

SENATE BILL No. 7

By Committee on Judiciary

1-13

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 testing; administrative penalties; crimes, punishment
4 and criminal procedure; amending K.S.A. 8-241, 8-285, 8-1008, 8-
5 1009, 8-1016, 8-1017, 8-1501, 12-4413, 12-4414, 12-4415, 12-4416,
6 22-2908, 22-2910, 22-3610, 22-4704 and 22-4705 and K.S.A. 2009
7 Supp. 8-1567, as amended by section 3 of chapter 153 of the 2010
8 Session Laws of Kansas, and K.S.A. 2010 Supp. 8-235, 8-262, 8-
9 2,142, 8-2,144, 8-1001, 8-1012, 8-1013, 8-1014, 8-1015, 8-1020, 8-
10 1021, 8-1022, 8-1102, 12-4104, 12-4106, 12-4516, 12-4517, 22-2802,
11 22-2909, 22-3717, 28-176, 60-427, 74-2012 and 74-7301 and sections
12 14, 48, 254, 285, 292 and 299 of chapter 136 of the 2010 Session
13 Laws of Kansas and repealing the existing sections; also repealing
14 K.S.A. 2009 Supp. 21-4704, as amended by section 6 of chapter 147
15 of the 2010 Session Laws of Kansas, 22-2908, as amended by section
16 9 of chapter 101 of the 2010 Session Laws of Kansas, and 22-2909,
17 as amended by section 10 of chapter 101 of the 2010 Session Laws of
18 Kansas, and K.S.A. 2010 Supp. 8-1020a, 8-1567, 21-4704 and 22-
19 3717c.

20
21 *Be it enacted by the Legislature of the State of Kansas:*

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

26 (1) Been convicted of a first violation of K.S.A. 8-1567 or section 2,
27 and amendments thereto, or an ordinance of a city in this state, a
28 resolution of a county in this state or any law of another state, which
29 ordinance, resolution or law prohibits the acts prohibited by that statute;
30 or

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

1 prohibited by that statute.

2 (b) If requested by the licensee, the professional licensing body shall
3 conduct a due process hearing, in accordance with the Kansas
4 administrative procedure act, to determine how the violation described in
5 subsection (a) will affect the licensee's professional license. After such
6 hearing, the licensing body may take any action authorized by law,
7 including, but not limited to, alternative corrective measures in lieu of
8 suspension, restriction, denial, termination, or failure to renew the
9 professional license of the licensee.

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

13 (d) As used in this section:

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

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

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

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

26 (A) On a first conviction a class A, nonperson misdemeanor. The
27 person convicted shall be sentenced to not less than 90 days nor more
28 than one year's imprisonment and fined not less than \$1,000 nor more
29 than \$1,500. The person convicted shall serve at least five consecutive
30 days' imprisonment before the person is granted probation, suspension or
31 reduction of sentence or parole or is otherwise released. The five
32 consecutive days' imprisonment mandated by this subsection may be
33 served by completing: (i) Six days in a work release program only after
34 such person has served 48 consecutive hours' imprisonment, provided
35 such work release program requires such person to return to confinement
36 at the end of each day in the work release program; or (ii) ten days under
37 a house arrest program pursuant to section 249 of chapter 136 of the 2010
38 Session Laws of Kansas, and amendments thereto, only after such person
39 has served 48 consecutive hours' imprisonment;

40 (B) on a second conviction a class A, nonperson misdemeanor. 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 serve at least 10 consecutive days' imprisonment before the person

1 is granted probation, suspension or reduction of sentence or parole or is
2 otherwise released. The 10 consecutive days' imprisonment mandated by
3 this subsection may be served by completing: (i) twelve days in a work
4 release program only after such person has served 96 consecutive hours'
5 imprisonment, provided such work release program requires such person
6 to return to confinement at the end of each day in the work release
7 program; or (ii) twenty days under a house arrest program pursuant to
8 section 249 of chapter 136 of the 2010 Session Laws of Kansas, and
9 amendments thereto, only after such person has served 96 consecutive
10 hours' imprisonment;

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

13 (2) In addition, prior to sentencing for any conviction, the court shall
14 order the person to participate in an alcohol and drug evaluation
15 conducted by a licensed provider with a DUI specialty as provided in
16 K.S.A. 8-1008, and amendments thereto. The person shall be required to
17 follow any recommendation made by the provider after such evaluation,
18 unless otherwise ordered by the court. The provisions of this paragraph
19 shall not apply to any person sentenced to imprisonment for a third or
20 subsequent conviction pursuant to subsection (b)(1)(C).

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

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

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

42 (f) The court shall electronically report every conviction of a
43 violation of this section and every diversion agreement entered into in

1 lieu of further criminal proceedings on a complaint alleging a violation of
2 this section to the division. Prior to sentencing under the provisions of
3 this section, the court shall request and shall receive from the: (1)
4 Division a record of all prior convictions obtained against such person for
5 any violations of any of the motor vehicle laws of this state; and (2)
6 Kansas bureau of investigation central repository all criminal history
7 record information concerning such person.

8 (g) Upon conviction of a person of a violation of this section or a
9 violation of a city ordinance or county resolution prohibiting the acts
10 prohibited by this section, the division, upon receiving a report of
11 conviction, shall suspend, restrict or suspend and restrict the person's
12 driving privileges as provided by K.S.A. 8-1014, and amendments
13 thereto.

14 (h) Except as provided in subsection (i), nothing contained in this
15 section shall be construed as preventing any city from enacting
16 ordinances, or any county from adopting resolutions, declaring acts
17 prohibited or made unlawful by this section as unlawful or prohibited in
18 such city or county and prescribing penalties for violation thereof. The
19 minimum penalty prescribed by any such ordinance or resolution shall
20 not be less than the minimum penalty prescribed by this section for the
21 same violation, and the maximum penalty in any such ordinance or
22 resolution shall not exceed the maximum penalty prescribed for the same
23 violation.

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

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

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

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

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

1 shall request and shall receive from the: (A) Division of vehicles a record
2 of all prior convictions obtained against such person for any violations of
3 any of the motor vehicle laws of this state; and (B) Kansas bureau of
4 investigation central repository all criminal history record information
5 concerning such person.

6 (2) If the elements of such ordinance violation are the same as the
7 elements of a violation of this section that would constitute, and be
8 punished as, a felony, the city attorney shall refer the violation to the
9 appropriate county or district attorney for prosecution. The county or
10 district attorney shall accept such referral and pursue a disposition of such
11 violation, and shall not refer any such violation back to the city attorney.

12 (k) (1) Except as provided further, no plea bargaining agreement
13 shall be entered into nor shall any judge approve a plea bargaining
14 agreement entered into for the purpose of permitting a person charged
15 with a violation of this section, or a violation of any ordinance of a city or
16 resolution of any county in this state which prohibits the acts prohibited
17 by this section, to avoid the mandatory penalties established by this
18 section, or by the ordinance or resolution.

19 (2) For the purpose of this subsection, entering into a diversion
20 agreement pursuant to K.S.A. 12-4413 et seq. or 22-2906 et seq., and
21 amendments thereto, shall not constitute plea bargaining.

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

27 (l) (1) A person shall not be eligible to enter into a diversion
28 agreement in lieu of further criminal proceedings for a violation of this
29 section, or a violation of an ordinance of any city or resolution of any
30 county which prohibits the acts that this section prohibits, if such person
31 has a prior conviction, as defined in subsection (m), during the person's
32 lifetime, of any violation described in subsection (m).

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

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

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

11 (2) any convictions for a violation of the following sections
12 occurring during a person's lifetime shall be taken into account: (A) This
13 section; (B) K.S.A. 8-2,144, and amendments thereto; (C) K.S.A. 32-
14 1131, and amendments thereto; (D) subsection (a)(3) of section 40 of
15 chapter 136 of the 2010 Session Laws of Kansas, and amendments
16 thereto; (E) subsection (g) of section 48 of chapter 136 of the 2010
17 Session Laws of Kansas, and amendments thereto; and (F) aggravated
18 vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular
19 battery, K.S.A. 21-3405b, prior to its repeal, if the crime was committed
20 while committing a violation of K.S.A. 8-1567, and amendments thereto;

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

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

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

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

1 (2) The agreement shall be conditioned on the inmate's satisfactory
2 conduct and attitude while incarcerated. If the secretary determines that
3 the inmate's conduct, attitude or needs require modifications or additions
4 to those programs which are set forth in the agreement, the secretary shall
5 revise the agreement.

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

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

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

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

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

22 Sec. 5. K.S.A. 2010 Supp. 8-235 is hereby amended to read as
23 follows: 8-235. (a) No person, except those expressly exempted, shall
24 drive any motor vehicle upon a highway in this state unless such person
25 has a valid driver's license. No person shall receive a driver's license
26 unless and until such person surrenders or with the approval of the
27 division, lists to the division all valid licenses in such person's possession
28 issued to such person by any other jurisdiction. All surrendered licenses
29 or the information listed on foreign licenses shall be returned by the
30 division to the issuing department, together with information that the
31 licensee is now licensed in a new jurisdiction. No person shall be
32 permitted to have more than one valid license at any time.

33 (b) Any person licensed under the motor vehicle drivers' license act
34 may exercise the privilege granted upon all streets and highways in this
35 state and shall not be required to obtain any other license to exercise such
36 privilege by any local authority. Nothing herein shall prevent cities from
37 requiring licenses of persons who drive taxicabs or municipally
38 franchised transit systems for hire upon city streets, to protect the public
39 from drivers whose character or habits make them unfit to transport the
40 public. If a license is denied, the applicant may appeal such decision to
41 the district court of the county in which such city is located by filing
42 within 14 days after such denial, a notice of appeal with the clerk of the
43 district court and by filing a copy of such notice with the city clerk of the

1 involved city. The city clerk shall certify a copy of such decision of the
2 city governing body to the clerk of the district court and the matter shall
3 be docketed as any other cause and the applicant shall be granted a trial of
4 such person's character and habits. The matter shall be heard by the court
5 *de novo* in accordance with the code of civil procedure. The cost of such
6 appeal shall be assessed in such manner as the court may direct.

