from the:*

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

29 *(2) Kansas bureau of investigation central repository all criminal*  
30 *history record information concerning such person.*

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

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

41 *(1) Convictions for a violation of K.S.A. 8-1567, and amendments*  
42 *thereto, or a violation of an ordinance of any city or resolution of any*  
43 *county which prohibits the acts that such section prohibits, or entering*

1 *into a diversion agreement in lieu of further criminal proceedings on a*  
2 *complaint alleging any such violations, shall be taken into account, but*  
3 *only convictions or diversions occurring: (A) On or after July 1, 2001;*  
4 *and (B) when such person was 18 years of age or older. Nothing in this*  
5 *provision shall be construed as preventing any court from considering*  
6 *any convictions or diversions occurring during the person's lifetime in*  
7 *determining the sentence to be imposed within the limits provided for a*  
8 *first, second, third, fourth or subsequent offender;*

9 *(2) any convictions for a violation of the following sections which*  
10 *occurred during a person's lifetime shall be taken into account, but only*  
11 *convictions occurring when such person was 18 years of age or older:*  
12 *(A) This section; (B) driving a commercial motor vehicle under the*  
13 *influence, K.S.A. 8-2,144, and amendments thereto; (C) operating a*  
14 *vessel under the influence of alcohol or drugs, K.S.A. 32-1131, and*  
15 *amendments thereto; (D) involuntary manslaughter while driving under*  
16 *the influence of alcohol or drugs, K.S.A. 21-3442, prior to its repeal, or*  
17 *subsection (a)(3) of K.S.A. 2011 Supp. 21-5405, and amendments*  
18 *thereto; and (E) aggravated vehicular homicide, K.S.A. 21-3405a, prior*  
19 *to its repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if*  
20 *the crime was committed while committing a violation of K.S.A. 8-1567,*  
21 *and amendments thereto;*

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

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

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

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

41 *(i) Upon conviction of a person of a violation of this section or a*  
42 *violation of a city ordinance or county resolution prohibiting the acts*  
43 *prohibited by this section, the division, upon receiving a report of*

1 *conviction, shall suspend, restrict or suspend and restrict the person's*  
2 *driving privileges as provided by K.S.A. 8-1014, and amendments*  
3 *thereto.*

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

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

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

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

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

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

31 *(B) Kansas bureau of investigation central repository all criminal*  
32 *history record information concerning such person.*

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

37 *(l) No plea bargaining agreement shall be entered into nor shall*  
38 *any judge approve a plea bargaining agreement entered into for the*  
39 *purpose of permitting a person charged with a violation of this section,*  
40 *or a violation of any ordinance of a city or resolution of any county in*  
41 *this state which prohibits the acts prohibited by this section, to avoid the*  
42 *mandatory penalties established by this section or by the ordinance. For*  
43 *the purpose of this subsection, entering into a diversion agreement*



1 *pursuant to K.S.A. 12-4413 et seq. or 22-2906 et seq., and amendments*  
2 *thereto, shall not constitute plea bargaining.*

3 *(m) As used in this section, "imprisonment" shall include any*  
4 *restrained environment in which the court and law enforcement agency*  
5 *intend to retain custody and control of a defendant and such*  
6 *environment has been approved by the board of county commissioners*  
7 *or the governing body of a city.*

8 *(n) On and after July 1, 2012, the amount of \$250 from each fine*  
9 *imposed pursuant to this section shall be remitted by the clerk of the*  
10 *district court to the state treasurer in accordance with the provisions of*  
11 *K.S.A. 75-4215, and amendments thereto. Upon receipt of such*  
12 *remittance, the state treasurer shall credit the entire amount to the*  
13 *community corrections supervision fund established by K.S.A. 2011*  
14 *Supp. 75-52,113, and amendments thereto.*

15 *Sec. 3. K.S.A. 2011 Supp. 8-235 is hereby amended to read as*  
16 *follows: 8-235. (a) No person, except those expressly exempted, shall*  
17 *drive any motor vehicle upon a highway in this state unless such person*  
18 *has a valid driver's license. No person shall receive a driver's license*  
19 *unless and until such person surrenders or with the approval of the*  
20 *division, lists to the division all valid licenses in such person's possession*  
21 *issued to such person by any other jurisdiction. All surrendered licenses*  
22 *or the information listed on foreign licenses shall be returned by the*  
23 *division to the issuing department, together with information that the*  
24 *licensee is now licensed in a new jurisdiction. No person shall be*  
25 *permitted to have more than one valid license at any time.*

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

43 *(c) Any person operating in this state a motor vehicle, except a*

1 *motorcycle, which is registered in this state other than under a*  
2 *temporary thirty-day permit shall be the holder of a driver's license*  
3 *which is classified for the operation of such motor vehicle, and any*  
4 *person operating in this state a motorcycle which is registered in this*  
5 *state shall be the holder of a class M driver's license, except that any*  
6 *person operating in this state a motorcycle which is registered under a*  
7 *temporary thirty-day permit shall be the holder of a driver's license for*  
8 *any class of motor vehicles.*

9 *(d) No person shall drive any motorized bicycle upon a highway of*  
10 *this state unless: (1) Such person has a valid driver's license which*  
11 *entitles the licensee to drive a motor vehicle in any class or classes; (2)*  
12 *such person is at least 15 years of age and has passed the written and*  
13 *visual examinations required for obtaining a class C driver's license, in*  
14 *which case the division shall issue to such person a class C license*  
15 *which clearly indicates such license is valid only for the operation of*  
16 *motorized bicycles; or (3) such person has had their driving privileges*  
17 *suspended, for a violation other than a violation of K.S.A. 8-2,144, 8-*  
18 *1567 or 8-1567a or section 2, and amendments thereto, and has made*  
19 *application to the division for the issuance of a class C license for the*  
20 *operation of motorized bicycles, in accordance with paragraph (2), in*  
21 *which case the division shall issue to such person a class C license*  
22 *which clearly indicates such license is valid only for the operation of*  
23 *motorized bicycles.*

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

25 ~~Section 1.~~ **Sec. 4.** K.S.A. 8-241 is hereby amended to read as follows:  
26 8-241. (a) Except as provided in K.S.A. 8-2,125 through 8-2,142, and  
27 amendments thereto, any person licensed to operate a motor vehicle in this  
28 state shall submit to an examination whenever: (1) The division of vehicles  
29 has good cause to believe that such person is incompetent or otherwise not  
30 qualified to be licensed; or (2) the division of vehicles has suspended such  
31 person's license pursuant to K.S.A. 8-1014, and amendments thereto, as  
32 the result of a test refusal, test failure or conviction for a violation of  
33 K.S.A. 8-1567, and amendments thereto, or a violation a of city ordinance  
34 or county resolution prohibiting the acts prohibited by K.S.A. 8-1567, and  
35 amendments thereto, except that no person shall have to submit to and  
36 successfully complete an examination more than once as the result of  
37 separate suspensions arising out of the same occurrence.

38 (b) When a person is required to submit to an examination pursuant  
39 to subsection (a)(1), the fee for such examination shall be in the amount  
40 provided by K.S.A 8-240, and amendments thereto. When a person is  
41 required to submit to an examination pursuant to subsection (a)(2), the fee  
42 for such examination shall be \$25. In addition, any person required to  
43 submit to an examination pursuant to subsection (a)(2): (1) As the result of

1 a test failure, a conviction for a violation of K.S.A. 8-1567, and  
2 amendments thereto, or a violation of a city ordinance or county resolution  
3 prohibiting the acts prohibited by K.S.A. 8-1567, and amendments thereto,  
4 shall be required, at the time of examination, to pay a reinstatement fee of  
5 \$100 after the first occurrence, \$200 after the second occurrence, \$300  
6 after the third occurrence and \$400 after the fourth *or subsequent*  
7 occurrence; and (2) as a result of a test refusal, ***a conviction for a***  
8 ***violation of section 2, and amendments thereto, or a violation of a city***  
9 ***ordinance or county resolution prohibiting the acts prohibited by section***  
10 ***2, and amendments thereto***, shall be required, at the time of examination,  
11 to pay a reinstatement fee of \$400 after the first occurrence, \$600 after the  
12 second occurrence, \$800 after the third occurrence and \$1,000 after the  
13 fourth *or subsequent* occurrence. ~~No reinstatement shall be allowed after~~  
14 ~~the fifth or subsequent occurrence under either subsection (b)(1) or (b)(2).~~  
15 All examination fees collected pursuant to this section shall be remitted to  
16 the state treasurer, in accordance with the provisions of K.S.A. 75-4215,  
17 and amendments thereto, who shall deposit the entire amount in the state  
18 treasury and credit 80% to the state highway fund and 20% shall be  
19 disposed of as provided in K.S.A. 8-267, and amendments thereto. All  
20 reinstatement fees collected pursuant to this section shall be remitted to the  
21 state treasurer, in accordance with the provisions of K.S.A. 75-4215, and  
22 amendments thereto, who shall deposit the entire amount in the state  
23 treasury and credit 50% to the community alcoholism and intoxication  
24 programs fund created pursuant to K.S.A. 41-1126, and amendments  
25 thereto, 20% to the juvenile detention facilities fund created by K.S.A. 79-  
26 4803, and amendments thereto, 20% to the forensic laboratory and  
27 materials fee fund cited in K.S.A. 28-176, and amendments thereto, and  
28 10% to the driving under the influence equipment fund created by K.S.A.  
29 75-5660, and amendments thereto. Moneys credited to the forensic  
30 laboratory and materials fee fund as provided herein shall be used to  
31 supplement existing appropriations and shall not be used to supplant  
32 general fund appropriations to the Kansas bureau of investigation.

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

43 (d) Refusal or neglect of the licensee to submit to an examination as

1 required by this section shall be grounds for suspension or revocation of  
2 the license.

3 ***Sec. 5. K.S.A. 2011 Supp. 8-262 is hereby amended to read as***  
4 ***follows: 8-262. (a) (1) Any person who drives a motor vehicle on any***  
5 ***highway of this state at a time when such person's privilege so to do is***  
6 ***canceled, suspended or revoked or while such person's privilege to***  
7 ***obtain a driver's license is suspended or revoked pursuant to K.S.A. 8-***  
8 ***252a, and amendments thereto, shall be guilty of a class B nonperson***  
9 ***misdeemeanor on the first conviction and a class A nonperson***  
10 ***misdeemeanor on the second or subsequent conviction.***

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

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

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

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

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

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

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

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

9 (C) *was convicted of vehicular homicide, K.S.A. 21-3405, prior to*  
10 *its repeal, or K.S.A. 2011 Supp. 21-5406, and amendments thereto,*  
11 *involuntary manslaughter while driving under the influence of alcohol*  
12 *or drugs, K.S.A. 21-3442, prior to its repeal, or involuntary*  
13 *manslaughter as defined in subsection (a)(3) of K.S.A. 2011 Supp. 21-*  
14 *5405, and amendments thereto, or any other murder or manslaughter*  
15 *crime resulting from the operation of a motor vehicle; or*

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

18 (2) *The person convicted shall not be eligible for release on*  
19 *probation, suspension or reduction of sentence or parole until the*  
20 *person has served at least 90 days' imprisonment. The 90 days'*  
21 *imprisonment mandated by this subsection may be served in a work*  
22 *release program only after such person has served 48 consecutive hours'*  
23 *imprisonment, provided such work release program requires such*  
24 *person to return to confinement at the end of each day in the work*  
25 *release program. The court may place the person convicted under a*  
26 *house arrest program pursuant to K.S.A. 2011 Supp. 21-6609, and*  
27 *amendments thereto, or any municipal ordinance to serve the remainder*  
28 *of the minimum sentence only after such person has served 48*  
29 *consecutive hours' imprisonment.*

30 (d) *For the purposes of determining whether a conviction is a first,*  
31 *second, third or subsequent conviction in sentencing under this section,*  
32 *"conviction" includes a conviction of a violation of any ordinance of*  
33 *any city or resolution of any county or a law of another state which is in*  
34 *substantial conformity with this section.*

35 *Sec. 6. K.S.A. 2011 Supp. 8-285 is hereby amended to read as*  
36 *follows: 8-285. Except as otherwise provided in this section, as used in*  
37 *this act, the words and phrases defined in K.S.A. 8-234a, and*  
38 *amendments thereto, shall have the meanings ascribed to them therein.*  
39 *The term "habitual violator" means any resident or nonresident person*  
40 *who, within the immediately preceding five years, has been convicted in*  
41 *this or any other state:*

42 (a) *Three or more times of:*

43 (1) *Vehicular homicide, as defined by K.S.A. 21-3405, prior to its*

1 *repeal, or K.S.A. 2011 Supp. 21-5406, and amendments thereto, or as*  
2 *prohibited by any ordinance of any city in this state, any resolution of*  
3 *any county in this state or any law of another state which is in*  
4 *substantial conformity with that statute;*

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

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

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

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

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

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

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

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

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

41 *For the purpose of subsection (a)(2) and (a)(9), in addition to the*  
42 *definition of "conviction" otherwise provided by law, conviction*  
43 *includes, but is not limited to, a diversion agreement entered into in lieu*

1 *of further criminal proceedings, or a plea of nolo contendere, on a*  
 2 *complaint, indictment, information, citation or notice to appear alleging*  
 3 *a violation of K.S.A. 8-1567 or section 2, and amendments thereto, or an*  
 4 *ordinance of a city in this state, a resolution of a county in this state or*  
 5 *law of another state, which ordinance or law prohibits the acts*  
 6 *prohibited by that statute those statutes.*

7 Sec. 7. K.S.A. 2011 Supp. 8-2,144 is hereby amended to read as  
 8 follows: 8-2,144. (a) Driving a commercial motor vehicle under the  
 9 influence is operating or attempting to operate any commercial motor  
 10 vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, within this  
 11 state while:

12 (1) The alcohol concentration in the person's blood or breath, as  
 13 shown by any competent evidence, including other competent evidence, as  
 14 defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and  
 15 amendments thereto, is .04 or more;

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

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

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

23 (A) On a first conviction a class B, nonperson misdemeanor. The  
 24 person convicted shall be sentenced to not less than 48 consecutive hours  
 25 nor more than six months' imprisonment, or in the court's discretion, 100  
 26 hours of public service, and fined not less than ~~\$750~~ ~~\$500~~ **\$750** nor more  
 27 than \$1,000. The person convicted shall serve at least 48 consecutive  
 28 hours' imprisonment or 100 hours of public service either before or as a  
 29 condition of any grant of probation, suspension or reduction of sentence or  
 30 parole or other release;

31 (B) on a second conviction a class A, nonperson misdemeanor. The  
 32 person convicted shall be sentenced to not less than 90 days nor more than  
 33 one year's imprisonment and fined not less than ~~\$1,250~~ ~~\$1,000~~ **\$1,250** nor  
 34 more than ~~\$1,750~~ ~~\$1,500~~ **\$1,750**. The person convicted shall serve at least  
 35 five consecutive days' imprisonment before the person is granted  
 36 probation, suspension or reduction of sentence or parole or is otherwise  
 37 released. The five days' imprisonment mandated by this subsection may be  
 38 served in a work release program only after such person has served 48  
 39 consecutive hours' imprisonment, provided such work release program  
 40 requires such person to return to confinement at the end of each day in the  
 41 work release program. The person convicted, if placed into a work release  
 42 program, shall serve a minimum of 120 hours of confinement. Such 120  
 43 hours of confinement shall be a period of at least 48 consecutive hours of

1 imprisonment followed by confinement hours at the end of and continuing  
2 to the beginning of the offender's work day. The court may place the  
3 person convicted under a house arrest program pursuant to K.S.A. 2011  
4 Supp. 21-6609, and amendments thereto, to serve the remainder of the  
5 minimum sentence only after such person has served 48 consecutive hours'  
6 imprisonment. The person convicted, if placed under house arrest, shall be  
7 monitored by an electronic monitoring device, which verifies the  
8 offender's location. The offender shall serve a minimum of 120 hours of  
9 confinement within the boundaries of the offender's residence. Any  
10 exceptions to remaining within the boundaries of the offender's residence  
11 provided for in the house arrest agreement shall not be counted as part of  
12 the 120 hours; and

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

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

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



1 this section, who had one or more children under the age of 14 years in the  
2 vehicle at the time of the offense shall have such person's punishment  
3 enhanced by one month of imprisonment. This imprisonment shall be  
4 served consecutively to any other minimum mandatory penalty imposed  
5 for a violation of this section, or a violation of a city ordinance or county  
6 resolution prohibiting the acts prohibited by this section. Any enhanced  
7 penalty imposed shall not exceed the maximum sentence allowable by law.  
8 During the service of the enhanced penalty, the judge may order the person  
9 on house arrest, work release or other conditional release.

10 (d) If a person is charged with a violation of this section involving  
11 drugs, the fact that the person is or has been entitled to use the drug under  
12 the laws of this state shall not constitute a defense against the charge.

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

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

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

34 (h) The court shall electronically report every conviction of a  
35 violation of this section and every diversion agreement entered into in lieu  
36 of further criminal proceedings on a complaint alleging a violation of this  
37 section to the division. Prior to sentencing under the provisions of this  
38 section, the court shall request and shall receive from the: (1) Division a  
39 record of all prior convictions obtained against such person for any  
40 violation of any of the motor vehicle laws of this state; and (2) Kansas  
41 bureau of investigation central repository all criminal history record  
42 information concerning such person.

43 (i) Upon conviction of a person of a violation of this section or a

1 violation of a city ordinance or county resolution prohibiting the acts  
2 prohibited by this section, the division, upon receiving a report of  
3 conviction, shall: (1) Disqualify the person from driving a commercial  
4 motor vehicle under K.S.A. 8-2,142, and amendments thereto; and (2)  
5 suspend, restrict or suspend and restrict the person's driving privileges as  
6 provided by K.S.A. 8-1014, and amendments thereto.

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

12 (2) The minimum penalty prescribed by any such ordinance or  
13 resolution shall not be less than the minimum penalty prescribed by this  
14 section for the same violation, and the maximum penalty in any such  
15 ordinance or resolution shall not exceed the maximum penalty prescribed  
16 for the same violation.

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

20 (k) (1) Upon the filing of a complaint, citation or notice to appear  
21 alleging a person has violated a city ordinance prohibiting the acts  
22 prohibited by this section, and prior to conviction thereof, a city attorney  
23 shall request and shall receive from the: (A) Division of vehicles a record  
24 of all prior convictions obtained against such person for any violations of  
25 any of the motor vehicle laws of this state; and (B) Kansas bureau of  
26 investigation central repository all criminal history record information  
27 concerning such person.

28 (2) If the elements of such ordinance violation are the same as the  
29 elements of a violation of this section that would constitute, and be  
30 punished as, a felony, the city attorney shall refer the violation to the  
31 appropriate county or district attorney for prosecution. The county or  
32 district attorney shall accept such referral and pursue a disposition of such  
33 violation, and shall not refer any such violation back to the city attorney.

34 (l) No plea bargaining agreement shall be entered into nor shall any  
35 judge approve a plea bargaining agreement entered into for the purpose of  
36 permitting a person charged with a violation of this section, or a violation  
37 of any ordinance of a city or resolution of any county in this state which  
38 prohibits the acts prohibited by this section, to avoid the mandatory  
39 penalties established by this section or by the ordinance or resolution.

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

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

3 ~~(1) "Conviction" includes being convicted of a violation of a law of~~  
4 ~~another state or an ordinance of any city, or resolution of any county,~~  
5 ~~which prohibits the acts that this section prohibits;~~

6 ~~(2) any convictions occurring during a person's lifetime shall be taken~~  
7 ~~into account when determining the sentence to be imposed for a first,~~  
8 ~~second, third or subsequent offender; and~~

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

11 *(1) Convictions for a violation of K.S.A. 8-1567, and amendments*  
12 *thereto, or a violation of an ordinance of any city or resolution of any*  
13 *county which prohibits the acts that such section prohibits, or entering*  
14 *into a diversion agreement in lieu of further criminal proceedings on a*  
15 *complaint alleging any such violations, shall be taken into account, but*  
16 *only convictions or diversions occurring on or after July 1, 2001.*  
17 *Nothing in this provision shall be construed as preventing any court*  
18 *from considering any convictions or diversions occurring during the*  
19 *person's lifetime in determining the sentence to be imposed within the*  
20 *limits provided for a first, second, third, fourth or subsequent offender;*

21 *(2) any convictions for a violation of the following sections*  
22 *occurring during a person's lifetime shall be taken into account: (A)*  
23 *This section; (B) refusing to submit to a test to determine the presence of*  
24 *alcohol or drugs, section 2, and amendments thereto; (C) operating a*  
25 *vessel under the influence of alcohol or drugs, K.S.A. 32-1131, and*  
26 *amendments thereto; (D) involuntary manslaughter while driving under*  
27 *the influence of alcohol or drugs, K.S.A. 21-3442, prior to its repeal, or*  
28 *subsection (a)(3) of K.S.A. 2011 Supp. 21-5405, and amendments*  
29 *thereto; and (E) aggravated vehicular homicide, K.S.A. 21-3405a, prior*  
30 *to its repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if*  
31 *the crime was committed while committing a violation of K.S.A. 8-1567,*  
32 *and amendments thereto;*

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

43 *(4) it is irrelevant whether an offense occurred before or after*

1 *conviction for a previous offense; and*

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

5 (o) For the purpose of this section:

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

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

12 (3) "drug" includes toxic vapors as such term is defined in K.S.A.  
13 2011 Supp. 21-5712, and amendments thereto.

14 ~~(p) On and after July 1, 2011, the amount of \$250 from each fine~~  
15 ~~imposed pursuant to this section shall be remitted by the clerk of the~~  
16 ~~district court to the state treasurer in accordance with the provisions of~~  
17 ~~K.S.A. 75-4215, and amendments thereto. Upon receipt of such~~  
18 ~~remittance, the state treasurer shall credit the entire amount to the~~  
19 ~~community corrections supervision fund established by K.S.A. 2011 Supp.~~  
20 ~~75-52,113, and amendments thereto.~~

21 *(p) On and after July 1, 2011, the amount of \$250 from each fine*  
22 *imposed pursuant to this section shall be remitted by the clerk of the*  
23 *district court to the state treasurer in accordance with the provisions of*  
24 *K.S.A. 75-4215, and amendments thereto. Upon receipt of such*  
25 *remittance, the state treasurer shall credit the entire amount to the*  
26 *community corrections supervision fund established by K.S.A. 2011*  
27 *Supp. 75-52,113, and amendments thereto.*

28 *Sec. 8. K.S.A. 2011 Supp. 8-1001 is hereby amended to read as*  
29 *follows: 8-1001. (a) Any person who operates or attempts to operate a*  
30 *vehicle within this state is deemed to have given consent, subject to the*  
31 *provisions of this act, to submit to one or more tests of the person's*  
32 *blood, breath, urine or other bodily substance to determine the presence*  
33 *of alcohol or drugs. The testing deemed consented to herein shall*  
34 *include all quantitative and qualitative tests for alcohol and drugs. A*  
35 *person who is dead or unconscious shall be deemed not to have*  
36 *withdrawn the person's consent to such test or tests, which shall be*  
37 *administered in the manner provided by this section.*

38 *(b) A law enforcement officer shall request a person to submit to a*  
39 *test or tests deemed consented to under subsection (a): (1) If the officer*  
40 *has reasonable grounds to believe the person was operating or*  
41 *attempting to operate a vehicle while under the influence of alcohol or*  
42 *drugs, or both, or to believe that the person was driving a commercial*  
43 *motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto,*

1 *while having alcohol or other drugs in such person's system, or was*  
2 *under the age of 21 years while having alcohol or other drugs in such*  
3 *person's system; and one of the following conditions exists: (A) The*  
4 *person has been arrested or otherwise taken into custody for any offense*  
5 *involving operation or attempted operation of a vehicle while under the*  
6 *influence of alcohol or drugs, or both, or for a violation of K.S.A. 8-*  
7 *1567a, and amendments thereto, or involving driving a commercial*  
8 *motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto,*  
9 *while having alcohol or other drugs in such person's system, in violation*  
10 *of a state statute or a city ordinance; or (B) the person has been involved*  
11 *in a vehicle accident or collision resulting in property damage or*  
12 *personal injury other than serious injury; or (2) if the person was*  
13 *operating or attempting to operate a vehicle and such vehicle has been*  
14 *involved in an accident or collision resulting in serious injury or death*  
15 *of any person and the operator could be cited for any traffic offense, as*  
16 *defined in K.S.A. 8-2117, and amendments thereto. The traffic offense*  
17 *violation shall constitute probable cause for purposes of paragraph (2).*  
18 *The test or tests under paragraph (2) shall not be required if a law*  
19 *enforcement officer has reasonable grounds to believe the actions of the*  
20 *operator did not contribute to the accident or collision. The law*  
21 *enforcement officer directing administration of the test or tests may act*  
22 *on personal knowledge or on the basis of the collective information*  
23 *available to law enforcement officers involved in the accident*  
24 *investigation or arrest.*

25 *(c) If a law enforcement officer requests a person to submit to a test*  
26 *of blood under this section, the withdrawal of blood at the direction of*  
27 *the officer may be performed only by: (1) A person licensed to practice*  
28 *medicine and surgery, licensed as a physician's assistant, or a person*  
29 *acting under the direction of any such licensed person; (2) a registered*  
30 *nurse or a licensed practical nurse; (3) any qualified medical technician,*  
31 *including, but not limited to, an emergency medical technician-*  
32 *intermediate, mobile intensive care technician, an emergency medical*  
33 *technician-intermediate defibrillator, an advanced emergency medical*  
34 *technician or a paramedic, as those terms are defined in K.S.A. 65-6112,*  
35 *and amendments thereto, authorized by medical protocol or (4) a*  
36 *phlebotomist.*

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

39 *(1) If the person has given consent and meets the requirements of*  
40 *subsection (b);*

41 *(2) if medically unable to consent, if the person meets the*  
42 *requirements of paragraph (2) of subsection (b); or*

43 *(3) if the person refuses to submit to and complete a test, if the*

1 *person meets the requirements of paragraph (2) of subsection (b).*

2 *(e) When so directed by a law enforcement officer through a written*  
3 *statement, the medical professional shall withdraw the sample as soon as*  
4 *practical and shall deliver the sample to the law enforcement officer or*  
5 *another law enforcement officer as directed by the requesting law*  
6 *enforcement officer as soon as practical, provided the collection of the*  
7 *sample does not jeopardize the person's life, cause serious injury to the*  
8 *person or seriously impede the person's medical assessment, care or*  
9 *treatment. The medical professional authorized herein to withdraw the*  
10 *blood and the medical care facility where the blood is drawn may act on*  
11 *good faith that the requirements have been met for directing the*  
12 *withdrawing of blood once presented with the written statement provided*  
13 *for under this subsection. The medical professional shall not require the*  
14 *person to sign any additional consent or waiver form. In such a case, the*  
15 *person authorized to withdraw blood and the medical care facility shall*  
16 *not be liable in any action alleging lack of consent or lack of informed*  
17 *consent.*

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

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

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

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

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

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

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

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

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

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

26 ~~*(4) (5) if the person refuses to submit to and complete any test of*~~  
27 ~~*breath, blood or urine hereafter requested by a law enforcement officer,*~~  
28 ~~*the person's driving privileges will be suspended for one year for the first*~~  
29 ~~*or subsequent occurrence;*~~

30 ~~*(5) (6) if the person submits to and completes the test or tests and*~~  
31 ~~*the test results show:*~~

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

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

38 ~~*(6) (7) if the person is less than 21 years of age at the time of the*~~  
39 ~~*test request and submits to and completes the tests and the test results*~~  
40 ~~*show an alcohol concentration of .08 or greater, the person's driving*~~  
41 ~~*privileges will be suspended for one year;*~~

42 ~~*(7) (8) refusal to submit to testing may be used against the person at*~~  
43 ~~*any trial on a charge arising out of the operation or attempted operation*~~

1 *of a vehicle while under the influence of alcohol or drugs, or both;*

2 ~~(8)~~ (9) *the results of the testing may be used against the person at*  
3 *any trial on a charge arising out of the operation or attempted operation*  
4 *of a vehicle while under the influence of alcohol or drugs, or both; and*

5 ~~(9)~~ (10) *after the completion of the testing, the person has the right*  
6 *to consult with an attorney and may secure additional testing, which, if*  
7 *desired, should be done as soon as possible and is customarily available*  
8 *from medical care facilities willing to conduct such testing.*

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

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

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

36 (o) *If a law enforcement officer had reasonable grounds to believe*  
37 *the person had been driving a commercial motor vehicle, as defined in*  
38 *K.S.A. 8-2,128, and amendments thereto, and the test results show a*  
39 *blood or breath alcohol concentration of .04 or greater, the person shall*  
40 *be disqualified from driving a commercial motor vehicle, pursuant to*  
41 *K.S.A. 8-2,142, and amendments thereto. If a law enforcement officer*  
42 *had reasonable grounds to believe the person had been driving a*  
43 *commercial motor vehicle, as defined in K.S.A. 8-2,128, and*



1 *amendments thereto, and the test results show a blood or breath alcohol*  
2 *concentration of .08 or greater, or the person refuses a test, the person's*  
3 *driving privileges shall be subject to suspension, or suspension and*  
4 *restriction, pursuant to this section, in addition to being disqualified*  
5 *from driving a commercial motor vehicle pursuant to K.S.A. 8-2,142,*  
6 *and amendments thereto.*

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

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

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

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

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

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

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

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

34 *(1) Disabling a person from the physical capacity to remove*  
35 *themselves from the scene;*

36 *(2) renders a person unconscious;*

37 *(3) the immediate loss of or absence of the normal use of at least*  
38 *one limb;*

39 *(4) an injury determined by a physician to require surgery; or*

40 *(5) otherwise indicates the person may die or be permanently*  
41 *disabled by the injury.*

42 Sec. ~~3~~ 9. K.S.A. 2011 Supp. 8-1008 is hereby amended to read as  
43 follows: 8-1008. (a) As used in this section, "provider" means: (1) A

1 professional licensed by the behavioral sciences regulatory board to  
2 diagnose and treat mental or substance use disorders at the independent  
3 level who is compliant with the requirements set forth by the secretary of  
4 social and rehabilitation services as described in subsection (f); or (2) a  
5 professional licensed by the behavioral sciences regulatory board who is  
6 working in an alcohol and drug treatment facility licensed by the secretary  
7 of social and rehabilitation services as meeting the requirements described  
8 in subsection (f).