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

16 (d) No person shall drive any motorized bicycle upon a highway of
17 this state unless: (1) Such person has a valid driver's license which
18 entitles the licensee to drive a motor vehicle in any class or classes; (2)
19 such person is at least 15 years of age and has passed the written and
20 visual examinations required for obtaining a class C driver's license, in
21 which case the division shall issue to such person a class C license which
22 clearly indicates such license is valid only for the operation of motorized
23 bicycles; or (3) such person has had their driving privileges suspended,
24 for a violation other than a violation of K.S.A. 8-2,144, 8-1567 or 8-
25 1567a *or section 2*, and amendments thereto, and has made application to
26 the division for the issuance of a class C license for the operation of
27 motorized bicycles, in accordance with paragraph (2), in which case the
28 division shall issue to such person a class C license which clearly
29 indicates such license is valid only for the operation of motorized
30 bicycles.

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

32 Sec. 6. K.S.A. 8-241 is hereby amended to read as follows: 8-241.

33 (a) Except as provided in K.S.A. 8-2,125 through 8-2,142, and
34 amendments thereto, any person licensed to operate a motor vehicle in
35 this state shall submit to an examination whenever: (1) The division of
36 vehicles has good cause to believe that such person is incompetent or
37 otherwise not qualified to be licensed; or (2) the division of vehicles has
38 suspended such person's license pursuant to K.S.A. 8-1014, and
39 amendments thereto, as the result of a test refusal, test failure or
40 conviction for a violation of K.S.A. 8-1567 *or section 2*, and amendments
41 thereto, or a violation ~~a~~ of a city ordinance or county resolution
42 prohibiting the acts prohibited by K.S.A. 8-1567 *or section 2*, and
43 amendments thereto, except that no person shall have to submit to and

1 successfully complete an examination more than once as the result of
2 separate suspensions arising out of the same occurrence.

3 (b) When a person is required to submit to an examination pursuant
4 to subsection (a)(1), the fee for such examination shall be in the amount
5 provided by K.S.A 8-240, and amendments thereto. When a person is
6 required to submit to an examination pursuant to subsection (a)(2), the
7 fee for such examination shall be \$25. In addition, any person required to
8 submit to an examination pursuant to subsection (a)(2): (1) As the result
9 of a test failure, a conviction for a violation of K.S.A. 8-1567, and
10 amendments thereto, or a violation of a city ordinance or county
11 resolution prohibiting the acts prohibited by K.S.A. 8-1567, and
12 amendments thereto, shall be required, at the time of examination, to pay
13 a reinstatement fee of \$100 after the first occurrence, \$200 after the
14 second occurrence, \$300 after the third occurrence and \$400 after the
15 fourth occurrence; and (2) as a result of a test refusal, *a conviction for a*
16 *violation of section 2, and amendments thereto, or a violation of a city*
17 *ordinance or county resolution prohibiting the acts prohibited by section*
18 *2, and amendments thereto*, shall be required, at the time of examination,
19 to pay a reinstatement fee of \$400 after the first occurrence, \$600 after
20 the second occurrence, \$800 after the third occurrence and \$1,000 after
21 the fourth occurrence. No reinstatement shall be allowed after the fifth or
22 subsequent occurrence under either subsection (b)(1) or (b)(2). All
23 examination fees collected pursuant to this section shall be remitted to the
24 state treasurer, in accordance with the provisions of K.S.A. 75-4215, and
25 amendments thereto, who shall deposit the entire amount in the state
26 treasury and credit 80% to the state highway fund and 20% shall be
27 disposed of as provided in K.S.A. 8-267, and amendments thereto. All
28 reinstatement fees collected pursuant to this section shall be remitted to
29 the state treasurer, in accordance with the provisions of K.S.A. 75-4215,
30 and amendments thereto, who shall deposit the entire amount in the state
31 treasury and credit 50% to the community alcoholism and intoxication
32 programs fund created pursuant to K.S.A. 41-1126, and amendments
33 thereto, 20% to the juvenile detention facilities fund created by K.S.A.
34 79-4803, and amendments thereto, 20% to the forensic laboratory and
35 materials fee fund cited in K.S.A. 28-176, and amendments thereto, and
36 10% to the driving under the influence equipment fund created by K.S.A.
37 75-5660, and amendments thereto. Moneys credited to the forensic
38 laboratory and materials fee fund as provided herein shall be used to
39 supplement existing appropriations and shall not be used to supplant
40 general fund appropriations to the Kansas bureau of investigation.

41 (c) When an examination is required pursuant to subsection (a), at
42 least five days' written notice of the examination shall be given to the
43 licensee. The examination administered hereunder shall be at least

1 equivalent to the examination required by subsection (e) of K.S.A. 8-247,
2 and amendments thereto, with such additional tests as the division deems
3 necessary. Upon the conclusion of such examination, the division shall
4 take action as may be appropriate and may suspend or revoke the license
5 of such person or permit the licensee to retain such license, or may issue a
6 license subject to restrictions as permitted under K.S.A. 8-245, and
7 amendments thereto.

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

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

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

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

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

43 (b) The division, upon receiving a record of the conviction of any

1 person under this section, or any ordinance of any city or resolution of
2 any county or a law of another state which is in substantial conformity
3 with this section, upon a charge of driving a vehicle while the license of
4 such person is revoked or suspended, shall extend the period of such
5 suspension or revocation for an additional period of 90 days.

6 (c) (1) The person found guilty of a class A nonperson misdemeanor
7 on a third or subsequent conviction of this section shall be sentenced to
8 not less than 90 days imprisonment and fined not less than \$1,500 if such
9 person's privilege to drive a motor vehicle is canceled, suspended or
10 revoked because such person:

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

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

17 (C) was convicted of vehicular homicide, ~~K.S.A. 21-3405~~ *section 41*
18 *of chapter 136 of the 2010 Session Laws of Kansas*, and amendments
19 thereto, involuntary manslaughter while driving under the influence of
20 alcohol or drugs, ~~K.S.A. 21-3442~~ *subsection (a)(3) of section 40 of*
21 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments
22 thereto, or any other murder or manslaughter crime resulting from the
23 operation of a motor vehicle; or

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

26 (2) The person convicted shall not be eligible for release on
27 probation, suspension or reduction of sentence or parole until the person
28 has served at least 90 days' imprisonment. The 90 days' imprisonment
29 mandated by this subsection may be served in a work release program
30 only after such person has served 48 consecutive hours' imprisonment,
31 provided such work release program requires such person to return to
32 confinement at the end of each day in the work release program. The
33 court may place the person convicted under a house arrest program
34 pursuant to ~~K.S.A. 21-4603b~~ *section 249 of chapter 136 of the 2010*
35 *Session Laws of Kansas*, and amendments thereto, or any municipal
36 ordinance to serve the remainder of the minimum sentence only after
37 such person has served 48 consecutive hours' imprisonment.

38 (d) For the purposes of determining whether a conviction is a first,
39 second, third or subsequent conviction in sentencing under this section,
40 "conviction" includes a conviction of a violation of any ordinance of any
41 city or resolution of any county or a law of another state which is in
42 substantial conformity with this section.

43 Sec. 8. K.S.A. 8-285 is hereby amended to read as follows: 8-285.

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

6 (a) Three or more times of:

7 (1) Vehicular homicide, as defined by ~~K.S.A. 21-3405~~ *section 41 of*
8 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments
9 thereto, or as prohibited by any ordinance of any city in this state, *any*
10 *resolution of any county in this state* or any law of another state which is
11 in substantial conformity with that statute;

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

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

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

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

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

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

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

42 (9) *violating section 2, and amendments thereto, or violating an*
43 *ordinance of any city in this state, a resolution of any county in this state*

1 *or any law of another state which ordinance, resolution or law declares*
 2 *to be unlawful the acts prohibited by that statute.*

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

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

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

18 (1) While operating a commercial motor vehicle:

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

21 (B) the person is convicted of violating subsection (b) of K.S.A. 8-
 22 2,132, and amendments thereto;

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

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

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

29 (2) while operating a noncommercial motor vehicle:

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

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

40 ~~(B)~~ (C) the person's test refusal or test failure, as defined in K.S.A.
 41 8-1013, and amendments thereto; or

42 (3) while operating any motor vehicle:

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

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

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

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

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

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

20 (f) A person is disqualified from driving a commercial motor vehicle
21 for a period of not less than 60 days if convicted of two serious traffic
22 violations, or 120 days if convicted of three or more serious traffic
23 violations, committed in a commercial motor vehicle arising from
24 separate incidents occurring within a three-year period. Any
25 disqualification period under this paragraph shall be in addition to any
26 other previous period of disqualification. The beginning date for any
27 three-year period within a ten-year period, required by this subsection,
28 shall be the issuance date of the citation which resulted in a conviction.

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

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

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

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

1 preceding the date of the present violation; or

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

6 (2) A person who is convicted of operating a commercial motor
7 vehicle in violation of an out-of-service order while transporting a
8 hazardous material required to be placarded under 49 U.S.C. § 5101 et
9 seq. or while operating a motor vehicle designed to transport more than
10 15 passengers, including the driver, shall be disqualified from driving a
11 commercial motor vehicle for a period of not less than:

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

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

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

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

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

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

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

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

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

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

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

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

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

1 separate incidents.

2 (j) After suspending, revoking or canceling a commercial driver's
3 license, the division shall update its records to reflect that action within
4 10 days. After suspending, revoking or canceling a nonresident
5 commercial driver's privileges, the division shall notify the licensing
6 authority of the state which issued the commercial driver's license or
7 nonresident commercial driver's license within 10 days. The notification
8 shall include both the disqualification and the violation that resulted in
9 the disqualification, suspension, revocation or cancellation.

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

16 (l) Upon suspension, revocation, cancellation or disqualification of a
17 commercial driver's license under this act, the license shall be
18 immediately surrendered to the division if still in the licensee's
19 possession. If otherwise eligible, and upon payment of the required fees,
20 the licensee may be issued a noncommercial driver's license for the
21 period of suspension, revocation, cancellation or disqualification of the
22 commercial driver's license under the same identifier number.