9 (b) A provider shall provide:

10 (1) Alcohol and drug evaluations, prior to sentencing, of any person  
11 who is convicted of a violation of K.S.A. 8-2,144 or 8-1567 **or section 2**,  
12 and amendments thereto, or the ordinance of a city or resolution of a  
13 county in this state which prohibits the acts prohibited by those statutes;  
14 and

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

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

35 (d) Prior to sentencing, an alcohol and drug evaluation shall be  
36 conducted on any person who is convicted of a violation of K.S.A. 8-2,144  
37 or 8-1567 **or section 2**, and amendments thereto, or the ordinance of a city  
38 or resolution of a county in this state which prohibits the acts prohibited by  
39 those statutes. The alcohol and drug evaluation report shall be made  
40 available to and shall be considered by the court prior to sentencing.  
41 ~~Except as provided further,~~ The court shall order that *the* cost of any  
42 alcohol and drug evaluation for any person shall be paid by such person to  
43 the provider at the time of service, ~~and shall not exceed \$150. If the court~~

1 ~~finds that such person is indigent, the court shall pay the cost of any~~  
2 ~~alcohol and drug evaluation for such person to the provider at the time of~~  
3 ~~service. The cost of any such evaluation, whether paid by the person or the~~  
4 ~~court, shall be not less than \$150.~~

5 (e) An alcohol and drug evaluation shall be conducted on any person  
6 whom the prosecutor considers for eligibility or finds eligible to enter a  
7 diversion agreement in lieu of further criminal proceedings on a complaint  
8 alleging a violation of K.S.A. 8-1567 **or section 2**, and amendments  
9 thereto, or the ordinance of a city or resolution of a county in this state  
10 which prohibits the acts prohibited by that statute. The alcohol and drug  
11 evaluation report shall be made available to the prosecuting attorney and  
12 shall be considered by the prosecuting attorney. The cost of any alcohol  
13 and drug evaluation for any person shall be paid by such person ~~or the~~  
14 ~~court~~ to the provider at the time of service, and shall ~~not exceed~~ *be not less*  
15 *than \$150.*

16 (f) All alcohol and drug evaluations conducted pursuant to this  
17 section shall utilize a standardized substance use evaluation approved by  
18 the secretary of social and rehabilitation services and be submitted in a  
19 format approved by the secretary of social and rehabilitation services. On  
20 or before July 1, 2012, the secretary of social and rehabilitation services  
21 shall promulgate rules and regulations to implement this section.

22 ***Sec. 10. K.S.A. 2011 Supp. 8-1013 is hereby amended to read as***  
23 ***follows: 8-1013. As used in K.S.A. 8-1001 through 8-1010, 8-1011, 8-***  
24 ***1012, 8-1014, 8-1015, 8-1016, 8-1017 and 8-1018, and amendments***  
25 ***thereto, and this section:***

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

28 (b) (1) ***"Alcohol or drug-related conviction" means any of the***  
29 ***following: (A) Conviction of vehicular battery or aggravated vehicular***  
30 ***homicide, if the crime is committed while committing a violation of***  
31 ***K.S.A. 8-1567, and amendments thereto, or the ordinance of a city or***  
32 ***resolution of a county in this state which prohibits any acts prohibited by***  
33 ***that statute, or conviction of a violation of K.S.A. 8-2,144 or 8-1567 or***  
34 ***section 2, and amendments thereto; (B) conviction of a violation of a law***  
35 ***of another state which would constitute a crime described in subsection***  
36 ***(b)(1)(A) if committed in this state; (C) conviction of a violation of an***  
37 ***ordinance of a city in this state or a resolution of a county in this state***  
38 ***which would constitute a crime described in subsection (b)(1)(A),***  
39 ***whether or not such conviction is in a court of record; or (D) conviction***  
40 ***of an act which was committed on a military reservation and which***  
41 ***would constitute a violation of K.S.A. 8-2,144 or 8-1567 or section 2, and***  
42 ***amendments thereto, or would constitute a crime described in subsection***  
43 ***(b)(1)(A) if committed off a military reservation in this state.***

1       (2) *For the purpose of determining whether an occurrence is a first,*  
2 *second or subsequent occurrence: (A) "Alcohol or drug-related*  
3 *conviction" also includes entering into a diversion agreement in lieu of*  
4 *further criminal proceedings on a complaint alleging commission of a*  
5 *crime described in subsection (b)(1), including a diversion agreement*  
6 *entered into prior to the effective date of this act; and (B) it is irrelevant*  
7 *whether an offense occurred before or after conviction or diversion for a*  
8 *previous offense.*

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

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

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

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

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

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

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

34       (j) *"Law enforcement officer" has the meaning provided by K.S.A.*  
35 *2011 Supp. 21-5111, and amendments thereto, and includes any person*  
36 *authorized by law to make an arrest on a military reservation for an act*  
37 *which would constitute a violation of K.S.A. 8-1567 or section 2, and*  
38 *amendments thereto, if committed off a military reservation in this state.*

39       Sec. 4. *II.* K.S.A. 2011 Supp. 8-1014 is hereby amended to read as  
40 follows: 8-1014. (a) Except as provided by subsection (e) and K.S.A. 8-  
41 2,142, and amendments thereto, if a person refuses a test, the division,  
42 pursuant to K.S.A. 8-1002, and amendments thereto, shall:

43       (1) On the person's first occurrence, suspend the person's driving

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

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

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

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

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

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

23 (A) On the person's first occurrence, suspend the person's driving  
24 privileges for 30 days and at the end of the suspension, restrict the person's  
25 driving privileges as provided by subsection (b) of K.S.A. 8-1015, and  
26 amendments thereto;

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

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

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

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

43 (2) Except as provided by subsection (e) and K.S.A. 8-2,142, and

1 amendments thereto, if a person fails a test or has an alcohol or drug-  
2 related conviction in this state and the person's blood or breath alcohol  
3 concentration is .15 or greater, the division shall:

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

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

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

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

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

24 (3) Whenever a person's driving privileges have been restricted to  
25 driving only a motor vehicle equipped with an ignition interlock device for  
26 10 years under this section, such person may petition any district court for  
27 relief from such restriction after five years of such restriction have been  
28 served. The court shall consider, but not be limited to, whether: (A) Such  
29 person's driving privileges have been restricted, suspended, revoked or  
30 disqualified pursuant to another action by the division or a court; and (B)  
31 such person proves installation, maintenance and use of an ignition  
32 interlock device approved by the division throughout the five-year period.  
33 If the court finds that the person's driving privileges should be restored,  
34 then the court shall electronically report such order to the division. The  
35 division, upon receiving such order, shall restore such person's driving  
36 privileges, unless such person's driving privileges have been restricted,  
37 suspended, revoked or disqualified pursuant to another action by the  
38 division or a court.

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

42 (1) On the person's first occurrence, suspend the person's driving  
43 privileges for one year. If the person's blood or breath alcohol

1 concentration is .15 or greater, the division shall at the end of the  
2 suspension, restrict the person's driving privileges for one year to driving  
3 only a motor vehicle equipped with an ignition interlock device;

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

6 (d) Whenever the division is notified by ~~an alcohol and drug safety~~  
7 ~~action program that a person has failed to complete any alcohol and drug~~  
8 ~~safety action education or treatment program ordered a provider, as~~  
9 ~~defined in K.S.A. 8-1008, and amendments thereto, or a court that the~~  
10 ~~person has failed to follow any recommendation made by the provider or~~  
11 ~~otherwise ordered by a court for a conviction of a violation of K.S.A. 8-~~  
12 ~~1567 or **section 2**, and amendments thereto, the division shall suspend the~~  
13 ~~person's driving privileges until the division receives notice of the person's~~  
14 ~~completion of such ~~program~~ recommendation.~~

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

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

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

39 (g) The provisions of subsections (a), (b) and (c), as amended by ~~this~~  
40 ~~act section 14 of chapter 105 of the 2011 Session Laws of Kansas~~, may be  
41 applied retroactively only if requested by a person who has had such  
42 person's driving privileges suspended or restricted pursuant to subsection  
43 (a), (b) or (c) prior to such amendment. Such person may apply to the

1 division to have the penalties applied retroactively, as provided under  
2 subsection ~~(f)~~ (g) of K.S.A. 8-1015, and amendments thereto.

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

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

17 ~~Sec. 5-~~ 12. K.S.A. 2011 Supp. 8-1015 is hereby amended to read as  
18 follows: 8-1015.

19 (a) (1) *Except as provided in subsection (a)(2), whenever a person's*  
20 *driving privileges have been suspended for one year as provided in*  
21 *subsection (a) of K.S.A. 8-1014, and amendments thereto, after 90 days of*  
22 *such suspension, such person may apply to the division for such person's*  
23 *driving privileges to be restricted for the remainder of the one-year*  
24 *suspension period to driving only a motor vehicle equipped with an*  
25 *ignition interlock device and only for the purposes of getting to and from:*  
26 *Work, school or an alcohol treatment program; and the ignition interlock*  
27 *provider for maintenance and downloading of data from the device.*

28 (2) *Whenever a person's driving privileges have been suspended for*  
29 *one year as provided in subsection (a)(1) of K.S.A. 8-1014, and*  
30 *amendments thereto, after 90 days of such suspension, such person may*  
31 *apply to the division for such person's driving privileges to be restricted*  
32 *for the remainder of the one-year suspension period to driving only a*  
33 *motor vehicle equipped with an ignition interlock device and only under*  
34 *the circumstances provided by subsections (a)(1), (2), (3) and (4) of K.S.A.*  
35 *8-292, and amendments thereto.*

36 (3) *Except as provided in subsection (a)(4), whenever a person's*  
37 *driving privileges have been suspended for one year as provided in*  
38 *subsection ~~(a)~~ (b) or (c) of K.S.A. 8-1014, and amendments thereto, after*  
39 *45 days of such suspension, such person may apply to the division for such*  
40 *person's driving privileges to be restricted for the remainder of the one-*  
41 *year suspension period to driving only a motor vehicle equipped with an*  
42 *ignition interlock device and only for the purposes of getting to and from:*  
43 *Work, school or an alcohol treatment program; and the ignition interlock*



1 provider for maintenance and downloading of data from the device.

2 (4) *Whenever a person's driving privileges have been suspended for*  
3 *one year as provided in subsection (b)(2)(A) or (c)(1) of K.S.A. 8-1014,*  
4 *and amendments thereto, after 45 days of such suspension, such person*  
5 *may apply to the division for such person's driving privileges to be*  
6 *restricted for the remainder of the one-year suspension period to driving*  
7 *only a motor vehicle equipped with an ignition interlock device and only*  
8 *under the circumstances provided by subsections (a)(1), (2), (3) and (4) of*  
9 *K.S.A. 8-292, and amendments thereto.*

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

12 ~~(2)~~ (6) The division shall approve the request for such restricted  
13 license unless such person's driving privileges have been restricted,  
14 suspended, revoked or disqualified pursuant to another action by the  
15 division or a court. If the request is approved, upon receipt of proof of the  
16 installation of such device, the division shall issue a copy of the order  
17 imposing such restrictions on the person's driving privileges and such  
18 order shall be carried by the person at any time the person is operating a  
19 motor vehicle on the highways of this state. Except as provided in K.S.A.  
20 8-1017, and amendments thereto, if such person is convicted of a violation  
21 of the restrictions, such person's driving privileges shall be suspended for  
22 an additional year, in addition to any term of suspension or restriction as  
23 provided in subsection (a), (b) or (c) of K.S.A. 8-1014, and amendments  
24 thereto.

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

26 (A) Except as provided in subsection (b)(1)(B), when a person has  
27 completed the suspension pursuant to subsection (b)(1)(A) of K.S.A. 8-  
28 1014, and amendments thereto, the division shall restrict the person's  
29 driving privileges for 180 days to driving only a motor vehicle equipped  
30 with an ignition interlock device.

31 (B) When a person has completed the suspension pursuant to  
32 subsection (b)(1)(A) of K.S.A. 8-1014, and amendments thereto, the  
33 division shall restrict the person's driving privileges for one year to driving  
34 only a motor vehicle equipped with an ignition interlock device if the  
35 records maintained by the division indicate that such person has  
36 previously: (A) Been convicted of a violation of K.S.A. 8-1599, and  
37 amendments thereto; (B) been convicted of a violation of K.S.A. 41-727,  
38 and amendments thereto; (C) been convicted of any violations listed in  
39 subsection (a) of K.S.A. 8-285, and amendments thereto; (D) been  
40 convicted of three or more moving traffic violations committed on separate  
41 occasions within a 12-month period; or (E) had such person's driving  
42 privileges revoked, suspended, canceled or withdrawn.