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

29 Sec. 10. K.S.A. 2010 Supp. 8-2,144 is hereby amended to read as
30 follows: 8-2,144. (a) ~~No person shall drive~~ *Driving a commercial motor*
31 *vehicle under the influence is operating or attempting to operate* any
32 commercial motor vehicle, as defined in K.S.A. 8-2,128, and
33 amendments thereto, within this state while:

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

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

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

1 ~~(b) Upon a first conviction of a violation of this section, a person~~
2 ~~shall be guilty of a class B, nonperson misdemeanor and sentenced to not~~
3 ~~less than 48 consecutive hours nor more than six months' imprisonment,~~
4 ~~or in the court's discretion, 100 hours of public service, and fined not less~~
5 ~~than \$500 nor more than \$1,000. The person convicted must serve at least~~
6 ~~48 consecutive hours' imprisonment or 100 hours of public service either~~
7 ~~before or as a condition of any grant of probation or suspension,~~
8 ~~reduction of sentence or parole. In addition, the court shall enter an order~~
9 ~~which requires that the person enroll in and successfully complete an~~
10 ~~alcohol and drug safety action education program or treatment program as~~
11 ~~provided in K.S.A. 8-1008, and amendments thereto, or both the~~
12 ~~education and treatment programs.~~

13 ~~(c) On a second conviction of a violation of this section, a person~~
14 ~~shall be guilty of a class A, nonperson misdemeanor and sentenced to not~~
15 ~~less than 90 days nor more than one year's imprisonment and fined not~~
16 ~~less than \$1,000 nor more than \$1,500. The person convicted must serve~~
17 ~~at least five consecutive days' imprisonment before the person is granted~~
18 ~~probation, suspension or reduction of sentence or parole or is otherwise~~
19 ~~released. The five days' imprisonment mandated by this subsection may~~
20 ~~be served in a work release program only after such person has served 48~~
21 ~~consecutive hours' imprisonment, provided such work release program~~
22 ~~requires such person to return to confinement at the end of each day in~~
23 ~~the work release program. The court may place the person convicted~~
24 ~~under a house arrest program pursuant to K.S.A. 21-4603b, and~~
25 ~~amendments thereto, to serve the remainder of the minimum sentence~~
26 ~~only after such person has served 48 consecutive hours' imprisonment. As~~
27 ~~a condition of any grant of probation, suspension of sentence or parole or~~
28 ~~of any other release, the person shall be required to enter into and~~
29 ~~complete a treatment program for alcohol and drug abuse as provided in~~
30 ~~K.S.A. 8-1008, and amendments thereto.~~

31 ~~(d) On the third conviction of a violation of this section, a person~~
32 ~~shall be guilty of a nonperson felony and sentenced to not less than 90~~
33 ~~days nor more than one year's imprisonment and fined not less than~~
34 ~~\$1,500 nor more than \$2,500. The person convicted shall not be eligible~~
35 ~~for release on probation, suspension or reduction of sentence or parole~~
36 ~~until the person has served at least 90 days' imprisonment. The court also~~
37 ~~requires as a condition of parole that such person enter into and complete~~
38 ~~a treatment program for alcohol and drug abuse as provided by K.S.A. 8-~~
39 ~~1008, and amendments thereto. The 90 days' imprisonment mandated by~~
40 ~~this subsection may be served in a work release program only after such~~
41 ~~person has served 48 consecutive hours' imprisonment provided such~~
42 ~~work release program requires such person to return to confinement at the~~
43 ~~end of each day in the work release program. The court may place the~~

1 ~~person convicted under a house arrest program pursuant to K.S.A. 21-~~
2 ~~4603b, and amendments thereto, to serve the remainder of the minimum~~
3 ~~sentence only after such person has served 48 consecutive hours'~~
4 ~~imprisonment.~~

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

6 (A) *On a first conviction a class A, nonperson misdemeanor. The*
7 *person convicted shall be sentenced to not less than 90 days nor more*
8 *than one year's imprisonment and fined not less than \$1,000 nor more*
9 *than \$1,500. The person convicted shall serve at least five consecutive*
10 *days' imprisonment before the person is granted probation, suspension or*
11 *reduction of sentence or parole or is otherwise released. The five*
12 *consecutive days' imprisonment mandated by this subsection may be*
13 *served by completing: (i) Six days in a work release program only after*
14 *such person has served 48 consecutive hours' imprisonment, provided*
15 *such work release program requires such person to return to confinement*
16 *at the end of each day in the work release program; or (ii) ten days under*
17 *a house arrest program pursuant to section 249 of chapter 136 of the*
18 *2010 Session Laws of Kansas, and amendments thereto, only after such*
19 *person has served 48 consecutive hours' imprisonment;*

20 (B) *on a second conviction a class A, nonperson misdemeanor. The*
21 *person convicted shall be sentenced to not less than 90 days nor more*
22 *than one year's imprisonment and fined \$2,500. The person convicted*
23 *shall serve at least 10 consecutive days' imprisonment before the person*
24 *is granted probation, suspension or reduction of sentence or parole or is*
25 *otherwise released. The 10 consecutive days' imprisonment mandated by*
26 *this subsection may be served by completing: (i) twelve days in a work*
27 *release program only after such person has served 96 consecutive hours'*
28 *imprisonment, provided such work release program requires such person*
29 *to return to confinement at the end of each day in the work release*
30 *program; or (ii) twenty days under a house arrest program pursuant to*
31 *section 249 of chapter 136 of the 2010 Session Laws of Kansas, and*
32 *amendments thereto, only after such person has served 96 consecutive*
33 *hours' imprisonment;*

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

36 (2) *In addition, prior to sentencing, the court shall order the person*
37 *to participate in an alcohol and drug evaluation conducted by a licensed*
38 *provider with a DUI specialty as provided in K.S.A. 8-1008, and*
39 *amendments thereto. The person shall be required to follow any*
40 *recommendation made by the provider after such evaluation, unless*
41 *otherwise ordered by the court. The provisions of this paragraph shall*
42 *not apply to any person sentenced to imprisonment for a third or*
43 *subsequent conviction pursuant to subsection (b)(1)(C).*

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

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

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

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

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

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

1 *Kansas bureau of investigation central repository all criminal history*
2 *record information concerning such person.*

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

10 *(j) (1) Except as provided in subsections (k) and (l), nothing*
11 *contained in this section shall be construed as preventing any city from*
12 *enacting ordinances, or any county from adopting resolutions, declaring*
13 *acts prohibited or made unlawful by this section as unlawful or*
14 *prohibited in such city or county and prescribing penalties for violation*
15 *thereof.*

16 *(2) The minimum penalty prescribed by any such ordinance or*
17 *resolution shall not be less than the minimum penalty prescribed by this*
18 *section for the same violation, and the maximum penalty in any such*
19 *ordinance or resolution shall not exceed the maximum penalty prescribed*
20 *for the same violation.*

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

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

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

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

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

41 *(l) On and after July 1, 2011, any city ordinance declaring the acts*
42 *prohibited by this section as unlawful or prohibited in such city and*
43 *prescribing penalties for violation thereof is hereby declared null and*

1 void, regardless of when such ordinance was enacted, unless such city
2 meets the requirements specified in subsection (k).

3 (m) (1) Upon the filing of a complaint, citation or notice to appear
4 alleging a person has violated a city ordinance prohibiting the acts
5 prohibited by this section, and prior to conviction thereof, a city attorney
6 shall request and shall receive from the: (A) Division of vehicles a record
7 of all prior convictions obtained against such person for any violations of
8 any of the motor vehicle laws of this state; and (B) Kansas bureau of
9 investigation central repository all criminal history record information
10 concerning such person.

11 (2) If the elements of such ordinance violation are the same as the
12 elements of a violation of this section that would constitute, and be
13 punished as, a felony, the city attorney shall refer the violation to the
14 appropriate county or district attorney for prosecution. The county or
15 district attorney shall accept such referral and pursue a disposition of
16 such violation, and shall not refer any such violation back to the city
17 attorney.

18 (n) No plea bargaining agreement shall be entered into nor shall
19 any judge approve a plea bargaining agreement entered into for the
20 purpose of permitting a person charged with a violation of this section,
21 or a violation of any ordinance of a city or resolution of any county in
22 this state which prohibits the acts prohibited by this section, to avoid the
23 mandatory penalties established by this section or by the ordinance or
24 resolution.

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

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

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

41 (2) any convictions for a violation of the following sections
42 occurring during a person's lifetime shall be taken into account: (A) This
43 section; (B) section 2, and amendments thereto; (C) K.S.A. 32-1131, and

1 amendments thereto; (D) subsection (a)(3) of section 40 of chapter 136 of
2 the 2010 Session Laws of Kansas, and amendments thereto; (E)
3 subsection (g) of section 48 of chapter 136 of the 2010 Session Laws of
4 Kansas, and amendments thereto; and (F) aggravated vehicular
5 homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular battery,
6 K.S.A. 21-3405b, prior to its repeal, if the crime was committed while
7 committing a violation of K.S.A. 8-1567, and amendments thereto;

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

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

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

23 ~~(g)~~ (q) For the purpose of this section,:

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

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

30 (3) "drug" includes toxic vapors as such term is defined in K.S.A.
31 2010 Supp. 21-36a12, and amendments thereto.

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

42 (b) A law enforcement officer shall request a person to submit to a
43 test or tests deemed consented to under subsection (a): (1) If the officer

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

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

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

42 (1) If the person has given consent and meets the requirements of
43 subsection (b);

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

3 (3) if the person refuses to submit to and complete a test, if the
4 person meets the requirements of paragraph (2) of subsection (b).

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

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

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

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

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

1 any person other than the persons supervising the collection of the sample
2 and the person being tested, unless the right to privacy is waived by the
3 person being tested. When possible, the supervising person shall be a law
4 enforcement officer. The results of qualitative testing for drug presence
5 shall be admissible in evidence and questions of accuracy or reliability
6 shall go to the weight rather than the admissibility of the evidence. If the
7 person is medically unable to provide a urine sample in such manner due
8 to the injuries or treatment of the injuries, the same authorization and
9 procedure as used for the collection of blood in subsections (d) and (e)
10 shall apply to the collection of a urine sample.

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

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

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

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

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

29 ~~(4) (5)~~ if the person refuses to submit to and complete any test of
30 breath, blood or urine hereafter requested by a law enforcement officer,
31 the person's driving privileges will be suspended for one year for the first
32 occurrence, ~~two years for the second occurrence, three years for the third~~
33 ~~occurrence, 10 years for the~~ *second, third or fourth* occurrence and
34 permanently revoked for a fifth or subsequent occurrence;

35 ~~(5) (6)~~ if the person submits to and completes the test or tests and the
36 test results show for the first occurrence:

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

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

41 ~~(6) (7)~~ if the person submits to and completes the test or tests and the
42 test results show an alcohol concentration of .08 or greater, the person's
43 driving privileges will be suspended for one year for the second, third or

1 fourth occurrence and permanently revoked for a fifth or subsequent
2 occurrence;

3 ~~(7)~~ (8) if the person is less than 21 years of age at the time of the test
4 request and submits to and completes the tests and the test results show
5 an alcohol concentration of .08 or greater, the person's driving privileges
6 will be suspended for one year except the person's driving privileges will
7 be permanently revoked for a fifth or subsequent occurrence;

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

11 ~~(9)~~ (10) the results of the testing may be used against the person at
12 any trial on a charge arising out of the operation or attempted operation of
13 a vehicle while under the influence of alcohol or drugs, or both; and

14 ~~(10)~~ (11) after the completion of the testing, the person has the right
15 to consult with an attorney and may secure additional testing, which, if
16 desired, should be done as soon as possible and is customarily available
17 from medical care facilities willing to conduct such testing.

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

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

39 (n) The person's refusal shall be admissible in evidence against the
40 person at any trial on a charge arising out of the alleged operation or
41 attempted operation of a vehicle while under the influence of alcohol or
42 drugs, or both. *The person's refusal shall be admissible in evidence*
43 *against the person at any trial on a charge arising out of the alleged*

1 *violation of section 2, and amendments thereto.*

2 (o) If a law enforcement officer had reasonable grounds to believe
3 the person had been driving a commercial motor vehicle, as defined in
4 K.S.A. 8-2,128, and amendments thereto, and the test results show a
5 blood or breath alcohol concentration of .04 or greater, the person shall be
6 disqualified from driving a commercial motor vehicle, pursuant to K.S.A.
7 8-2,142, and amendments thereto. If a law enforcement officer had
8 reasonable grounds to believe the person had been driving a commercial
9 motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto,
10 and the test results show a blood or breath alcohol concentration of .08 or
11 greater, or the person refuses a test, the person's driving privileges shall
12 be subject to suspension, or suspension and restriction, pursuant to this
13 section, in addition to being disqualified from driving a commercial
14 motor vehicle pursuant to K.S.A. 8-2,142, and amendments thereto.

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

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

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

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

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

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

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

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

42 (1) Disabling a person from the physical capacity to remove
43 themselves from the scene;

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

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

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

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

22 (3) (2) alcohol and drug evaluations of persons whom the prosecutor
23 considers for eligibility or finds eligible to enter a diversion agreement in
24 lieu of further criminal proceedings on a complaint alleging a violation of
25 K.S.A. 8-1567 *or section 2*, and amendments thereto, or the ordinance of
26 a city *or resolution of a county* in this state which prohibits the acts
27 prohibited by ~~that statute; those statutes.~~

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

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

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

1 by the secretary of social and rehabilitation services for judicial districts
2 in which the chief judge declines to certify a program. In addition to any
3 qualifications established by the secretary, the chief judge may establish
4 qualifications for the certification of programs, which qualifications may
5 include requirements for training, education and certification of
6 personnel; supervision and monitoring of clients; fee reimbursement
7 procedures; handling of conflicts of interest; delivery of services to
8 clients unable to pay; and other matters relating to quality and delivery of
9 services by the program. In establishing the qualifications for programs,
10 the chief judge or the secretary shall give preference to those programs
11 which have had practical experience prior to July 1, 1982, in diagnosis
12 and referral in alcohol and drug abuse. Certification of a program by the
13 chief judge shall be done with consultation and approval of a majority of
14 the judges of the district court of the district and municipal judges of
15 cities lying in whole or in part within the district. If within 60 days after
16 the effective date of this act the chief judge declines to certify any
17 program for the judicial district, the judge shall notify the secretary of
18 social and rehabilitation services, and the secretary of social and
19 rehabilitation services shall certify a community-based alcohol and drug
20 safety action program for that judicial district. The certification shall be
21 for a four-year period. Recertification of a program or certification of a
22 different program shall be by the chief judge, with consultation and
23 approval of a majority of the judges of the district court of the district and
24 municipal judges of cities lying in whole or in part within the district. If
25 upon expiration of certification of a program there will be no certified
26 program for the district and the chief judge declines to recertify or certify
27 any program in the district, the judge shall notify the secretary of social
28 and rehabilitation services, at least six months prior to the expiration of
29 certification, that the judge declines to recertify or certify a program
30 under this subsection. Upon receipt of the notice and prior to the
31 expiration of certification, the secretary shall recertify or certify a
32 community-based alcohol and drug safety action program for the judicial
33 district for the next four-year period. To be eligible for certification
34 *licensure* under this subsection, the chief judge or the secretary of social
35 and rehabilitation services shall determine that a community-based
36 alcohol and drug safety action program *the provider with a DUI specialty*
37 meets the qualifications established by the judge or secretary and is
38 capable of providing, within the judicial district: (1) The evaluations,
39 supervision and monitoring required under subsection (a); (2) the alcohol
40 and drug evaluation report required under subsection (c) or (d); (3) the
41 follow-up duties specified under subsection (c) or (d) for persons who
42 prepare the alcohol and drug evaluation report; and (4) any other
43 functions and duties specified by law. Community-based alcohol and drug

1 ~~safety action programs~~ Each judicial district shall be provided with a list
2 of licensed providers with a DUI specialty licensed in accordance with
3 this subsection, and such list shall be used when selecting a licensed
4 provider with a DUI specialty to be used as described in subsections (c)
5 and (d). A licensed provider with a DUI specialty performing services in
6 any judicial district under this section prior to the effective date of this act
7 may continue to perform those services until ~~a community-based alcohol~~
8 ~~and drug safety action program is certified for that judicial district~~
9 January 1, 2012.

10 (c) ~~A presentence~~ (1) *Except as provided further, prior to*
11 *sentencing, an alcohol and drug evaluation shall be conducted on any*
12 *person who is convicted of a violation of K.S.A. 8-2,144 or 8-1567 or*
13 *section 2, and amendments thereto, or the ordinance of a city or*
14 *resolution of a county in this state which prohibits the acts prohibited by*
15 ~~that statute those statutes.~~ The presentence alcohol and drug evaluation
16 report shall be made available to and shall be considered by the court
17 prior to sentencing. The presentence alcohol and drug evaluation report
18 shall ~~contain a history of the defendant's prior traffic record,~~
19 ~~characteristics and alcohol or drug problems, or both, and a~~
20 ~~recommendation concerning the amenability of the defendant to~~
21 ~~education and rehabilitation.~~ The presentence alcohol and drug evaluation
22 report shall include a recommendation concerning the alcohol and drug
23 driving safety education and treatment for the defendant. The presentence
24 alcohol and drug evaluation report shall be prepared by a program which
25 has demonstrated practical experience in the diagnosis of alcohol and
26 drug abuse. The duties of persons who prepare the presentence alcohol
27 and drug evaluation report may also include appearing at sentencing and
28 probation hearings in accordance with the orders of the court, monitoring
29 defendants in the treatment programs, notifying the probation department
30 and the court of any defendant failing to meet the conditions of probation
31 or referrals to treatment, appearing at revocation hearings as may be
32 required and providing assistance and data reporting and program
33 evaluation ~~meet the standards of assessment as set forth by the secretary~~
34 ~~of social and rehabilitation services.~~ The court shall order that cost of
35 any alcohol and drug education, rehabilitation and treatment programs
36 evaluation for any person shall be paid by such person, and such costs
37 shall include, but not be limited to, the assessments required by
38 subsection (c). If financial obligations are not met or cannot be met, the
39 sentencing court shall be notified for the purpose of collection or review
40 and further action on the defendant's sentence *to the provider at the time*
41 *of service, and shall not exceed \$150.*

42 (2) *The provisions of this subsection shall not apply to any person*
43 *sentenced to imprisonment for a third or subsequent conviction of a*

1 violation of K.S.A. 8-2,144 or section 2, and amendments thereto, or a
2 fourth or subsequent conviction of a violation of K.S.A. 8-1567, and
3 amendments thereto.

4 (d) An alcohol and drug evaluation shall be conducted on any person
5 whom the prosecutor considers for eligibility or finds eligible to enter a
6 diversion agreement in lieu of further criminal proceedings on a
7 complaint alleging a violation of K.S.A. 8-1567 or section 2, and
8 amendments thereto, or the ordinance of a city or resolution of a county
9 in this state which prohibits the acts prohibited by ~~that statute those~~
10 ~~statutes~~ . The alcohol and drug evaluation report shall be made available
11 to the prosecuting attorney and shall be considered by the prosecuting
12 attorney. The alcohol and drug evaluation report shall ~~contain a history of~~
13 ~~the person's prior traffic record, characteristics and alcohol or drug~~
14 ~~problems, or both, and a recommendation concerning the amenability of~~
15 ~~the person to education and rehabilitation. The alcohol and drug~~
16 ~~evaluation report shall include a recommendation concerning the alcohol~~
17 ~~and drug driving safety education and treatment for the person. The~~
18 ~~alcohol and drug evaluation report shall be prepared by a program which~~
19 ~~has demonstrated practical experience in the diagnosis of alcohol and~~
20 ~~drug abuse. The duties of persons who prepare the alcohol and drug~~
21 ~~evaluation report may also include monitoring persons in the treatment~~
22 ~~programs, notifying the prosecutor and the court of any person failing to~~
23 ~~meet the conditions of diversion or referrals to treatment, and providing~~
24 ~~assistance and data reporting and program evaluation meet the standards~~
25 ~~of assessment as set forth by the secretary of social and rehabilitation~~
26 ~~services. The cost of any alcohol and drug education, rehabilitation and~~
27 ~~treatment programs evaluation for any person shall be paid by such~~
28 ~~person, and such costs shall include, but not be limited to, the~~
29 ~~assessments required by subsection (e) to the provider at the time of~~
30 ~~service, and shall not exceed \$150.~~

31 (e) ~~In addition to any fines, fees, penalties or costs levied against a~~
32 ~~person who is convicted of a violation of K.S.A. 8-1567, and~~
33 ~~amendments thereto, or the ordinance of a city in this state which~~
34 ~~prohibits the acts prohibited by that statute, or who enters a diversion~~
35 ~~agreement in lieu of further criminal proceedings on a complaint alleging~~
36 ~~a violation of that statute or such an ordinance, \$150 shall be assessed~~
37 ~~against the person by the sentencing court or under the diversion~~
38 ~~agreement. The \$150 assessment may be waived by the court, in whole or~~
39 ~~in part, or, in the case of diversion of criminal proceedings, by the~~
40 ~~prosecuting attorney, if the court or prosecuting attorney finds that the~~
41 ~~defendant is an indigent person. Except as otherwise provided in this~~
42 ~~subsection, the clerk of the court shall deposit all assessments received~~
43 ~~under this section in the alcohol and drug safety action fund of the court,~~