43 (2) On and after July 1, 2015:

1 (A) Except as provided in subsection (b)(2)(B), when a person has  
2 completed the suspension pursuant to subsection (b)(1)(A) of K.S.A. 8-  
3 1014, and amendments thereto, the division shall restrict the person's  
4 driving privileges to driving only under the circumstances provided by  
5 subsections (a)(1), (2), (3) and (4) of K.S.A. 8-292, and amendments  
6 thereto.

7 (B) In lieu of the restrictions set out in subsection (b)(2)(A), the  
8 division, upon request of the person whose driving privileges are to be  
9 restricted, may restrict the person's driving privileges to driving only a  
10 motor vehicle equipped with an ignition interlock device.

11 (c) Except as provided in subsection (b), when a person has  
12 completed the suspension pursuant to subsection (a), (b) or (c) of K.S.A.  
13 8-1014, and amendments thereto, the division shall restrict the person's  
14 driving privileges pursuant to subsection (a), (b) or (c) of K.S.A. 8-1014,  
15 and amendments thereto, to driving only a motor vehicle equipped with an  
16 ignition interlock device. Upon restricting a person's driving privileges  
17 pursuant to this subsection, the division shall issue a copy of the order  
18 imposing the restrictions which is required to be carried by the person at  
19 any time the person is operating a motor vehicle on the highways of this  
20 state.

21 (d) Whenever an ignition interlock device is required by law, such  
22 ignition interlock device shall be approved by the division and maintained  
23 at the person's expense. Proof of the installation of such ignition interlock  
24 device, for the entire period required by the applicable law, shall be  
25 provided to the division before the person's driving privileges are fully  
26 reinstated.

27 (e) Except as provided further, any person whose license is restricted  
28 to operating only a motor vehicle with an ignition interlock device  
29 installed may operate an employer's vehicle without an ignition interlock  
30 device installed during normal business activities, provided that the person  
31 does not partly or entirely own or control the employer's vehicle or  
32 business. The provisions of this subsection shall not apply to any person  
33 whose driving privileges have been restricted for the remainder of the one-  
34 year suspension period as provided in subsection (a).

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

42 (g) Any person who has had the person's driving privileges suspended  
43 ~~or~~, restricted *or revoked* pursuant to subsection (a), (b) or (c) of K.S.A. 8-

1 1014, prior to the amendments by ~~this act~~ *section 14 of chapter 105 of the*  
2 *2011 Session Laws of Kansas*, may apply to the division to have the  
3 suspension ~~and~~, restriction or revocation penalties modified in conformity  
4 with the provisions of subsection (a), (b) or (c) of K.S.A. 8-1014, and  
5 amendments thereto. The division shall assess an application fee of \$100  
6 for a person to apply to modify the suspension ~~and~~, restriction or  
7 revocation penalties previously issued. *The division shall modify the*  
8 *suspension, restriction or revocation penalties, unless such person's*  
9 *driving privileges have been restricted, suspended, revoked or disqualified*  
10 *pursuant to another action by the division or a court.*

11 (h) The division shall remit all application fees *collected pursuant to*  
12 *subsections (a) and (g) to the state treasurer in accordance with the*  
13 *provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of*  
14 *such remittance, the state treasurer shall deposit the entire amount in the*  
15 *state treasury and shall credit such moneys to the division of vehicles*  
16 *operating fund until an aggregate amount of \$100,000 is credited to the*  
17 *division of vehicles operating fund each fiscal year. On and after an*  
18 *aggregate amount of \$100,000 is credited to such fund each fiscal year, the*  
19 *entire amount of such remittance shall be credited to the community*  
20 *corrections supervision fund created by K.S.A. 2011 Supp. 75-52,113, and*  
21 *amendments thereto. The application fee established in this section shall*  
22 *be the only fee collected or moneys in the nature of a fee collected for such*  
23 *application. Such fee shall only be established by an act of the legislature*  
24 *and no other authority is established by law or otherwise to collect a fee.*  
25 ~~The division shall modify the suspension and restriction penalties, unless~~  
26 ~~such person's driving privileges have been restricted, suspended, revoked~~  
27 ~~or disqualified pursuant to another action by the division or a court.~~

28 ~~Sec. 6-13.~~ K.S.A. 2011 Supp. 8-1020 is hereby amended to read as  
29 follows: 8-1020. (a) Any licensee served with an officer's certification and  
30 notice of suspension pursuant to K.S.A. 8-1002, and amendments thereto,  
31 may request an administrative hearing. Such request may be made either  
32 by:

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

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

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

42 (c) If the licensee fails to make a timely request for an administrative  
43 hearing *together with the required hearing fee*, the licensee's driving

1 privileges shall be suspended or suspended and then restricted in  
2 accordance with the notice of suspension served pursuant to K.S.A. 8-  
3 1002, and amendments thereto.

4 (d) (1) Upon receipt of a timely request for a hearing *together with*  
5 *the required hearing fee*, the division shall forthwith set the matter for  
6 hearing before a representative of the director and provide notice of the  
7 extension of temporary driving privileges. The hearing shall be held by  
8 telephone conference call unless the hearing request includes a request that  
9 the hearing be held in person before a representative of the director. The  
10 officer's certification and notice of suspension shall inform the licensee of  
11 the availability of a hearing before a representative of the director. Except  
12 for a hearing conducted by telephone conference call, the hearing shall be  
13 conducted in the county where the arrest occurred or a county adjacent  
14 thereto.

15 (2) The division shall charge a fee of \$50 for a hearing, *to be paid*  
16 *within the time period for making a timely request for a hearing*, whether  
17 held by telephone or in person, to be applied by the division for  
18 administrative costs to conduct the hearing. The division shall remit all  
19 hearing fees to the state treasurer in accordance with the provisions of  
20 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such  
21 remittance, the state treasurer shall deposit the entire amount in the state  
22 treasury to the credit of the division of vehicles operating fund. The  
23 hearing fee established in this section shall be the only fee collected or  
24 moneys in the nature of a fee collected for such hearing. Such fee shall  
25 only be established by an act of the legislature and no other authority is  
26 established by law or otherwise to collect a fee.

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

31 (1) The officer's certification and notice of suspension;

32 (2) in the case of a breath or blood test failure, copies of documents  
33 indicating the result of any evidentiary breath or blood test administered at  
34 the request of a law enforcement officer;

35 (3) in the case of a breath test failure, a copy of the affidavit showing  
36 certification of the officer and the instrument; and

37 (4) in the case of a breath test failure, a copy of the Kansas  
38 department of health and environment testing protocol checklist.

39 (f) At or prior to the time the notice of hearing is sent, the division  
40 shall issue an order allowing the licensee or the licensee's attorney to  
41 review any video or audio tape record made of the events upon which the  
42 administrative action is based. Such review shall take place at a reasonable  
43 time designated by the law enforcement agency and shall be made at the

1 location where the video or audio tape is kept. The licensee may obtain a  
2 copy of any such video or audio tape upon request and upon payment of a  
3 reasonable fee to the law enforcement agency, not to exceed \$25 per tape.

4 (g) Witnesses at the hearing shall be limited to the licensee, to any  
5 law enforcement officer who signed the certification form and to one other  
6 witness who was present at the time of the issuance of the certification and  
7 called by the licensee. The presence of the certifying officer or officers  
8 shall not be required, unless requested by the licensee at the time of  
9 making the request for the hearing. The examination of a law enforcement  
10 officer shall be restricted to the factual circumstances relied upon in the  
11 officer's certification.

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

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

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

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

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

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

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

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

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

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

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

43 (F) the testing procedures used substantially complied with the

- 1 procedures set out by the Kansas department of health and environment;
- 2 (G) the test result determined that the person had an alcohol  
3 concentration of .08 or greater in such person's breath; and
- 4 (H) the person was operating or attempting to operate a vehicle.
- 5 (3) If the officer certifies that the person failed a blood test, the scope  
6 of the hearing shall be limited to whether:
- 7 (A) A law enforcement officer had reasonable grounds to believe the  
8 person was operating a vehicle while under the influence of alcohol or  
9 drugs, or both, or had been driving a commercial motor vehicle, as defined  
10 in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other  
11 drugs in such person's system;
- 12 (B) the person was in custody or arrested for an alcohol or drug  
13 related offense or was involved in a vehicle accident or collision resulting  
14 in property damage, personal injury or death;
- 15 (C) a law enforcement officer had presented the person with the oral  
16 and written notice required by K.S.A. 8-1001, and amendments thereto;
- 17 (D) the testing equipment used was reliable;
- 18 (E) the person who operated the testing equipment was qualified;
- 19 (F) the testing procedures used were reliable;
- 20 (G) the test result determined that the person had an alcohol  
21 concentration of .08 or greater in such person's blood; and
- 22 (H) the person was operating or attempting to operate a vehicle.
- 23 (i) At a hearing pursuant to this section, or upon court review of an  
24 order entered at such a hearing, an affidavit of the custodian of records at  
25 the Kansas department of health and environment stating that the breath  
26 testing device was certified and the operator of such device was certified  
27 on the date of the test shall be admissible into evidence in the same  
28 manner and with the same force and effect as if the certifying officer or  
29 employee of the Kansas department of health and environment had  
30 testified in person. A certified operator of a breath testing device shall be  
31 competent to testify regarding the proper procedures to be used in  
32 conducting the test.
- 33 (j) At a hearing pursuant to this section, or upon court review of an  
34 order entered at such a hearing, in which the report of blood test results  
35 have been prepared by the Kansas bureau of investigation or other forensic  
36 laboratory of a state or local law enforcement agency are to be introduced  
37 as evidence, the report, or a copy of the report, of the findings of the  
38 forensic examiner shall be admissible into evidence in the same manner  
39 and with the same force and effect as if the forensic examiner who  
40 performed such examination, analysis, comparison or identification and  
41 prepared the report thereon had testified in person.
- 42 (k) At the hearing, the licensee has the burden of proof by a  
43 preponderance of the evidence to show that the facts set out in the officer's

1 certification are false or insufficient and that the order suspending or  
2 suspending and restricting the licensee's driving privileges should be  
3 dismissed.

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

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

6 (2) the testimony of the licensee;

7 (3) the testimony of any certifying officer;

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

10 (5) any affidavits submitted from other witnesses;

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

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

16 (m) After the hearing, the representative of the director shall enter an  
17 order affirming the order of suspension or suspension and restriction of  
18 driving privileges or for good cause appearing therefor, dismiss the  
19 administrative action. If the representative of the director enters an order  
20 affirming the order of suspension or suspension and restriction of driving  
21 privileges, the suspension or suspension and restriction shall begin on the  
22 30th day after the effective date of the order of suspension or suspension  
23 and restriction. If the person whose privileges are suspended is a  
24 nonresident licensee, the license of the person shall be forwarded to the  
25 appropriate licensing authority in the person's state of residence if the  
26 result at the hearing is adverse to such person or if no timely request for a  
27 hearing is received.

28 (n) The representative of the director may issue an order at the close  
29 of the hearing or may take the matter under advisement and issue a hearing  
30 order at a later date. If the order is made at the close of the hearing, the  
31 licensee or the licensee's attorney shall be served with a copy of the order  
32 by the representative of the director. If the matter is taken under  
33 advisement or if the hearing was by telephone conference call, the licensee  
34 and any attorney who appeared at the administrative hearing upon behalf  
35 of the licensee each shall be served with a copy of the hearing order by  
36 mail. Any law enforcement officer who appeared at the hearing also may  
37 be mailed a copy of the hearing order. The effective date of the hearing  
38 order shall be the date upon which the hearing order is served, whether  
39 served in person or by mail.

40 (o) The licensee may file a petition for review of the hearing order  
41 pursuant to K.S.A. 8-259, and amendments thereto. Upon filing a petition  
42 for review, the licensee shall serve the secretary of revenue with a copy of  
43 the petition and summons. Upon receipt of a copy of the petition for

1 review by the secretary, the temporary license issued pursuant to  
2 subsection (b) shall be extended until the decision on the petition for  
3 review is final.

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

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

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

26 (s) Upon motion by a party, or on the court's own motion, the court  
27 may enter an order restricting the driving privileges allowed by the  
28 temporary license provided for in K.S.A. 8-1002, and amendments thereto,  
29 and in this section. The temporary license also shall be subject to  
30 restriction, suspension, revocation or cancellation, as set out in K.S.A. 8-  
31 1014, and amendments thereto, or for other cause.

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

38 (u) All notices affirming or canceling a suspension under this section,  
39 all notices of a hearing held under this section and all issuances of  
40 temporary driving privileges pursuant to this section shall be sent by first-  
41 class mail and a United States post office certificate of mailing shall be  
42 obtained therefor. All notices so mailed shall be deemed received three  
43 days after mailing, except that this provision shall not apply to any



1 licensee where such application would result in a manifest injustice.

2 (v) The provisions of K.S.A. 60-206, and amendments thereto,  
3 regarding the computation of time shall be applicable in determining the  
4 time for requesting an administrative hearing as set out in subsection (a)  
5 and to the time for filing a petition for review pursuant to subsection (o)  
6 and K.S.A. 8-259, and amendments thereto.