1 which fund shall be subject to the administration of the judge having
2 administrative authority over that court. If the secretary of social and
3 rehabilitation services certifies the community-based alcohol and drug
4 safety action program for the judicial district in which the court is
5 located, the clerk of the court shall remit, during the four-year period for
6 which the program is certified, 15% of all assessments received under this
7 section to the secretary of social and rehabilitation services. Moneys
8 credited to the alcohol and drug safety action fund shall be expended by
9 the court, pursuant to vouchers signed by the judge having administrative
10 authority over that court, only for costs of the services specified by
11 subsection (a) or otherwise required or authorized by law and provided by
12 community-based alcohol and drug safety action programs, except that
13 not more than 10% of the money credited to the fund may be expended to
14 cover the expenses of the court involved in administering the provisions
15 of this section. In the provision of these services the court shall contract
16 as may be necessary to carry out the provisions of this section. The
17 district or municipal judge having administrative authority over that court
18 shall compile a report and send such report to the office of the state
19 judicial administrator on or before January 20 of each year, beginning
20 January 20, 1991. Such report shall include, but not be limited to:

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

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

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

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

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

40 Sec. 13. K.S.A. 8-1009 is hereby amended to read as follows: 8-
41 1009. (a) Upon the filing of a first complaint, indictment or information
42 alleging a person has violated K.S.A. 8-1567 or section 2, and
43 amendments thereto, when the acts prohibited by K.S.A. 8-1567, and

1 ~~amendments thereto, occur concurrently with any such alleged violation,~~
2 *or a county resolution which prohibits the acts prohibited by those*
3 *sections, and prior to conviction thereof, the district attorney or county*
4 *attorney shall determine whether the defendant shall be allowed to enter*
5 *into a diversion agreement in accordance with this act.*

6 (b) Upon the filing of a first complaint, citation or notice to appear
7 alleging a person has violated a city ordinance which prohibits the acts
8 prohibited by K.S.A. 8-1567 *or section 2*, and amendments thereto, and
9 prior to conviction thereof, the city attorney shall determine whether the
10 defendant shall be allowed to enter into a diversion agreement in
11 accordance with this act.

12 Sec. 14. K.S.A. 2010 Supp. 8-1012 is hereby amended to read as
13 follows: 8-1012. (a) Any person who operates or attempts to operate a
14 vehicle within this state is deemed to have given consent to submit to a
15 preliminary screening test of the person's breath *or saliva, or both*,
16 subject to the provisions set out in subsection (b).

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

24 (c) At the time the test is requested, the person shall be given oral
25 notice that: (1) There is no right to consult with an attorney regarding
26 whether to submit to testing; (2) refusal to submit to testing is a traffic
27 infraction; and (3) further testing may be required after the preliminary
28 screening test. Failure to provide the notice shall not be an issue or
29 defense in any action. The law enforcement officer then shall request the
30 person to submit to the test.

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

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

6 Sec. 15. K.S.A. 2010 Supp. 8-1013 is hereby amended to read as
7 follows: 8-1013. As used in K.S.A. 8-1001 through 8-1010, 8-1011, 8-
8 1012, 8-1014, 8-1015, 8-1016, 8-1017 and 8-1018, and amendments
9 thereto, and this section:

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

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

28 (2) ~~For the purpose of determining whether an occurrence is a first,~~
29 ~~second or subsequent occurrence: (A) "Alcohol or drug-related~~
30 ~~conviction" also includes entering into a diversion agreement in lieu of~~
31 ~~further criminal proceedings on a complaint alleging commission of a~~
32 ~~crime described in subsection (b)(1), including a diversion agreement~~
33 ~~entered into prior to the effective date of this act; and (B) it is irrelevant~~
34 ~~whether an offense occurred before or after conviction or diversion for a~~
35 ~~previous offense. (A) Section 2, and amendments thereto; (B) K.S.A. 8-~~
36 ~~2,144, and amendments thereto; (C) K.S.A. 8-1567, and amendments~~
37 ~~thereto; (D) K.S.A. 32-1131, and amendments thereto; (E) subsection (a)~~
38 ~~(3) of section 40 of chapter 136 of the 2010 Session Laws of Kansas, and~~
39 ~~amendments thereto; (F) subsection (g) of section 48 of chapter 136 of~~
40 ~~the 2010 Session Laws of Kansas, and amendments thereto; and (G)~~
41 ~~aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or~~
42 ~~vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was~~
43 ~~committed while committing a violation of K.S.A. 8-1567, and~~

1 *amendments thereto.*

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

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

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

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

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

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

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

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

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

39 (j) "Law enforcement officer" has the meaning provided by ~~K.S.A.~~
40 ~~21-3110~~ *section 11 of chapter 136 of the 2010 Session Laws of Kansas*,
41 and amendments thereto, and includes any person authorized by law to
42 make an arrest on a military reservation for an act which would constitute
43 a violation of K.S.A. 8-1567, and amendments thereto, if committed off a

1 military reservation in this state.

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

4 Sec. 16. K.S.A. 2010 Supp. 8-1014 is hereby amended to read as
5 follows: 8-1014. (a) Except as provided by subsection (e) and K.S.A. 8-
6 2,142, and amendments thereto, if a person refuses a test, the division,
7 pursuant to K.S.A. 8-1002, and amendments thereto, shall:

8 (1) On the person's first 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 one year to driving only a motor vehicle
11 equipped with an ignition interlock device;

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

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

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

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

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

29 (A) On the person's first occurrence, suspend the person's driving
30 privileges for 30 days and at the end of the suspension, ~~then~~ restrict the
31 person's driving privileges as provided by subsection (b) of K.S.A. 8-
32 1015, and amendments thereto, for an additional 330 days;

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

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

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

1 *equipped with an ignition interlock device; and*

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

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

8 (A) On the person's first 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 one year to driving only a motor vehicle
11 equipped with an ignition interlock device;

12 (B) on the person's second 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 two years to driving only a motor vehicle
15 equipped with an ignition interlock device;

16 (C) on the person's third 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 three years to driving only a motor vehicle
19 equipped with an ignition interlock device;

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

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

26 ~~(3) Whenever a person's driving privileges have been restricted to~~
27 ~~driving only a motor vehicle equipped with an ignition interlock device,~~
28 ~~proof of the installation of such device, for the entire restriction period,~~
29 ~~shall be provided to the division before the person's driving privileges are~~
30 ~~fully reinstated.~~

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

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

1 amendments thereto, if a person who is less than 21 years of age fails a
2 test or has an alcohol or drug-related conviction in this state, the division
3 shall:

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

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

11 ~~(d) Whenever the division is notified by an alcohol and drug safety~~
12 ~~action program that a person has failed to complete any alcohol and drug~~
13 ~~safety action education or treatment program ordered by a court for a~~
14 ~~conviction of a violation of K.S.A. 8-1567, and amendments thereto, the~~
15 ~~division shall suspend the person's driving privileges until the division~~
16 ~~receives notice of the person's completion of such program.~~

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

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

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

42 ~~(g) Upon restricting a person's driving privileges pursuant to this~~
43 ~~section, the division shall issue a copy of the order imposing the~~

1 restrictions which is required to be carried by the person at any time the
2 person is operating a motor vehicle on the highways of this state.

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

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

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

26 *(2) The secretary of corrections shall notify the division of the date
27 when incarceration began and the date of release from incarceration for
28 any person incarcerated for an alcohol or drug-related conviction. The
29 notification shall be in a format approved by the division.*

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

33 Sec. 17. K.S.A. 2010 Supp. 8-1015 is hereby amended to read as
34 follows: 8-1015. ~~(a) When subsection (b)(1) of K.S.A. 8-1014, and
35 amendments thereto, requires or authorizes the division to place
36 restrictions on a person's driving privileges, the division shall restrict the
37 person's driving privileges to driving only under the circumstances
38 provided by subsections (a)(1), (2), (3) and (4) of K.S.A. 8-292 and
39 amendments thereto.~~

40 ~~(b) In lieu of the restrictions set out in subsection (a), the division,
41 upon request of the person whose driving privileges are to be restricted,
42 may restrict the person's driving privileges to driving only a motor
43 vehicle equipped with an ignition interlock device, approved by the~~

1 ~~division and obtained, installed and maintained at the person's expense.~~
2 ~~Prior to issuing such restricted license, the division shall receive proof of~~
3 ~~the installation of such device.~~ (a) (1) *Whenever a person's driving*
4 *privileges have been suspended for one year as provided in subsection*
5 *(a), (b) or (c) of K.S.A. 8-1014, and amendments thereto, after 45 days of*
6 *such suspension, such person may apply to the division for such person's*
7 *driving privileges to be restricted for the remainder of the one-year*
8 *suspension period to driving only a motor vehicle equipped with an*
9 *ignition interlock and only for the purposes of getting to and from: Work,*
10 *school or an alcohol treatment program; and the ignition interlock*
11 *provider for maintenance and downloading of data from the device.*

12 (2) *The division shall approve the request for such restricted license*
13 *unless such person's driving privileges have been restricted, suspended,*
14 *revoked or disqualified pursuant to another action by the division or a*
15 *court. If the request is approved, upon receipt of proof of the installation*
16 *of such device, the division shall issue a copy of the order imposing such*
17 *restrictions on the person's driving privileges and such order shall be*
18 *carried by the person at any time the person is operating a motor vehicle*
19 *on the highways of this state. Except as provided in K.S.A. 8-1017, and*
20 *amendments thereto, if such person is convicted of a violation of the*
21 *restrictions, such person's driving privileges shall be suspended for an*
22 *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) *When a person has completed the suspension pursuant to*
26 *subsection (b)(1)(A) of K.S.A. 8-1014, and amendments thereto, the*
27 *division shall restrict the person's driving privileges pursuant to*
28 *subsection (b)(1)(A) of K.S.A. 8-1014, and amendments thereto, to*
29 *driving only a motor vehicle equipped with an ignition interlock and only*
30 *in the course of the person's employment and for the purposes of getting*
31 *to and from: Work, school or an alcohol treatment program; the ignition*
32 *interlock provider for maintenance and downloading of data from the*
33 *device; and court or court-ordered supervision. Except as provided in*
34 *K.S.A. 8-1017, and amendments thereto, if such person is convicted of a*
35 *violation of the restrictions, such person's driving privileges shall be*
36 *suspended for an additional year, in addition to any term of suspension*
37 *or restriction as provided in subsection (b)(1)(A) of K.S.A. 8-1014, and*
38 *amendments thereto.*

39 (c) (1) *Any person whose driving privileges have been restricted*
40 *as provided in subsection (a) or (b) shall carry documentation, as*
41 *provided in rules and regulations promulgated by the division, of*
42 *scheduled events the person is allowed to drive to and from under such*
43 *restrictions at any time the person is operating a motor vehicle on the*

1 *highways of this state. The division shall promulgate such rules and*
2 *regulations on or before July 1, 2012.*

3 *(2) Whenever a law enforcement officer stops any person operating*
4 *a motor vehicle on the highways of this state whose driving privileges*
5 *have been restricted as provided in subsection (a) or (b) and the person is*
6 *not carrying the documentation described in this subsection, there shall*
7 *be a rebuttable presumption that the person is operating a motor vehicle*
8 *on the highways of this state in violation of such restrictions.*

9 ~~*(e) (d) Except as provided in subsection (b), when a person has*~~
10 ~~*completed the suspension pursuant to subsection (a), (b) or (c) of K.S.A.*~~
11 ~~*8-1014, and amendments thereto, the division shall restrict the person's*~~
12 ~~*driving privileges pursuant to subsection (a), (b) or (c) of K.S.A. 8-1014,*~~
13 ~~*and amendments thereto, to driving only a motor vehicle equipped with*~~
14 ~~*an ignition interlock device, approved by the division and maintained at*~~
15 ~~*the person's expense. Proof of the installation of such device, for the*~~
16 ~~*entire restriction period, shall be provided to the division before the*~~
17 ~~*person's driving privileges are fully reinstated. Upon restricting a*~~
18 ~~*person's driving privileges pursuant to this subsection, the division shall*~~
19 ~~*issue a copy of the order imposing the restrictions which is required to be*~~
20 ~~*carried by the person at any time the person is operating a motor vehicle*~~
21 ~~*on the highways of this state.*~~

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

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

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

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

20 Sec. 18. K.S.A. 8-1016 is hereby amended to read as follows: 8-
21 1016. (a) *On or before July 1, 2012, the secretary of ~~revenue~~ may health*
22 *and environment shall adopt rules and regulations for:*

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

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

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

42 (4) requiring that each manufacturer provide a credit of at least 2%
43 of the gross program revenues in the state as a credit for those persons

1 *who have otherwise qualified to obtain an ignition interlock restricted*
2 *license under this act who are indigent as evidenced by qualification and*
3 *eligibility for the federal supplemental assistance nutrition program.*
4 *Such rules and regulations shall require that the manufacturer or the*
5 *manufacturer's representatives inform persons of this credit and how to*
6 *qualify for assistance in obtaining an ignition interlock device.*

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

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

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

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

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

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

42 ~~(b) (c) If the division department approves an ignition interlock~~
43 ~~device in accordance with rules and regulations adopted under this~~

1 section, the ~~division~~ department shall give written notice of the approval
2 to the manufacturer of the device. Such notice shall be admissible in any
3 civil or criminal proceeding in this state.

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

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

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

15 Sec. 19. K.S.A. 8-1017 is hereby amended to read as follows: 8-
16 1017. (a) No person shall:

17 (1) Tamper with an ignition interlock device ~~for the purpose of~~
18 ~~circumventing it or rendering~~, *circumvent it or render* it inaccurate or
19 inoperative;

20 (2) request or solicit another to blow into an ignition interlock
21 device, or start a motor vehicle equipped with such device, ~~for the~~
22 ~~purpose of~~ providing an operable motor vehicle to a person whose driving
23 privileges have been restricted to driving a motor vehicle equipped with
24 such device;

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

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

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

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

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

39 (B) *on a second or subsequent conviction of a violation of*
40 *subsection (a)(1) or (a)(2), the division shall restart the original ignition*
41 *interlock restriction period on the person's driving privileges; and*

42 (2) *on a conviction of a violation of subsection (a)(3), the division*
43 *shall restrict the person's driving privileges for two years to driving only*

1 *a motor vehicle equipped with an ignition interlock and only in the*
2 *course of the person's employment and for the purposes of getting to and*
3 *from: Work, school or an alcohol treatment program; the ignition*
4 *interlock provider for maintenance and downloading of data from the*
5 *device; and court or court-ordered supervision; and*

6 *(3) on a conviction of a violation of subsection (a)(4), the division*
7 *shall restart the original ignition interlock restriction period on the*
8 *person's driving privileges.*

9 Sec. 20. K.S.A. 2010 Supp. 8-1020 is hereby amended to read as
10 follows: 8-1020. (a) Any licensee served with an officer's certification
11 and notice of suspension pursuant to K.S.A. 8-1002, and amendments
12 thereto, may request an administrative hearing. Such request may be
13 made either by:

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

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

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

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

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

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

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

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

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

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

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

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

16 (f) At or prior to the time the notice of hearing is sent, the division
17 shall issue an order allowing the licensee or the licensee's attorney to
18 review any video or audio tape record made of the events upon which the
19 administrative action is based. Such review shall take place at a
20 reasonable time designated by the law enforcement agency and shall be
21 made at the location where the video or audio tape is kept. The licensee
22 may obtain a copy of any such video or audio tape upon request and upon
23 payment of a reasonable fee to the law enforcement agency, not to exceed
24 \$25 per tape.

25 (g) Witnesses at the hearing shall be limited to the licensee, to any
26 law enforcement officer who signed the certification form and to one
27 other witness who was present at the time of the issuance of the
28 certification and called by the licensee. The presence of the certifying
29 officer or officers shall not be required, unless requested by the licensee
30 at the time of making the request for the hearing. The examination of a
31 law enforcement officer shall be restricted to the factual circumstances
32 relied upon in the officer's certification.

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

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

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

43 (C) a law enforcement officer had presented the person with the oral

1 and written notice required by K.S.A. 8-1001, and amendments thereto;
2 and

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

5 (2) If the officer certifies that the person failed a breath test, the
6 scope 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
10 defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol
11 or other 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 certified by the Kansas
18 department of health and environment;

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

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

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

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

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

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

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

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

38 (D) the testing equipment used was reliable;

39 (E) the person who operated the testing equipment was qualified;

40 (F) the testing procedures used were reliable;

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

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

1 (i) At a hearing pursuant to this section, or upon court review of an
2 order entered at such a hearing, an affidavit of the custodian of records at
3 the Kansas department of health and environment stating that the breath
4 testing device was certified and the operator of such device was certified
5 on the date of the test shall be admissible into evidence in the same
6 manner and with the same force and effect as if the certifying officer or
7 employee of the Kansas department of health and environment had
8 testified in person. A certified operator of a breath testing device shall be
9 competent to testify regarding the proper procedures to be used in
10 conducting the test.

11 (j) At a hearing pursuant to this section, or upon court review of an
12 order entered at such a hearing, in which the report of blood test results
13 have been prepared by the Kansas bureau of investigation or other
14 forensic laboratory of a state or local law enforcement agency are to be
15 introduced as evidence, the report, or a copy of the report, of the findings
16 of the forensic examiner shall be admissible into evidence in the same
17 manner and with the same force and effect as if the forensic examiner
18 who performed such examination, analysis, comparison or identification
19 and prepared the report thereon had testified in person.

20 (k) At the hearing, the licensee has the burden of proof by a
21 preponderance of the evidence to show that the facts set out in the
22 officer's certification are false or insufficient and that the order
23 suspending or suspending and restricting the licensee's driving privileges
24 should be dismissed.

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

- 26 (1) The documents set out in subsection (e);
- 27 (2) the testimony of the licensee;
- 28 (3) the testimony of any certifying officer;
- 29 (4) the testimony of any witness present at the time of the issuance
30 of the certification and called by the licensee;
- 31 (5) any affidavits submitted from other witnesses;
- 32 (6) any documents submitted by the licensee to show the existence
33 of a medical condition, as described in K.S.A. 8-1001, and amendments
34 thereto; and
- 35 (7) any video or audio tape record of the events upon which the
36 administrative action is based.

37 (m) After the hearing, the representative of the director shall enter an
38 order affirming the order of suspension or suspension and restriction of
39 driving privileges or for good cause appearing therefor, dismiss the
40 administrative action. If the representative of the director enters an order
41 affirming the order of suspension or suspension and restriction of driving
42 privileges, the suspension or suspension and restriction shall begin on the
43 30th day after the effective date of the order of suspension or suspension

1 and restriction. If the person whose privileges are suspended is a
2 nonresident licensee, the license of the person shall be forwarded to the
3 appropriate licensing authority in the person's state of residence if the
4 result at the hearing is adverse to such person or if no timely request for a
5 hearing is received.

6 (n) The representative of the director may issue an order at the close
7 of the hearing or may take the matter under advisement and issue a
8 hearing order at a later date. If the order is made at the close of the
9 hearing, the licensee or the licensee's attorney shall be served with a copy
10 of the order by the representative of the director. If the matter is taken
11 under advisement or if the hearing was by telephone conference call, the
12 licensee and any attorney who appeared at the administrative hearing
13 upon behalf of the licensee each shall be served with a copy of the
14 hearing order by mail. Any law enforcement officer who appeared at the
15 hearing also may be mailed a copy of the hearing order. The effective
16 date of the hearing order shall be the date upon which the hearing order is
17 served, whether served in person or by mail.

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

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

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

43 (r) Notwithstanding the requirement to issue a temporary license in

1 K.S.A. 8-1002, and amendments thereto, and the requirements to extend
2 the temporary license in this section, any such temporary driving
3 privileges are subject to restriction, suspension, revocation or cancellation
4 as provided in K.S.A. 8-1014, and amendments thereto, or for other
5 cause.

6 (s) Upon motion by a party, or on the court's own motion, the court
7 may enter an order restricting the driving privileges allowed by the
8 temporary license provided for in K.S.A. 8-1002, and amendments
9 thereto, and in this section. The temporary license also shall be subject to
10 restriction, suspension, revocation or cancellation, as set out in K.S.A. 8-
11 1014, and amendments thereto, or for other cause.