7 ***Sec. 14. K.S.A. 8-1501 is hereby amended to read as follows: 8-***  
8 ***1501. The provisions of this article relating to the operation of vehicles***  
9 ***refer exclusively to the operation of vehicles upon highways except:***

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

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

16 ~~Sec. 7.~~ **15.** K.S.A. 2011 Supp. 8-1567 is hereby amended to read as  
17 follows: 8-1567. (a) Driving under the influence is operating or attempting  
18 to operate any vehicle within this state while:

19 (1) The alcohol concentration in the person's blood or breath as  
20 shown by any competent evidence, including other competent evidence, as  
21 defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and  
22 amendments thereto, is .08 or more;

23 (2) the alcohol concentration in the person's blood or breath, as  
24 measured within three hours of the time of operating or attempting to  
25 operate a vehicle, is .08 or more;

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

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

30 (5) under the influence of a combination of alcohol and any drug or  
31 drugs to a degree that renders the person incapable of safely driving a  
32 vehicle; ~~or~~

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

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

36 (A) On a first conviction a class B, nonperson misdemeanor. The  
37 person convicted shall be sentenced to not less than 48 consecutive hours  
38 nor more than six months' imprisonment, or in the court's discretion 100  
39 hours of public service, and fined not less than ~~\$750~~ ~~\$500~~ **\$750** nor more  
40 than \$1,000. The person convicted shall serve at least 48 consecutive  
41 hours' imprisonment or 100 hours of public service either before or as a  
42 condition of any grant of probation or suspension, reduction of sentence or  
43 parole. The court may place the person convicted under a house arrest

1 program pursuant to K.S.A. 2011 Supp. 21-6609, and amendments thereto,  
2 to serve the remainder of the minimum sentence only after such person has  
3 served 48 consecutive hours' imprisonment;

4 (B) on a second conviction a class A, nonperson misdemeanor. The  
5 person convicted shall be sentenced to not less than 90 days nor more than  
6 one year's imprisonment and fined not less than ~~\$1,250~~ ~~\$1,000~~ **\$1,250** nor  
7 more than ~~\$1,750~~ ~~\$1,500~~ **\$1,750**. The person convicted shall serve at least  
8 five consecutive days' imprisonment before the person is granted  
9 probation, suspension or reduction of sentence or parole or is otherwise  
10 released. The five days' imprisonment mandated by this subsection may be  
11 served in a work release program only after such person has served 48  
12 consecutive hours' imprisonment, provided such work release program  
13 requires such person to return to confinement at the end of each day in the  
14 work release program. The person convicted, if placed into a work release  
15 program, shall serve a minimum of 120 hours of confinement. Such 120  
16 hours of confinement shall be a period of at least 48 consecutive hours of  
17 imprisonment followed by confinement hours at the end of and continuing  
18 to the beginning of the offender's work day. The court may place the  
19 person convicted under a house arrest program pursuant to K.S.A. 2011  
20 Supp. 21-6609, and amendments thereto, to serve the remainder of the  
21 minimum sentence only after such person has served 48 consecutive hours'  
22 imprisonment. The person convicted, if placed under house arrest, shall be  
23 monitored by an electronic monitoring device, which verifies the  
24 offender's location. The offender shall serve a minimum of 120 hours of  
25 confinement within the boundaries of the offender's residence. Any  
26 exceptions to remaining within the boundaries of the offender's residence  
27 provided for in the house arrest agreement shall not be counted as part of  
28 the 120 hours;

29 (C) on a third conviction a class A, nonperson misdemeanor, except  
30 as provided in subsection (b)(1)(D). The person convicted shall be  
31 sentenced to not less than 90 days nor more than one year's imprisonment  
32 and fined not less than ~~\$1,750~~ ~~\$1,500~~ **\$1,750** nor more than \$2,500. The  
33 person convicted shall not be eligible for release on probation, suspension  
34 or reduction of sentence or parole until the person has served at least 90  
35 days' imprisonment. The 90 days' imprisonment mandated by this  
36 subsection may be served in a work release program only after such person  
37 has served 48 consecutive hours' imprisonment, provided such work  
38 release program requires such person to return to confinement at the end of  
39 each day in the work release program. The person convicted, if placed into  
40 a work release program, shall serve a minimum of ~~240~~ **2,160** hours of  
41 confinement. Such ~~240~~ **2,160** hours of confinement shall be a period of at  
42 least 48 consecutive hours of imprisonment followed by confinement  
43 hours at the end of and continuing to the beginning of the offender's work

1 day. The court may place the person convicted under a house arrest  
2 program pursuant to K.S.A. 2011 Supp. 21-6609, and amendments thereto,  
3 to serve the remainder of the minimum sentence only after such person has  
4 served 48 consecutive hours' imprisonment. The person convicted, if  
5 placed under house arrest, shall be monitored by an electronic monitoring  
6 device, which verifies the offender's location. The offender shall serve a  
7 minimum of ~~240~~ 2,160 hours of confinement within the boundaries of the  
8 offender's residence. Any exceptions to remaining within the boundaries of  
9 the offender's residence provided for in the house arrest agreement shall  
10 not be counted as part of the ~~240~~ 2,160 hours;

11 (D) on a third conviction a nonperson felony if the person has a prior  
12 conviction which occurred within the preceding 10 years, not including  
13 any period of incarceration. The person convicted shall be sentenced to not  
14 less than 90 days nor more than one year's imprisonment and fined not less  
15 than ~~\$1,750~~ ~~\$1,500~~ **\$1,750** nor more than \$2,500. The person convicted  
16 shall not be eligible for release on probation, suspension or reduction of  
17 sentence or parole until the person has served at least 90 days'  
18 imprisonment. The 90 days' imprisonment mandated by this subsection  
19 may be served in a work release program only after such person has served  
20 48 consecutive hours' imprisonment, provided such work release program  
21 requires such person to return to confinement at the end of each day in the  
22 work release program. The person convicted, if placed into a work release  
23 program, shall serve a minimum of ~~240~~ 2,160 hours of confinement. Such  
24 ~~240~~ 2,160 hours of confinement shall be a period of at least 48 consecutive  
25 hours of imprisonment followed by confinement hours at the end of and  
26 continuing to the beginning of the offender's work day. The court may  
27 place the person convicted under a house arrest program pursuant to  
28 K.S.A. 2011 Supp. 21-6609, and amendments thereto, to serve the  
29 remainder of the minimum sentence only after such person has served 48  
30 consecutive hours' imprisonment. The person convicted, if placed under  
31 house arrest, shall be monitored by an electronic monitoring device, which  
32 verifies the offender's location. The offender shall serve a minimum of ~~240~~  
33 2,160 hours of confinement within the boundaries of the offender's  
34 residence. Any exceptions to remaining within the boundaries of the  
35 offender's residence provided for in the house arrest agreement shall not be  
36 counted as part of the ~~240~~ 2,160 hours; and

37 (E) on a fourth or subsequent conviction a nonperson ~~felon~~ **felony**.  
38 The person convicted shall be sentenced to not less than 90 days nor more  
39 than one year's imprisonment and fined \$2,500. The person convicted shall  
40 not be eligible for release on probation, suspension or reduction of  
41 sentence or parole until the person has served at least 90 days'  
42 imprisonment. The 90 days' imprisonment mandated by this paragraph  
43 may be served in a work release program only after such person has served

1 72 consecutive hours' imprisonment, provided such work release program  
2 requires such person to return to confinement at the end of each day in the  
3 work release program. The person convicted, if placed into a work release  
4 program, shall serve a minimum of ~~240~~ 2,160 hours of confinement. Such  
5 ~~240~~ 2,160 hours of confinement shall be a period of at least 72 consecutive  
6 hours of imprisonment followed by confinement hours at the end of and  
7 continuing to the beginning of the offender's work day. The court may  
8 place the person convicted under a house arrest program pursuant to  
9 K.S.A. 2011 Supp. 21-6609, and amendments thereto, to serve the  
10 remainder of the minimum sentence only after such person has served 72  
11 consecutive hours' imprisonment. The person convicted, if placed under  
12 house arrest, shall be monitored by an electronic monitoring device, which  
13 verifies the offender's location. The offender shall serve a minimum of ~~240~~  
14 2,160 hours of confinement within the boundaries of the offender's  
15 residence. Any exceptions to remaining within the boundaries of the  
16 offender's residence provided for in the house arrest agreement shall not be  
17 counted as part of the ~~240~~ 2,160 hours.

18 (2) The court may order that the term of imprisonment imposed  
19 pursuant to subsection (b)(1)(D) or (b)(1)(E) be served in a state facility in  
20 the custody of the secretary of corrections in a facility designated by the  
21 secretary for the provision of substance abuse treatment pursuant to the  
22 provisions of K.S.A. 2011 Supp. 21-6804, and amendments thereto. The  
23 person shall remain imprisoned at the state facility only while participating  
24 in the substance abuse treatment program designated by the secretary and  
25 shall be returned to the custody of the sheriff for execution of the balance  
26 of the term of imprisonment upon completion of or the person's discharge  
27 from the substance abuse treatment program. Custody of the person shall  
28 be returned to the sheriff for execution of the sentence imposed in the  
29 event the secretary of corrections determines: (A) That substance abuse  
30 treatment resources or the capacity of the facility designated by the  
31 secretary for the incarceration and treatment of the person is not available;  
32 (B) the person fails to meaningfully participate in the treatment program of  
33 the designated facility; (C) the person is disruptive to the security or  
34 operation of the designated facility; or (D) the medical or mental health  
35 condition of the person renders the person unsuitable for confinement at  
36 the designated facility. The determination by the secretary that the person  
37 either is not to be admitted into the designated facility or is to be  
38 transferred from the designated facility is not subject to review. The sheriff  
39 shall be responsible for all transportation expenses to and from the state  
40 correctional facility.

41 (3) In addition, for any conviction pursuant to subsection (b)(1)(C),  
42 (b)(1)(D) or (b)(1)(E), at the time of the filing of the judgment form or  
43 journal entry as required by K.S.A. 22-3426 or K.S.A. 2011 Supp. 21-

1 6711, and amendments thereto, the court shall cause a certified copy to be  
2 sent to the officer having the offender in charge. The court shall determine  
3 whether the offender, upon release from imprisonment, shall be supervised  
4 by community correctional services or court services based upon the risk  
5 and needs of the offender. The risk and needs of the offender shall be  
6 determined by use of a risk assessment tool specified by the Kansas  
7 sentencing commission. The law enforcement agency maintaining custody  
8 and control of a defendant for imprisonment shall cause a certified copy of  
9 the judgment form or journal entry to be sent to the supervision office  
10 designated by the court and upon expiration of the term of imprisonment  
11 shall deliver the defendant to a location designated by the supervision  
12 office designated by the court. After the term of imprisonment imposed by  
13 the court, the person shall be placed on supervision to community  
14 correctional services or court services, as determined by the court, for a  
15 mandatory one-year period of supervision, which such period of  
16 supervision shall not be reduced. During such supervision, the person shall  
17 be required to participate in a multidisciplinary model of services for  
18 substance use disorders facilitated by a department of social and  
19 rehabilitation services designated care coordination agency to include  
20 assessment and, if appropriate, referral to a community based substance  
21 use disorder treatment including recovery management and mental health  
22 counseling as needed. The multidisciplinary team shall include the  
23 designated care coordination agency, the supervision officer, the social and  
24 rehabilitation services department designated treatment provider and the  
25 offender. Any violation of the conditions of such supervision may subject  
26 such person to revocation of supervision and imprisonment in jail for the  
27 remainder of the period of imprisonment, the remainder of the supervision  
28 period, or any combination or portion thereof.

29 (4) In addition, prior to sentencing for any conviction, the court shall  
30 order the person to participate in an alcohol and drug evaluation conducted  
31 by a provider in accordance with K.S.A. 8-1008, and amendments thereto.  
32 The person shall be required to follow any recommendation made by the  
33 provider after such evaluation, unless otherwise ordered by the court.

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

1 release.

2 (d) If a person is charged with a violation of this section involving  
3 drugs, the fact that the person is or has been entitled to use the drug under  
4 the laws of this state shall not constitute a defense against the charge.

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

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

20 ~~(g) (1) Except as provided in paragraph (5), in addition to any other~~  
21 ~~penalty which may be imposed upon a first conviction of a violation of this~~  
22 ~~section, the court may order that the convicted person's motor vehicle or~~  
23 ~~vehicles be impounded or immobilized for a period not to exceed one year~~  
24 ~~and that the convicted person pay all towing, impoundment and storage~~  
25 ~~fees or other immobilization costs.~~

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

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

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

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

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

41 ~~(5) As used in this subsection, the convicted person's motor vehicle or~~  
42 ~~vehicles shall include any vehicle leased by such person. If the lease on the~~  
43 ~~convicted person's motor vehicle subject to impoundment or~~

1 immobilization expires in less than one year from the date of the  
2 impoundment or immobilization, the time of impoundment or  
3 immobilization of such vehicle shall be the amount of time remaining on  
4 the lease.

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

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

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

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

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

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

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

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

32 (1) *Convictions for a violation of this section, and amendments*  
33 *thereto, or a violation of an ordinance of any city or resolution of any*  
34 *county which prohibits the acts that this section prohibits, or entering*  
35 *into a diversion agreement in lieu of further criminal proceedings on a*  
36 *complaint alleging any such violations, shall be taken into account, but*  
37 *only convictions or diversions occurring on or after July 1, 2001.*  
38 *Nothing in this provision shall be construed as preventing any court*  
39 *from considering any convictions or diversions occurring during the*  
40 *person's lifetime in determining the sentence to be imposed within the*  
41 *limits provided for a first, second, third, fourth or subsequent offender;*

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

1 *Refusing to submit to a test to determine the presence of alcohol or*  
2 *drugs, section 2, and amendments thereto; (B) driving a commercial*  
3 *motor vehicle under the influence, K.S.A. 8-2,144, and amendments*  
4 *thereto; (C) operating a vessel under the influence of alcohol or drugs,*  
5 *K.S.A. 32-1131, and amendments thereto; (D) involuntary manslaughter*  
6 *while driving under the influence of alcohol or drugs, K.S.A. 21-3442,*  
7 *prior to its repeal, or subsection (a)(3) of K.S.A. 2011 Supp. 21-5405,*  
8 *and amendments thereto; and (E) aggravated vehicular homicide, K.S.A.*  
9 *21-3405a, prior to its repeal, or vehicular battery, K.S.A. 21-3405b, prior*  
10 *to its repeal, if the crime was committed while committing a violation of*  
11 *K.S.A. 8-1567, and amendments thereto;*

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

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

25 ~~(4)~~ (5) it is irrelevant whether an offense occurred before or after  
26 conviction for a previous offense; and

27 ~~(5)~~ (6) a person may enter into a diversion agreement in lieu of  
28 further criminal proceedings for a violation of this section, and  
29 amendments thereto, or an ordinance which prohibits the acts of this  
30 section, and amendments thereto, only once during the person's lifetime.

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

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

41 (2) The minimum penalty prescribed by any such ordinance or  
42 resolution shall not be less than the minimum penalty prescribed by this  
43 section for the same violation, and the maximum penalty in any such



1 ordinance or resolution shall not exceed the maximum penalty prescribed  
2 for the same violation.

3 (3) On and after July 1, 2007, and retroactive for ordinance violations  
4 committed on or after July 1, 2006, an ordinance may grant to a municipal  
5 court jurisdiction over a violation of such ordinance which is concurrent  
6 with the jurisdiction of the district court over a violation of this section,  
7 notwithstanding that the elements of such ordinance violation are the same  
8 as the elements of a violation of this section that would constitute, and be  
9 punished as, a felony.

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

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

16 ~~(m)~~ (l) (1) Upon the filing of a complaint, citation or notice to appear  
17 alleging a person has violated a city ordinance prohibiting the acts  
18 prohibited by this section, and prior to conviction thereof, a city attorney  
19 shall request and shall receive from the:

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

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

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

28 ~~(n)~~ (m) No plea bargaining agreement shall be entered into nor shall  
29 any judge approve a plea bargaining agreement entered into for the  
30 purpose of permitting a person charged with a violation of this section, or a  
31 violation of any ordinance of a city or resolution of any county in this state  
32 which prohibits the acts prohibited by this section, to avoid the mandatory  
33 penalties established by this section or by the ordinance. For the purpose  
34 of this subsection, entering into a diversion agreement pursuant to K.S.A.  
35 12-4413 et seq. or 22-2906 et seq., and amendments thereto, shall not  
36 constitute plea bargaining.

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

41 ~~(p) Upon a fourth or subsequent conviction, the judge of any court in~~  
42 ~~which any person is convicted of violating this section, may revoke the~~  
43 ~~person's license plate or temporary registration certificate of the motor~~

1 vehicle driven during the violation of this section for a period of one year.  
2 Upon revoking any license plate or temporary registration certificate  
3 pursuant to this subsection, the court shall require that such license plate or  
4 temporary registration certificate be surrendered to the court.

5 (†) (o) As used in this section: (1) "Alcohol concentration" means the  
6 number of grams of alcohol per 100 milliliters of blood or per 210 liters of  
7 breath;

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

12 (3) "drug" includes toxic vapors as such term is defined in K.S.A.  
13 2011 Supp. 21-5712, and amendments thereto.

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

23 (2) ~~On and after July 1, 2011, the amount of \$250 from each fine~~  
24 ~~imposed pursuant to this section shall be remitted by the clerk of the~~  
25 ~~district court to the state treasurer in accordance with the provisions of~~  
26 ~~K.S.A. 75-4215, and amendments thereto. Upon receipt of such~~  
27 ~~remittance, the state treasurer shall credit the entire amount to the~~  
28 ~~community corrections supervision fund established by K.S.A. 2011 Supp.~~  
29 ~~75-52,113, and amendments thereto.~~

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

37 *Sec. 16. K.S.A. 2011 Supp. 12-4106 is hereby amended to read as*  
38 *follows: 12-4106. (a) The municipal judge shall have the power to*  
39 *administer the oaths and enforce all orders, rules and judgments made*  
40 *by such municipal judge, and may fine or imprison for contempt in the*  
41 *same manner and to the same extent as a judge of the district court.*

42 *(b) The municipal judge shall have the power to hear and*  
43 *determine all cases properly brought before such municipal judge to:*

1 *Grant continuances; sentence those found guilty to a fine or*  
2 *confinement in jail, or both; commit accused persons to jail in default of*  
3 *bond; determine applications for parole; release on probation; grant*  
4 *time in which a fine may be paid; correct a sentence; suspend imposition*  
5 *of a sentence; set aside a judgment; permit time for post trial motions;*  
6 *and discharge accused persons.*

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

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

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

26 *(f) In all cases alleging a violation of a city ordinance prohibiting*  
27 *the acts prohibited by K.S.A. 8-2,144 or 8-1567 or section 2, and*  
28 *amendments thereto, the municipal court judge shall ensure that the*  
29 *municipal court reports the filing and disposition of such case to the*  
30 *Kansas bureau of investigation central repository, and, on and after July*  
31 *1, 2013, reports the filing and disposition of such case electronically to*  
32 *the Kansas bureau of investigation central repository.*

33 *(g) In all cases in which a fine is imposed for a violation of a city*  
34 *ordinance prohibiting the acts prohibited by K.S.A. 8-2,144 or 8-1567 or*  
35 *section 2, and amendments thereto, the municipal court judge shall ensure*  
36 *that the municipal court remits the appropriate amount of such fine to the*  
37 *state treasurer as provided in section 1, and amendments thereto.*

38 *Sec. 17. K.S.A. 12-4413 is hereby amended to read as follows: 12-*  
39 *4413. As used in K.S.A. 8-1009; and 12-4413 to 12-4418, inclusive and*  
40 *~~22-3609~~, and amendments thereto:*

41 *(a) "City attorney" means a city attorney of a city of this state.*

42 *(b) "Complaint" means complaint, citation or notice to appear in a*  
43 *municipal court.*

1       (c) *"Diversion" means referral of a defendant in a criminal case*  
2 *charging an alcohol related offense to a supervised performance*  
3 *program prior to adjudication.*

4       (d) *"Diversion agreement" means the specification of formal terms*  
5 *and conditions which a defendant must fulfill in order to have the*  
6 *charges against such person dismissed.*

7       (e) *"Alcohol related offense" means violation of an ordinance of a*  
8 *city of this state that prohibits the acts prohibited by K.S.A. 8-1567 or*  
9 *section 2, and amendments thereto, or violation of such statute.*

10       Sec. 18. *K.S.A. 2011 Supp. 12-4414 is hereby amended to read as*  
11 *follows: 12-4414. (a) Except as provided in K.S.A. 8-1567 and section 2,*  
12 *and amendments thereto, after a complaint has been filed charging a*  
13 *defendant with violation of an alcohol or drug related offense and prior*  
14 *to conviction thereof, and after the city attorney has considered the*  
15 *factors listed in K.S.A. 12-4415, and amendments thereto, if it appears to*  
16 *the city attorney that diversion of the defendant would be in the interests*  
17 *of justice and of benefit to the defendant and the community, the city*  
18 *attorney may propose a diversion agreement to the defendant. The terms*  
19 *of each diversion agreement shall be established by the city attorney in*  
20 *accordance with K.S.A. 12-4416, and amendments thereto.*

21       (b) *Each city attorney shall adopt written policies and guidelines for*  
22 *the implementation of a diversion program in accordance with K.S.A. 8-*  
23 *1009 and 12-4412 to 12-4417, inclusive, and amendments thereto. Such*  
24 *policies and guidelines shall provide for a diversion conference and*  
25 *other procedures in those cases where the city attorney elects to offer*  
26 *diversion in lieu of further criminal proceedings on the complaint.*

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

36       Sec. 19. *K.S.A. 2011 Supp. 12-4415 is hereby amended to read as*  
37 *follows: 12-4415. (a) In determining whether diversion of a defendant is*  
38 *in the interests of justice and of benefit to the defendant and the*  
39 *community, the city attorney shall consider at least the following factors*  
40 *among all factors considered:*

41       (1) *The nature of the crime charged and the circumstances*  
42 *surrounding it;*

43       (2) *any special characteristics or circumstances of the defendant;*

1       (3) *whether the defendant is a first-time offender of an alcohol*  
2 *related offense and if the defendant has previously participated in*  
3 *diversion, according to the certification of the division of vehicles of the*  
4 *state department of revenue;*

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

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

9       (6) *the impact of the diversion of the defendant upon the*  
10 *community;*

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

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

14       (9) *provisions for restitution; and*

15       (10) *any mitigating circumstances.*

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

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

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

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

30       *Sec. 20. K.S.A. 2011 Supp. 12-4416 is hereby amended to read as*  
31 *follows: 12-4416. (a) A diversion agreement shall provide that if the*  
32 *defendant fulfills the obligations of the program described therein, as*  
33 *determined by the city attorney, the city attorney shall act to have the*  
34 *criminal charges against the defendant dismissed with prejudice. The*  
35 *diversion agreement shall include specifically the waiver of all rights*  
36 *under the law or the constitution of Kansas or of the United States to*  
37 *counsel, a speedy arraignment, a speedy trial, and the right to trial by*  
38 *jury. The diversion agreement may include, but is not limited to,*  
39 *provisions concerning payment of restitution, including court costs and*  
40 *diversion costs, residence in a specified facility, maintenance of gainful*  
41 *employment, and participation in programs offering medical,*  
42 *educational, vocational, social and psychological services, corrective and*  
43 *preventive guidance and other rehabilitative services. The diversion*

1 *agreement shall state:*

2 *(1) The defendant's full name;*

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

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

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

7 *(5) the date the complaint was filed; and*

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

9 *(b) If a diversion agreement is entered into in lieu of further*  
10 *criminal proceedings on a complaint alleging an alcohol related offense,*  
11 *the diversion agreement shall include a stipulation, agreed to by the*  
12 *defendant and the city attorney, of the facts upon which the charge is*  
13 *based and a provision that if the defendant fails to fulfill the terms of the*  
14 *specific diversion agreement and the criminal proceedings on the*  
15 *complaint are resumed, the proceedings, including any proceedings on*  
16 *appeal, shall be conducted on the record of the stipulation of facts*  
17 *relating to the complaint. In addition, the agreement shall include a*  
18 *requirement that the defendant:*

19 *(1) Pay a fine specified by the agreement in an amount equal to an*  
20 *amount authorized by K.S.A. 8-1567 or section 2, and amendments*  
21 *thereto, for a first offense or, in lieu of payment of the fine, perform*  
22 *community service specified by the agreement, consonant with K.S.A. 8-*  
23 *1567 or section 2, and amendments thereto; and*

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

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

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

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

1 *or city attorney or court.*

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

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

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

22 *Sec. 22. K.S.A. 2011 Supp. 21-5203 is hereby amended to read as*  
23 *follows: 21-5203. A person may be guilty of a crime without having a*  
24 *culpable mental state if the crime is:*

25 *(a) A misdemeanor, cigarette or tobacco infraction or traffic*  
26 *infraction and the statute defining the crime clearly indicates a*  
27 *legislative purpose to impose absolute liability for the conduct described;*

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

30 *(c) a violation of K.S.A. 8-1567 or 8-1567a, and amendments*  
31 *thereto;*

32 *(d) a violation of K.S.A. 8-2,144, and amendments thereto; or*

33 *(e) a violation of section 2, and amendments thereto; or*

34 *(f) a violation of K.S.A. 22-4901 et seq., and amendments*  
35 *thereto.*

36 *Sec. 23. K.S.A. 2011 Supp. 21-6804 is hereby amended to read as*  
37 *follows: 21-6804. (a) The provisions of this section shall be applicable to*  
38 *the sentencing guidelines grid for nondrug crimes. The following*  
39 *sentencing guidelines grid shall be applicable to nondrug felony crimes:*

**SENTENCING RANGE - NONDRUG 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	24 23 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	7 6 5

**LEGEND**

Presumptive Probation
Presumptive Fine
Presumptive Imprisonment



1  
2       ***(b) Sentences expressed in the sentencing guidelines grid for***  
3 ***nondrug crimes represent months of imprisonment.***

4       ***(c) The sentencing guidelines grid is a two-dimensional crime***  
5 ***severity and criminal history classification tool. The grid's vertical axis***  
6 ***is the crime severity scale which classifies current crimes of conviction.***  
7 ***The grid's horizontal axis is the criminal history scale which classifies***  
8 ***criminal histories.***

9       ***(d) The sentencing guidelines grid for nondrug crimes as provided***  
10 ***in this section defines presumptive punishments for felony convictions,***  
11 ***subject to the sentencing court's discretion to enter a departure sentence.***  
12 ***The appropriate punishment for a felony conviction should depend on***  
13 ***the severity of the crime of conviction when compared to all other crimes***  
14 ***and the offender's criminal history.***

15       ***(e) (1) The sentencing court has discretion to sentence at any place***  
16 ***within the sentencing range. In the usual case it is recommended that***  
17 ***the sentencing judge select the center of the range and reserve the upper***  
18 ***and lower limits for aggravating and mitigating factors insufficient to***  
19 ***warrant a departure.***

20       ***(2) In presumptive imprisonment cases, the sentencing court shall***  
21 ***pronounce the complete sentence which shall include the:***

22       ***(A) Prison sentence;***

23       ***(B) maximum potential reduction to such sentence as a result of***  
24 ***good time; and***

25       ***(C) period of postrelease supervision at the sentencing hearing.***  
26 ***Failure to pronounce the period of postrelease supervision shall not***  
27 ***negate the existence of such period of postrelease supervision.***

28       ***(3) In presumptive nonprison cases, the sentencing court shall***  
29 ***pronounce the:***

30       ***(A) Prison sentence; and***

31       ***(B) duration of the nonprison sanction at the sentencing hearing.***

32       ***(f) Each grid block states the presumptive sentencing range for an***  
33 ***offender whose crime of conviction and criminal history place such***  
34 ***offender in that grid block. If an offense is classified in a grid block***  
35 ***below the dispositional line, the presumptive disposition shall be***  
36 ***nonimprisonment. If an offense is classified in a grid block above the***  
37 ***dispositional line, the presumptive disposition shall be imprisonment. If***  
38 ***an offense is classified in grid blocks 5-H, 5-I or 6-G, the court may***  
39 ***impose an optional nonprison sentence as provided in subsection (q).***

40       ***(g) The sentence for a violation of K.S.A. 21-3415, prior to its***  
41 ***repeal, aggravated battery against a law enforcement officer committed***  
42 ***prior to July 1, 2006, or a violation of subsection (d) of K.S.A. 2011***  
43 ***Supp. 21-5412, and amendments thereto, aggravated assault against a***

1 *law enforcement officer, which places the defendant's sentence in grid*  
2 *block 6-H or 6-I shall be presumed imprisonment. The court may impose*  
3 *an optional nonprison sentence as provided in subsection (q).*

4 *(h) When a firearm is used to commit any person felony, the*  
5 *offender's sentence shall be presumed imprisonment. The court may*  
6 *impose an optional nonprison sentence as provided in subsection (q).*

7 *(i) (l) The sentence for the violation of the felony provision of*  
8 *K.S.A. 8-1567, subsection (b)(3) of K.S.A. 2011 Supp. 21-5414,*  
9 *subsections (b)(3) and (b)(4) of K.S.A. 2011 Supp. 21-5823, 21-6412 and*  
10 *21-6416, and amendments thereto, shall be as provided by the specific*  
11 *mandatory sentencing requirements of that section and shall not be*  
12 *subject to the provisions of this section or K.S.A. 2011 Supp. 21-6807,*  
13 *and amendments thereto.*

14 *(2) If because of the offender's criminal history classification the*  
15 *offender is subject to presumptive imprisonment or if the judge departs*  
16 *from a presumptive probation sentence and the offender is subject to*  
17 *imprisonment, the provisions of this section and K.S.A. 2011 Supp. 21-*  
18 *6807, and amendments thereto, shall apply and the offender shall not be*  
19 *subject to the mandatory sentence as provided in K.S.A. 2011 Supp. 21-*  
20 *5823, and amendments thereto.*