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

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

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

30 Sec. 21. K.S.A. 2010 Supp. 8-1021 is hereby amended to read as
31 follows: 8-1021. If the owner of a motor vehicle which has been
32 impounded pursuant to K.S.A. 8-1567 or K.S.A. 2010 Supp. 8-1022 *or*
33 *section 2*, and amendments thereto, refuses to pay any towing,
34 impoundment, storage or other fees relating to the impoundment or
35 immobilization of such vehicle or fails to take possession of such vehicle
36 within 30 days following the date of the expiration of the impoundment
37 period, such vehicle shall be deemed abandoned and the vehicle may be
38 disposed of by the person having possession of such vehicle. If the person
39 having possession of such vehicle is a public agency, disposition of such
40 vehicle shall be in compliance with the procedures for notice and public
41 auction provided by paragraph (2) of subsection (a) of K.S.A. 8-1102, and
42 amendments thereto. If the person having possession of such vehicle is
43 not a public agency, disposition of such vehicle shall be in compliance

1 with K.S.A. 8-1103 through 8-1108, and amendments thereto.

2 Sec. 22. K.S.A. 2010 Supp. 8-1022 is hereby amended to read as
3 follows: 8-1022. (a) It shall be unlawful for the owner of a motor vehicle
4 to allow a person to drive such vehicle when such owner knows or
5 reasonably should have known such person was driving in violation of
6 K.S.A. 8-1014, and amendments thereto.

7 (b) Violation of this section is an unclassified misdemeanor
8 punishable by a fine of not less than \$500 nor more than \$1,000. In
9 addition to the fine imposed upon a person convicted of a violation of this
10 section, the court may order that the convicted person's motor vehicle or
11 vehicles be impounded or immobilized for a period not to exceed one
12 year and that the convicted person pay all towing, impoundment and
13 storage fees or other immobilization costs. Prior to ordering the
14 impoundment or immobilization of any such motor vehicle, the court
15 shall consider the factors established in subsection ~~(k)(3)~~ (g) of K.S.A. 8-
16 1567, and amendments thereto. Any personal property in a vehicle
17 impounded or immobilized pursuant to this section may be retrieved prior
18 to or during the period of such impoundment or immobilization.

19 Sec. 23. K.S.A. 2010 Supp. 8-1102 is hereby amended to read as
20 follows: 8-1102. (a) (1) A person shall not use the public highway to
21 abandon vehicles or use the highway to leave vehicles unattended in such
22 a manner as to interfere with public highway operations. When a person
23 leaves a motor vehicle on a public highway or other property open to use
24 by the public, the public agency having jurisdiction of such highway or
25 other property open to use by the public, after 48 hours or when the motor
26 vehicle interferes with public highway operations, may remove and
27 impound the motor vehicle.

28 (2) Any motor vehicle which has been impounded as provided in
29 this section for 30 days or more shall be disposed of in the following
30 manner: If such motor vehicle has displayed thereon a registration plate
31 issued by the division of vehicles and has been registered with the
32 division, the public agency shall request verification from the division of
33 vehicles of the last registered owner and any lienholders, if any. Such
34 verification request shall be submitted to the division of vehicles not
35 more than 30 days after such agency took possession of the vehicle. The
36 public agency shall mail a notice by certified mail to the registered owner
37 thereof, addressed to the address as shown on the certificate of
38 registration, and to the lienholder, if any, of record in the county in which
39 the title shows the owner resides, if registered in this state. The notice
40 shall state that if the owner or lienholder does not claim such motor
41 vehicle and pay the removal and storage charges incurred by such public
42 agency on it within 15 days from the date of the mailing of the notice,
43 that it will be sold at public auction to the highest bidder for cash. The

1 notice shall be mailed within 10 days after receipt of verification of the
2 last owner and any lienholders, if any, as provided in this subsection.

3 After 15 days from date of mailing notice, the public agency shall
4 publish a notice once a week for two consecutive weeks in a newspaper
5 of general circulation in the county where such motor vehicle was
6 abandoned and left, which notice shall describe the motor vehicle by
7 name of maker, model, serial number, and owner, if known, and stating
8 that it has been impounded by the public agency and that it will be sold at
9 public auction to the highest bidder for cash if the owner thereof does not
10 claim it within 10 days of the date of the second publication of the notice
11 and pay the removal and storage charges, and publication costs incurred
12 by the public agency. If the motor vehicle does not display a registration
13 plate issued by the division of vehicles and is not registered with the
14 division, the public agency after 30 days from the date of impoundment,
15 shall request verification from the division of vehicles of the last
16 registered owner and any lienholders, if any. Such verification request
17 shall be submitted to the division of vehicles no more than 30 days after
18 such agency took possession of the vehicle. The public agency shall mail
19 a notice by certified mail to the registered owner thereof, addressed to the
20 address as shown on the certificate of registration, and to the lienholder, if
21 any, of record in the county in which the title shows the owner resides, if
22 registered in this state. The notice shall state that if the owner or
23 lienholder does not claim such motor vehicle and pay the removal and
24 storage charges incurred by such public agency on it within 15 days from
25 the date of the mailing of the notice, it will be sold at public auction to the
26 highest bidder for cash. The notice shall be mailed within 10 days after
27 receipt of verification of the last owner and any lienholders, if any, as
28 provided in this subsection. After 15 days from the date of mailing notice,
29 the public agency shall publish a notice in a newspaper of general
30 circulation in the county where such motor vehicle was abandoned and
31 left, which notice shall describe the motor vehicle by name of maker,
32 model, color and serial number and shall state that it has been impounded
33 by said public agency and will be sold at public auction to the highest
34 bidder for cash, if the owner thereof does not claim it within 10 days of
35 the date of the second publication of the notice and pay the removal and
36 storage charges incurred by the public agency.

37 When any public agency has complied with the provisions of this
38 section with respect to an abandoned motor vehicle and the owner thereof
39 does not claim it within the time stated in the notice and pay the removal
40 and storage charges and publication costs incurred by the public agency
41 on such motor vehicle, the public agency may sell the motor vehicle at
42 public auction to the highest bidder for cash.

43 (3) After any sale pursuant to this section, the purchaser may file

1 proof thereof with the division of vehicles, and the division shall issue a
2 certificate of title to the purchaser of such motor vehicle. All moneys
3 derived from the sale of motor vehicles pursuant to this section, after
4 payment of the expenses of the impoundment and sale, shall be paid into
5 the fund of the public agency which is used by it for the construction or
6 maintenance of highways.

7 (b) Any person who abandons and leaves a vehicle on real property,
8 other than public property or property open to use by the public, which is
9 not owned or leased by such person or by the owner or lessee of such
10 vehicle shall be guilty of criminal trespass, as defined by ~~K.S.A. 21-3721~~
11 *in section 94 of chapter 136 of the 2010 Session Laws of Kansas*, and
12 amendments thereto, and upon request of the owner or occupant of such
13 real property, the public agency in whose jurisdiction such property is
14 situated may remove and dispose of such vehicle in the manner provided
15 in subsection (a), except that the provisions of subsection (a) requiring
16 that a motor vehicle be abandoned for a period of time in excess of 48
17 hours prior to its removal shall not be applicable to abandoned vehicles
18 which are subject to the provisions of this subsection. Any person
19 removing such vehicle from the real property at the request of such public
20 agency shall have a possessory lien on such vehicle for the costs incurred
21 in removing, towing and storing such vehicle.

22 (c) Whenever any motor vehicle has been left unattended for more
23 than 48 hours or when any unattended motor vehicle interferes with
24 public highway operations, any law enforcement officer is hereby
25 authorized to move such vehicle or cause to have the vehicle moved as
26 provided in K.S.A. 8-1103 *et seq.*, and amendments thereto.

27 (d) The notice provisions of this section shall apply to any motor
28 vehicle which has been impounded as provided in K.S.A. 8-1567 *or*
29 *section 2*, and amendments thereto.

30 (e) Any person attempting to recover a motor vehicle impounded as
31 provided in this section or in accordance with a city ordinance or county
32 resolution providing for the impoundment of motor vehicles, shall show
33 proof of valid registration and ownership of the motor vehicle to the
34 public agency before obtaining the motor vehicle. In addition, the public
35 agency may require payment of all reasonable costs associated with the
36 impoundment of the motor vehicle, including transportation and storage
37 fees, prior to release of the motor vehicle.

38 Sec. 24. K.S.A. 8-1501 is hereby amended to read as follows: 8-
39 1501. The provisions of this article relating to the operation of vehicles
40 refer exclusively to the operation of vehicles upon highways except:

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

43 (b) The provisions of K.S.A. 8-1566 to 8-1568, inclusive, *section 2*

1 and the provisions of article 10 of chapter 8 of the Kansas Statutes
2 Annotated, and any acts amendatory thereof, shall apply upon highways
3 and elsewhere throughout the state.

4 Sec. 25. K.S.A. 2009 Supp. 8-1567, as amended by section 3 of
5 chapter 153 of the 2010 Session Laws of Kansas, is hereby amended to
6 read as follows: 8-1567. (a) ~~No person shall operate or attempt~~ *Driving*
7 *under the influence is operating or attempting to operate any vehicle*
8 *within this state while:*

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

13 (2) the alcohol concentration in the person's blood or breath, as
14 measured within ~~two~~ *three* hours of the time of operating or attempting to
15 operate a vehicle, is .08 or more;

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

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

20 (5) under the influence of a combination of alcohol and any drug or
21 drugs to a degree that renders the person incapable of safely driving a
22 vehicle.; *or*

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

25 (6) the person is a habitual user of any narcotic, hypnotic,
26 somnifacient or stimulating drug.