21 *(3) Notwithstanding the provisions of any other section, the term of*  
22 *imprisonment imposed for the violation of the felony provision of K.S.A.*  
23 *section 2, K.S.A. 8-2,144, 8-1567, subsection (b)(3) of K.S.A. 2011 Supp.*  
24 *21-5414, subsections (b)(3) and (b)(4) of K.S.A. 2011 Supp. 21-5823, 21-*  
25 *6412 and 21-6416, and amendments thereto, shall not be served in a*  
26 *state facility in the custody of the secretary of corrections, except that the*  
27 *term of imprisonment for felony violations of section 2 or K.S.A. 8-2,144*  
28 *or K.S.A. 8-1567, and amendments thereto, may be served in a state*  
29 *correctional facility designated by the secretary of corrections if the*  
30 *secretary determines that substance abuse treatment resources and*  
31 *facility capacity is available. The secretary's determination regarding the*  
32 *availability of treatment resources and facility capacity shall not be*  
33 *subject to review. Prior to imposing any sentence pursuant to this*  
34 *subsection, the court may consider assigning the defendant to a house*  
35 *arrest program pursuant to K.S.A. 2011 Supp. 21-6609, and*  
36 *amendments thereto.*

37 *(j) (1) The sentence for any persistent sex offender whose current*  
38 *convicted crime carries a presumptive term of imprisonment shall be*  
39 *double the maximum duration of the presumptive imprisonment term.*  
40 *The sentence for any persistent sex offender whose current conviction*  
41 *carries a presumptive nonprison term shall be presumed imprisonment*  
42 *and shall be double the maximum duration of the presumptive*  
43 *imprisonment term.*

1       (2) *Except as otherwise provided in this subsection, as used in this*  
2 *subsection, "persistent sex offender" means a person who:*

3       (A) (i) *Has been convicted in this state of a sexually violent crime,*  
4 *as defined in K.S.A. 22-3717, and amendments thereto; and*

5       (ii) *at the time of the conviction under subsection (j)(2)(A)(i) has at*  
6 *least one conviction for a sexually violent crime, as defined in K.S.A. 22-*  
7 *3717, and amendments thereto, in this state or comparable felony under*  
8 *the laws of another state, the federal government or a foreign*  
9 *government; or*

10       (B) (i) *has been convicted of rape, as defined in K.S.A. 21-3502,*  
11 *prior to its repeal, or K.S.A. 2011 Supp. 21-5503, and amendments*  
12 *thereto; and*

13       (ii) *at the time of the conviction under subsection (j)(2)(B)(i) has at*  
14 *least one conviction for rape in this state or comparable felony under the*  
15 *laws of another state, the federal government or a foreign government.*

16       (3) *Except as provided in subsection (j)(2)(B), the provisions of this*  
17 *subsection shall not apply to any person whose current convicted crime*  
18 *is a severity level 1 or 2 felony.*

19       (k) (1) *If it is shown at sentencing that the offender committed any*  
20 *felony violation for the benefit of, at the direction of, or in association*  
21 *with any criminal street gang, with the specific intent to promote, further*  
22 *or assist in any criminal conduct by gang members, the offender's*  
23 *sentence shall be presumed imprisonment. The court may impose an*  
24 *optional nonprison sentence as provided in subsection (q).*

25       (2) *As used in this subsection, "criminal street gang" means any*  
26 *organization, association or group of three or more persons, whether*  
27 *formal or informal, having as one of its primary activities:*

28       (A) *The commission of one or more person felonies; or*

29       (B) *the commission of felony violations of K.S.A. 2010 Supp. 21-*  
30 *36a01 through 21-36a17, and amendments thereto, or any felony*  
31 *violation of any provision of the uniform controlled substances act prior*  
32 *to July 1, 2009; and*

33       (C) *its members have a common name or common identifying sign*  
34 *or symbol; and*

35       (D) *its members, individually or collectively, engage in or have*  
36 *engaged in the commission, attempted commission, conspiracy to*  
37 *commit or solicitation of two or more person felonies or felony violations*  
38 *of K.S.A. 2010 Supp. 21-36a01 through 21-36a17, and amendments*  
39 *thereto, any felony violation of any provision of the uniform controlled*  
40 *substances act prior to July 1, 2009, or any substantially similar offense*  
41 *from another jurisdiction.*

42       (l) *Except as provided in subsection (o), the sentence for a violation*  
43 *of subsection (a)(1) of K.S.A. 2011 Supp. 21-5807, and amendments*

1 *thereto, or any attempt or conspiracy, as defined in K.S.A. 2011 Supp.*  
2 *21-5301 and 21-5302, and amendments thereto, to commit such offense,*  
3 *when such person being sentenced has a prior conviction for a violation*  
4 *of subsection (a) or (b) of K.S.A. 21-3715, prior to its repeal, 21-3716,*  
5 *prior to its repeal, subsection (a)(1) or (a)(2) of K.S.A. 2011 Supp. 21-*  
6 *5807, or subsection (b) of K.S.A. 2011 Supp. 21-5807, and amendments*  
7 *thereto, or any attempt or conspiracy to commit such offense, shall be*  
8 *presumptive imprisonment.*

9 *(m) The sentence for a violation of K.S.A 22-4903 or subsection (a)*  
10 *(2) of K.S.A. 2011 Supp. 21-5913, and amendments thereto, shall be*  
11 *presumptive imprisonment. If an offense under such sections is*  
12 *classified in grid blocks 5-E, 5-F, 5-G, 5-H or 5-I, the court may impose*  
13 *an optional nonprison sentence as provided in subsection (q).*

14 *(n) The sentence for a violation of criminal deprivation of property,*  
15 *as defined in K.S.A. 2011 Supp. 21-5803, and amendments thereto, when*  
16 *such property is a motor vehicle, and when such person being sentenced*  
17 *has any combination of two or more prior convictions of subsection (b)*  
18 *of K.S.A. 21-3705, prior to its repeal, or of criminal deprivation of*  
19 *property, as defined in K.S.A. 2011 Supp. 21-5803, and amendments*  
20 *thereto, when such property is a motor vehicle, shall be presumptive*  
21 *imprisonment. Such sentence shall not be considered a departure and*  
22 *shall not be subject to appeal.*

23 *(o) The sentence for a felony violation of theft of property as*  
24 *defined in K.S.A. 2011 Supp. 21-5801, and amendments thereto, or*  
25 *burglary as defined in subsection (a) of K.S.A. 2011 Supp. 21-5807, and*  
26 *amendments thereto, when such person being sentenced has no prior*  
27 *convictions for a violation of K.S.A. 21-3701 or 21-3715, prior to their*  
28 *repeal, or theft of property as defined in K.S.A. 2011 Supp. 21-5801, and*  
29 *amendments thereto, or burglary as defined in subsection (a) of K.S.A.*  
30 *2011 Supp. 21-5807, and amendments thereto; or the sentence for a*  
31 *felony violation of theft of property as defined in K.S.A. 2011 Supp. 21-*  
32 *5801, and amendments thereto, when such person being sentenced has*  
33 *one or two prior felony convictions for a violation of K.S.A. 21-3701, 21-*  
34 *3715 or 21-3716, prior to their repeal, or theft of property as defined in*  
35 *K.S.A. 2011 Supp. 21-5801, and amendments thereto, or burglary or*  
36 *aggravated burglary as defined in K.S.A. 2011 Supp. 21-5807, and*  
37 *amendments thereto; or the sentence for a felony violation of burglary*  
38 *as defined in subsection (a) of K.S.A. 2011 Supp. 21-5807, and*  
39 *amendments thereto, when such person being sentenced has one prior*  
40 *felony conviction for a violation of K.S.A. 21-3701, 21-3715 or 21-3716,*  
41 *prior to their repeal, or theft of property as defined in K.S.A. 2011 Supp.*  
42 *21-5801, and amendments thereto, or burglary or aggravated burglary*  
43 *as defined in K.S.A. 2011 Supp. 21-5807, and amendments thereto, shall*

1 *be the sentence as provided by this section, except that the court may*  
2 *order an optional nonprison sentence for a defendant to participate in a*  
3 *drug treatment program, including, but not limited to, an approved*  
4 *after-care plan, if the court makes the following findings on the record:*

5 *(1) Substance abuse was an underlying factor in the commission of*  
6 *the crime;*

7 *(2) substance abuse treatment in the community is likely to be more*  
8 *effective than a prison term in reducing the risk of offender recidivism;*  
9 *and*

10 *(3) participation in an intensive substance abuse treatment program*  
11 *will serve community safety interests.*

12 *A defendant sentenced to an optional nonprison sentence under this*  
13 *subsection shall be supervised by community correctional services. The*  
14 *provisions of subsection (f)(1) of K.S.A. 2011 Supp. 21-6824, and*  
15 *amendments thereto, shall apply to a defendant sentenced under this*  
16 *subsection. The sentence under this subsection shall not be considered a*  
17 *departure and shall not be subject to appeal.*

18 *(p) The sentence for a felony violation of theft of property as*  
19 *defined in K.S.A. 2011 Supp. 21-5801, and amendments thereto, when*  
20 *such person being sentenced has any combination of three or more prior*  
21 *felony convictions for violations of K.S.A. 21-3701, 21-3715 or 21-3716,*  
22 *prior to their repeal, or theft of property as defined in K.S.A. 2011 Supp.*  
23 *21-5801, and amendments thereto, or burglary or aggravated burglary*  
24 *as defined in K.S.A. 2011 Supp. 21-5807, and amendments thereto; or*  
25 *the sentence for a violation of burglary as defined in subsection (a) of*  
26 *K.S.A. 2011 Supp. 21-5807, and amendments thereto, when such person*  
27 *being sentenced has any combination of two or more prior convictions*  
28 *for violations of K.S.A. 21-3701, 21-3715 and 21-3716, prior to their*  
29 *repeal, or theft of property as defined in K.S.A. 2011 Supp. 21-5801, and*  
30 *amendments thereto, or burglary or aggravated burglary as defined in*  
31 *K.S.A. 2011 Supp. 21-5807, and amendments thereto, shall be presumed*  
32 *imprisonment and the defendant shall be sentenced to prison as provided*  
33 *by this section, except that the court may recommend that an offender be*  
34 *placed in the custody of the secretary of corrections, in a facility*  
35 *designated by the secretary to participate in an intensive substance abuse*  
36 *treatment program, upon making the following findings on the record:*

37 *(1) Substance abuse was an underlying factor in the commission of*  
38 *the crime;*

39 *(2) substance abuse treatment with a possibility of an early release*  
40 *from imprisonment is likely to be more effective than a prison term in*  
41 *reducing the risk of offender recidivism; and*

42 *(3) participation in an intensive substance abuse treatment program*  
43 *with the possibility of an early release from imprisonment will serve*

1 *community safety interests by promoting offender reformation.*

2 *The intensive substance abuse treatment program shall be*  
3 *determined by the secretary of corrections, but shall be for a period of at*  
4 *least four months. Upon the successful completion of such intensive*  
5 *treatment program, the offender shall be returned to the court and the*  
6 *court may modify the sentence by directing that a less severe penalty be*  
7 *imposed in lieu of that originally adjudged within statutory limits. If the*  
8 *offender's term of imprisonment expires, the offender shall be placed*  
9 *under the applicable period of postrelease supervision. The sentence*  
10 *under this subsection shall not be considered a departure and shall not*  
11 *be subject to appeal.*

12 *(g) As used in this section, an "optional nonprison sentence" is a*  
13 *sentence which the court may impose, in lieu of the presumptive*  
14 *sentence, upon making the following findings on the record:*

15 *(1) An appropriate treatment program exists which is likely to be*  
16 *more effective than the presumptive prison term in reducing the risk of*  
17 *offender recidivism; and*

18 *(2) the recommended treatment program is available and the*  
19 *offender can be admitted to such program within a reasonable period of*  
20 *time; or*

21 *(3) the nonprison sanction will serve community safety interests by*  
22 *promoting offender reformation.*

23 *Any decision made by the court regarding the imposition of an*  
24 *optional nonprison sentence shall not be considered a departure and*  
25 *shall not be subject to appeal.*

26 *(r) The sentence for a violation of subsection (c)(2) of K.S.A. 2011*  
27 *Supp. 21-5413, and amendments thereto, shall be presumptive*  
28 *imprisonment and shall be served consecutively to any other term or*  
29 *terms of imprisonment imposed. Such sentence shall not be considered a*  
30 *departure and shall not be subject to appeal.*

31 *(s) The sentence for a violation of K.S.A. 2011 Supp. 21-5512, and*  
32 *amendments thereto, shall be presumptive imprisonment. Such sentence*  
33 *shall not be considered a departure and shall not be subject to appeal.*

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

39 *(2) The sentence imposed pursuant to subsection (t)(1) shall be*  
40 *presumptive imprisonment and shall be served consecutively to any*  
41 *other term or terms of imprisonment imposed. Such sentence shall not*  
42 *be considered a departure and shall not be subject to appeal.*

43 *(3) As used in this subsection, "ballistic resistant material" means:*

1 *(A) Any commercially produced material designed with the purpose of*  
2 *providing ballistic and trauma protection, including, but not limited to,*  
3 *bulletproof vests and kevlar vests; and (B) any homemade or fabricated*  
4 *substance or item designed with the purpose of providing ballistic and*  
5 *trauma protection.*

6 *(u) The sentence for a violation of K.S.A. 2011 Supp. 21-6107, and*  
7 *amendments thereto, or any attempt or conspiracy, as defined in K.S.A.*  
8 *2011 Supp. 21-5301 and 21-5302, and amendments thereto, to commit*  
9 *such offense, when such person being sentenced has a prior conviction*  
10 *for a violation of K.S.A. 21-4018, prior to its repeal, or K.S.A. 2011*  
11 *Supp. 21-6107, and amendments thereto, or any attempt or conspiracy to*  
12 *commit such offense, shall be presumptive imprisonment. Such sentence*  
13 *shall not be considered a departure and shall not be subject to appeal.*

14 *Sec. 24. K.S.A. 2011 Supp. 22-2802 is hereby amended to read as*  
15 *follows: 22-2802. (1) Any person charged with a crime shall, at the*  
16 *person's first appearance before a magistrate, be ordered released*  
17 *pending preliminary examination or trial upon the execution of an*  
18 *appearance bond in an amount specified by the magistrate and sufficient*  
19 *to assure the appearance of such person before the magistrate when*  
20 *ordered and to assure the public safety. If the person is being bound over*  
21 *for a felony, the bond shall also be conditioned on the person's*  
22 *appearance in the district court or by way of a two-way electronic audio-*  
23 *video communication as provided in subsection (14) at the time required*  
24 *by the court to answer the charge against such person and at any time*  
25 *thereafter that the court requires. Unless the magistrate makes a specific*  
26 *finding otherwise, if the person is being bonded out for a person felony*  
27 *or a person misdemeanor, the bond shall be conditioned on the person*  
28 *being prohibited from having any contact with the alleged victim of such*  
29 *offense for a period of at least 72 hours. The magistrate may impose*  
30 *such of the following additional conditions of release as will reasonably*  
31 *assure the appearance of the person for preliminary examination or*  
32 *trial:*

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

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

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

40 *(d) place the person under a house arrest program pursuant to*  
41 *K.S.A. 2011 Supp. 21-6609, and amendments thereto; or*

42 *(e) place the person under the supervision of a court services officer*  
43 *responsible for monitoring the person's compliance with any conditions*

1 *of release ordered by the magistrate. The magistrate may order the*  
2 *person to pay for any costs associated with the supervision provided by*  
3 *the court services department in an amount not to exceed \$15 per week*  
4 *of such supervision. The magistrate may also order the person to pay for*  
5 *all other costs associated with the supervision and conditions for*  
6 *compliance in addition to the \$15 per week.*

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

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

20 *(4) A deposit of cash in the amount of the bond may be made in lieu*  
21 *of the execution of the bond pursuant to subsection (3). Except as*  
22 *provided in subsection (5), such deposit shall be in the full amount of the*  
23 *bond and in no event shall a deposit of cash in less than the full amount*  
24 *of bond be permitted. Any person charged with a crime who is released*  
25 *on a cash bond shall be entitled to a refund of all moneys paid for the*  
26 *cash bond, after deduction of any outstanding restitution, costs, fines*  
27 *and fees, after the final disposition of the criminal case if the person*  
28 *complies with all requirements to appear in court. The court may not*  
29 *exclude the option of posting bond pursuant to subsection (3).*

30 *(5) Except as provided further, the amount of the appearance bond*  
31 *shall be the same whether executed as described in subsection (3) or*  
32 *posted with a deposit of cash as described in subsection (4). When the*  
33 *appearance bond has been set at \$2,500 or less and the most serious*  
34 *charge against the person is a misdemeanor, a severity level 8, 9 or 10*  
35 *nonperson felony, a drug severity level 4 felony or a violation of K.S.A.*  
36 *8-1567 or section 2, and amendments thereto, the magistrate may allow*  
37 *the person to deposit cash with the clerk in the amount of 10% of the*  
38 *bond, provided the person meets at least the following qualifications:*

- 39 *(A) Is a resident of the state of Kansas;*  
40 *(B) has a criminal history score category of G, H or I;*  
41 *(C) has no prior history of failure to appear for any court*  
42 *appearances;*  
43 *(D) has no detainer or hold from any other jurisdiction;*



1       (E) *has not been extradited from, and is not awaiting extradition to,*  
2 *another state; and*

3       (F) *has not been detained for an alleged violation of probation.*

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

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

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

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

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

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

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

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

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

19       (15) *The magistrate may order the person to pay for any costs*  
20 *associated with the supervision of the conditions of release of the*  
21 *appearance bond in an amount not to exceed \$15 per week of such*  
22 *supervision. As a condition of sentencing under K.S.A. 2011 Supp. 21-*  
23 *6604, and amendments thereto, the court may impose the full amount of*  
24 *any such costs in addition to the \$15 per week, including, but not limited*  
25 *to, costs for treatment and evaluation under subsection (2).*

26       *Sec. 25. K.S.A. 2011 Supp. 22-2908 is hereby amended to read as*  
27 *follows: 22-2908. (a) In determining whether diversion of a defendant is*  
28 *in the interests of justice and of benefit to the defendant and the*  
29 *community, the county or district attorney shall consider at least the*  
30 *following factors among all factors considered:*

31       (1) *The nature of the crime charged and the circumstances*  
32 *surrounding it;*

33       (2) *any special characteristics or circumstances of the defendant;*

34       (3) *whether the defendant is a first-time offender and if the*  
35 *defendant has previously participated in diversion, according to the*  
36 *certification of the Kansas bureau of investigation or the division of*  
37 *vehicles of the department of revenue;*

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

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

42       (6) *the impact of the diversion of the defendant upon the*  
43 *community;*

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

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

4       (9) *provisions for restitution; and*

5       (10) *any mitigating circumstances.*

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

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

18       (2) *the complaint alleges that the defendant committed a class A or*  
19 *B felony or for crimes committed on or after July 1, 1993, an off-grid*  
20 *crime, a severity level 1, 2 or 3 felony for nondrug crimes or drug*  
21 *severity level 1 or 2 felony for drug crimes; or*

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

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

35       *Sec. 26. K.S.A. 2011 Supp. 22-2909 is hereby amended to read as*  
36 *follows: 22-2909. (a) A diversion agreement shall provide that if the*  
37 *defendant fulfills the obligations of the program described therein, as*  
38 *determined by the attorney general or county or district attorney, such*  
39 *attorney shall act to have the criminal charges against the defendant*  
40 *dismissed with prejudice. The diversion agreement shall include*  
41 *specifically the waiver of all rights under the law or the constitution of*  
42 *Kansas or of the United States to a speedy arraignment, preliminary*  
43 *examinations and hearings, and a speedy trial, and in the case of*

1 *diversion under subsection (c) waiver of the rights to counsel and trial*  
2 *by jury. The diversion agreement may include, but is not limited to,*  
3 *provisions concerning payment of restitution, including court costs and*  
4 *diversion costs, residence in a specified facility, maintenance of gainful*  
5 *employment, and participation in programs offering medical,*  
6 *educational, vocational, social and psychological services, corrective and*  
7 *preventive guidance and other rehabilitative services. If a county creates*  
8 *a local fund under the property crime restitution and compensation act,*  
9 *a county or district attorney may require in all diversion agreements as a*  
10 *condition of diversion the payment of a diversion fee in an amount not*  
11 *to exceed \$100. Such fees shall be deposited into the local fund and*  
12 *disbursed pursuant to recommendations of the local board under the*  
13 *property crime restitution and victims compensation act.*

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

20 *(c) If a diversion agreement is entered into in lieu of further*  
21 *criminal proceedings on a complaint alleging a violation of K.S.A. 8-*  
22 *1567 or section 2, and amendments thereto, the diversion agreement*  
23 *shall include a stipulation, agreed to by the defendant, the defendant's*  
24 *attorney if the defendant is represented by an attorney and the attorney*  
25 *general or county or district attorney, of the facts upon which the charge*  
26 *is based and a provision that if the defendant fails to fulfill the terms of*  
27 *the specific diversion agreement and the criminal proceedings on the*  
28 *complaint are resumed, the proceedings, including any proceedings on*  
29 *appeal, shall be conducted on the record of the stipulation of facts*  
30 *relating to the complaint. In addition, the agreement shall include a*  
31 *requirement that the defendant:*

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

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

41 *(d) If a diversion agreement is entered into in lieu of further*  
42 *criminal proceedings on a complaint alleging a domestic violence*  
43 *offense, as defined in K.S.A. 2011 Supp. 21-5111, and amendments*

1 *thereto, the diversion agreement shall include a requirement that the*  
2 *defendant undergo a domestic violence offender assessment and follow*  
3 *all recommendations unless otherwise agreed to with the prosecutor in*  
4 *the diversion agreement. The defendant shall be required to pay for such*  
5 *assessment and, unless otherwise agreed to with the prosecutor in the*  
6 *diversion agreement, for completion of all recommendations.*

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

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

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

30 *(h) Except as provided in subsection ~~(h)~~ (i), if a diversion*  
31 *agreement is entered into in lieu of further criminal proceedings*  
32 *alleging commission of a misdemeanor by the defendant, while under 21*  
33 *years of age, under K.S.A. 2011 Supp. 21-5701 through 21-5717, and*  
34 *amendments thereto, or K.S.A. 41-719, 41-727, 41-804, 41-2719 or 41-*  
35 *2720, and amendments thereto, the agreement shall require the*  
36 *defendant to participate in an alcohol and drug evaluation conducted by*  
37 *a licensed provider pursuant to K.S.A. 8-1008, and amendments thereto,*  
38 *and follow any recommendation made by the provider after such*  
39 *evaluation.*

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

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

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

14       Sec. 27. *K.S.A. 22-2910 is hereby amended to read as follows: 22-*  
15 *2910. No defendant shall be required to enter any plea to a criminal*  
16 *charge as a condition for diversion. No statements made by the*  
17 *defendant or counsel in any diversion conference or in any other*  
18 *discussion of a proposed diversion agreement shall be admissible as*  
19 *evidence in criminal proceedings on crimes charged or facts alleged in*  
20 *the complaint. Except for sentencing proceedings and as otherwise*  
21 *provided in subsection (c) of K.S.A. 22-2909, and amendments thereto,*  
22 *and as otherwise provided in K.S.A. 8-285 and 8-1567 and section 2, and*  
23 *amendments to these sections thereto, the following shall not be*  
24 *admissible as evidence in criminal proceedings which are resumed*  
25 *under K.S.A. 22-2911: (1) Participation in a diversion program; (2) the*  
26 *facts of such participation; or (3) the diversion agreement entered into.*

27       Sec. 28. *K.S.A. 2011 Supp. 22-4704 is hereby amended to read as*  
28 *follows: 22-4704. (a) In accordance with the provisions of K.S.A. 77-415*  
29 *et seq., and amendments thereto, the director shall adopt appropriate*  
30 *rules and regulations for agencies in the executive branch of*  
31 *government and for criminal justice agencies other than those that are*  
32 *part of the judicial branch of government to implement the provisions of*  
33 *this act.*

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

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

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

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

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

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

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

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

15       (8) *governing the exercise of the rights of inspection and challenge*  
16 *provided in this act.*

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

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

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

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

31       Sec. 29. *K.S.A. 2011 Supp. 60-427 is hereby amended to read as*  
32 *follows: 60-427. (a) As used in this section:*

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

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

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

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

8       (b) *Except as provided by subsections (c), (d), (e) and (f), a person,*  
9 *whether or not a party, has a privilege in a civil action or in a*  
10 *prosecution for a misdemeanor, other than a prosecution for a violation*  
11 *of K.S.A. 8-2,144 or 8-1567 or section 2, and amendments thereto, or a*  
12 *city ordinance or county resolution which prohibits the acts prohibited*  
13 *by those statutes, to refuse to disclose, and to prevent a witness from*  
14 *disclosing, a communication, if the person claims the privilege and the*  
15 *judge finds that: (1) The communication was a confidential*  
16 *communication between patient and physician; (2) the patient or the*  
17 *physician reasonably believed the communication necessary or helpful*  
18 *to enable the physician to make a diagnosis of the condition of the*  
19 *patient or to prescribe or render treatment therefor; (3) the witness (i) is*  
20 *the holder of the privilege, (ii) at the time of the communication was the*  
21 *physician or a person to whom disclosure was made because reasonably*  
22 *necessary for the transmission of the communication or for the*  
23 *accomplishment of the purpose for which it was transmitted or (iii) is*  
24 *any other person who obtained knowledge or possession of the*  
25 *communication as the result of an intentional breach of the physician's*  
26 *duty of nondisclosure by the physician or the physician's agent or*  
27 *servant; and (4) the claimant is the holder of the privilege or a person*  
28 *authorized to claim the privilege for the holder of the privilege.*

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

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



1 *which the patient is or was a party.*

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

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

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

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

27 *Sec. 30. K.S.A. 2011 Supp. 74-2012 is hereby amended to read as*  
28 *follows: 74-2012. (a) (1) All motor vehicle records shall be subject to the*  
29 *provisions of the open records act, except as otherwise provided under*  
30 *the provisions of this section and by K.S.A. 74-2022, and amendments*  
31 *thereto.*

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

36 *(b) All motor vehicle records which relate to the physical or mental*  
37 *condition of any person, have been expunged or are photographs or*  
38 *digital images maintained in connection with the issuance of drivers'*  
39 *licenses shall be confidential and shall not be disclosed except in*  
40 *accordance with a proper judicial order or as otherwise more specifically*  
41 *provided in this section or by other law. Photographs or digital images*  
42 *maintained by the division of vehicles in connection with the issuance of*  
43 *drivers' licenses may be disclosed to any federal, state or local agency,*

1 *including any court or law enforcement agency, to assist such agency in*  
2 *carrying out the functions required of such governmental agency. In*  
3 *January of each year the division shall report to the house committee on*  
4 *veterans, military and homeland security regarding the utilization of the*  
5 *provisions of this subsection. Motor vehicle records relating to diversion*  
6 *agreements for the purposes of K.S.A. 8-1567, 12-4415 and 22-2908 and*  
7 *section 2, and amendments thereto, shall be confidential and shall not be*  
8 *disclosed except in accordance with a proper judicial order or by direct*  
9 *computer access to:*

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

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

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

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

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

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

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

32 *(i) Have safety-related defects,*

33 *(ii) fail to comply with emission standards; or*

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

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

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

40 *(ii) in conducting antifraud activities by identifying potential*  
41 *undisclosed drivers of a motor vehicle currently insured by an insurer*  
42 *licensed to do business in this state by providing only the following*  
43 *information: drivers license number, license type, date of birth, name,*

1 *address, issue date and expiration date;*

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

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

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

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

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

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

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

41 *(e) The secretary of revenue, the secretary's agents or employees,*  
42 *the director of vehicles or the director's agents or employees shall not be*  
43 *liable for damages caused by any negligent or wrongful act or omission*

1 *of a law enforcement agency in furnishing any information obtained*  
2 *from motor vehicle records.*

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

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

18 ~~Sec.-8. 31. K.S.A. 8-241 and K.S.A. 2011 Supp. 8-2,144, 8-1008, 8-~~  
19 ~~1014, 8-1015, 8-1020, 8-1020b and 8-1567 , 8-1501, 12-4413 and 22-~~  
20 ~~2910 and K.S.A. 2011 Supp. 8-235, 8-262, 8-285, 8-2,144, 8-1001, 8-~~  
21 ~~1008, 8-1013, 8-1014, 8-1015, 8-1020, 8-1020b, 8-1567, 12-4106, 12-~~  
22 ~~4414, 12-4415, 12-4416, 12-4517, 21-5203, 21-6804, 22-2802, 22-2908,~~  
23 ~~22-2909, 22-2909c, 22-4704, 60-427 and 74-2012 are hereby repealed.~~

24 ~~Sec.-9. 32. This act shall take effect and be in force from and after its~~  
25 ~~publication in the statute book.~~