27 ~~(c) If a person is charged with a violation of this section involving~~
28 ~~drugs, the fact that the person is or has been entitled to use the drug under~~
29 ~~the laws of this state shall not constitute a defense against the charge.~~

30 ~~(d) Upon a first conviction of a violation of this section, a person~~
31 ~~shall be guilty of a class B, nonperson misdemeanor and sentenced to not~~
32 ~~less than 48 consecutive hours nor more than six months' imprisonment,~~
33 ~~or in the court's discretion 100 hours of public service, and fined not less~~
34 ~~than \$500 nor more than \$1,000. The person convicted must serve at least~~
35 ~~48 consecutive hours' imprisonment or 100 hours of public service either~~
36 ~~before or as a condition of any grant of probation or suspension,~~
37 ~~reduction of sentence or parole.~~

38 ~~In addition, the court shall enter an order which requires that the~~
39 ~~person enroll in and successfully complete an alcohol and drug safety~~
40 ~~action education program or treatment program as provided in K.S.A. 8-~~
41 ~~1008, and amendments thereto, or both the education and treatment~~
42 ~~programs.~~

43 ~~(e) On a second conviction of a violation of this section, a person~~

1 shall be guilty of a class A, nonperson misdemeanor and sentenced to not
2 less than 90 days nor more than one year's imprisonment and fined not
3 less than \$1,000 nor more than \$1,500. The person convicted must serve
4 at least five consecutive days' imprisonment before the person is granted
5 probation, suspension or reduction of sentence or parole or is otherwise
6 released. The five days' imprisonment mandated by this subsection may
7 be served in a work release program only after such person has served 48
8 consecutive hours' imprisonment, provided such work release program
9 requires such person to return to confinement at the end of each day in
10 the work release program. The court may place the person convicted
11 under a house arrest program pursuant to K.S.A. 21-4603b, and
12 amendments thereto, to serve the remainder of the minimum sentence
13 only after such person has served 48 consecutive hours' imprisonment.

14 As a condition of any grant of probation, suspension of sentence or
15 parole or of any other release, the person shall be required to enter into
16 and complete a treatment program for alcohol and drug abuse as provided
17 in K.S.A. 8-1008, and amendments thereto.

18 ~~(f) (1) On the third conviction of a violation of this section, a~~
19 ~~person shall be guilty of a nonperson felony and sentenced to not less~~
20 ~~than 90 days nor more than one year's imprisonment and fined \$2,500.~~
21 ~~The person convicted shall not be eligible for release on probation,~~
22 ~~suspension or reduction of sentence or parole until the person has served~~
23 ~~at least 90 days' imprisonment. The 90 days' imprisonment mandated by~~
24 ~~this paragraph may be served in a work release program only after such~~
25 ~~person has served 72 consecutive hours' imprisonment, provided such~~
26 ~~work release program requires such person to return to confinement at the~~
27 ~~end of each day in the work release program.~~

28 ~~(2)~~

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

30 ~~(A) On a first conviction a class A, nonperson misdemeanor. The~~
31 ~~person convicted shall be sentenced to not less than 30 days nor more~~
32 ~~than one year's imprisonment and fined not less than \$500 nor more than~~
33 ~~\$2,500. The person convicted shall serve at least 48 consecutive hours'~~
34 ~~imprisonment or 100 hours of public service either before or as a~~
35 ~~condition of any grant of probation or suspension, reduction of sentence~~
36 ~~or parole;~~

37 ~~(B) on a second conviction a class A, nonperson misdemeanor. The~~
38 ~~person convicted shall be sentenced to not less than 90 days nor more~~
39 ~~than one year's imprisonment and fined not less than \$1,000 nor more~~
40 ~~than \$2,500. The person convicted shall serve at least five consecutive~~
41 ~~days' imprisonment before the person is granted probation, suspension or~~
42 ~~reduction of sentence or parole or is otherwise released. The five~~
43 ~~consecutive days' imprisonment mandated by this subsection may be~~

1 served by completing: (i) Six days in a work release program only after
2 such person has served 48 consecutive hours' imprisonment, provided
3 such work release program requires such person to return to confinement
4 at the end of each day in the work release program; or (ii) ten days under
5 a house arrest program pursuant to section 249 of chapter 136 of the
6 2010 Session Laws of Kansas, and amendments thereto, only after such
7 person has served 48 consecutive hours' imprisonment;

8 (C) on a third conviction a class A, nonperson misdemeanor, except
9 as provided in subsection (b)(1)(D). The person convicted shall be
10 sentenced to not less than 90 days nor more than one year's
11 imprisonment and fined \$2,500. The person convicted shall serve at least
12 10 consecutive days' imprisonment before the person is granted
13 probation, suspension or reduction of sentence or parole or is otherwise
14 released. The 10 consecutive days' imprisonment mandated by this
15 subsection may be served by completing: (i) Twelve days in a work
16 release program only after such person has served 96 consecutive hours'
17 imprisonment, provided such work release program requires such person
18 to return to confinement at the end of each day in the work release
19 program; or (ii) twenty days under a house arrest program pursuant to
20 section 249 of chapter 136 of the 2010 Session Laws of Kansas, and
21 amendments thereto, only after such person has served 96 consecutive
22 hours' imprisonment;

23 (D) on a third conviction a nonperson felony, if the person has a
24 prior conviction which occurred within the preceding 10 years, not
25 including any period of incarceration. The person convicted shall be
26 sentenced to not less than 90 days nor more than one year's
27 imprisonment and fined \$2,500. The person convicted shall serve at least
28 10 consecutive days' imprisonment before the person is granted
29 probation, suspension or reduction of sentence or parole or is otherwise
30 released. The 10 consecutive days' imprisonment mandated by this
31 subsection may be served by completing:

32 (i) Twelve days in a work release program only after such person
33 has served 96 consecutive hours' imprisonment, provided such work
34 release program requires such person to return to confinement at the end
35 of each day in the work release program; or (ii) twenty days under a
36 house arrest program pursuant to section 249 of chapter 136 of the 2010
37 Session Laws of Kansas, and amendments thereto, only after such person
38 has served 96 consecutive hours' imprisonment;

39 (E) the court may order that the term of imprisonment imposed
40 pursuant to ~~paragraph (1)~~ subsection (b)(1)(C) or (b)(1)(D) be served in a
41 state facility in the custody of the secretary of corrections in a facility
42 designated by the secretary for the provision of substance abuse treatment
43 pursuant to the provisions of ~~K.S.A. 21-4704~~ section 285 of chapter 136

1 *of the 2010 Session Laws of Kansas*, and amendments thereto. The person
 2 shall remain imprisoned at the state facility only while participating in the
 3 substance abuse treatment program designated by the secretary and shall
 4 be returned to the custody of the sheriff for execution of the balance of
 5 the term of imprisonment upon completion of or the person's discharge
 6 from the substance abuse treatment program. Custody of the person shall
 7 be returned to the sheriff for execution of the sentence imposed in the
 8 event the secretary of corrections determines: ~~(A)~~ (i) That substance
 9 abuse treatment resources or the capacity of the facility designated by the
 10 secretary for the incarceration and treatment of the person is not
 11 available; ~~(B)~~ (ii) the person fails to meaningfully participate in the
 12 treatment program of the designated facility; ~~(C)~~ (iii) the person is
 13 disruptive to the security or operation of the designated facility; or ~~(D)~~
 14 (iv) the medical or mental health condition of the person renders the
 15 person unsuitable for confinement at the designated facility. The
 16 determination by the secretary that the person either is not to be admitted
 17 into the designated facility or is to be transferred from the designated
 18 facility is not subject to review. The sheriff shall be responsible for all
 19 transportation expenses to and from the state correctional facility.

20 At the time of the filing of the judgment form or journal entry as
 21 required by K.S.A. ~~21-4620 or 22-3426~~ or *section 280 of chapter 136 of*
 22 *the 2010 Session Laws of Kansas*, and amendments thereto, the court
 23 shall cause a certified copy to be sent to the officer having the offender in
 24 charge. The law enforcement agency maintaining custody and control of a
 25 defendant for imprisonment shall cause a certified copy of the judgment
 26 form or journal entry to be sent to the secretary of corrections within
 27 three business days of receipt of the judgment form or journal entry from
 28 the court and notify the secretary of corrections when the term of
 29 imprisonment expires and upon expiration of the term of imprisonment
 30 shall deliver the defendant to a location designated by the secretary. After
 31 the term of imprisonment imposed by the court, the person shall be
 32 placed in the custody of the secretary of corrections for a mandatory one-
 33 year period of postrelease supervision, which such period of postrelease
 34 supervision shall not be reduced. During such postrelease supervision, the
 35 person shall be required to participate in an inpatient or outpatient
 36 program for alcohol and drug abuse, including, but not limited to, an
 37 approved aftercare plan or mental health counseling, as determined by the
 38 secretary and satisfy conditions imposed by the Kansas parole board as
 39 provided by K.S.A. 22-3717, and amendments thereto. Any violation of
 40 the conditions of such postrelease supervision may subject such person to
 41 revocation of postrelease supervision pursuant to K.S.A. 75-5217 et seq.,
 42 and amendments thereto and as otherwise provided by law;

43 ~~(g) (1) On the fourth or subsequent conviction of a violation of this~~

1 section, a person shall be guilty of a nonperson felony and sentenced to
2 not less than 180 days nor more than one year's imprisonment and fined
3 \$2,500. The person convicted shall not be eligible for release on
4 probation, suspension or reduction of sentence or parole until the person
5 has served at least 180 days' imprisonment. The 180 days' imprisonment
6 mandated by this paragraph may be served in a work release program
7 only after such person has served 144 consecutive hours' imprisonment,
8 provided such work release program requires such person to return to
9 confinement at the end of each day in the work release program.

10 (2) The court may order that the term of imprisonment imposed
11 pursuant to paragraph (1) be served in a state facility in the custody of the
12 secretary of corrections in a facility designated by the secretary for the
13 provision of substance abuse treatment pursuant to the provisions of
14 K.S.A. 21-4704, and amendments thereto. The person shall remain
15 imprisoned at the state facility only while participating in the substance
16 abuse treatment program designated by the secretary and shall be returned
17 to the custody of the sheriff for execution of the balance of the term of
18 imprisonment upon completion of or the person's discharge from the
19 substance abuse treatment program. Custody of the person shall be
20 returned to the sheriff for execution of the sentence imposed in the event
21 the secretary of corrections determines: (A) That substance abuse
22 treatment resources or the capacity of the facility designated by the
23 secretary for the incarceration and treatment of the person is not
24 available; (B) the person fails to meaningfully participate in the treatment
25 program of the designated facility; (C) the person is disruptive to the
26 security or operation of the designated facility; or (D) the medical or
27 mental health condition of the person renders the person unsuitable for
28 confinement at the designated facility. The determination by the secretary
29 that the person either is not to be admitted into the designated facility or
30 is to be transferred from the designated facility is not subject to review.
31 The sheriff shall be responsible for all transportation expenses to and
32 from the state correctional facility.

33 At the time of the filing of the judgment form or journal entry as
34 required by K.S.A. 21-4620 or 22-3426, and amendments thereto, the
35 court shall cause a certified copy to be sent to the officer having the
36 offender in charge. The law enforcement agency maintaining custody and
37 control of a defendant for imprisonment shall cause a certified copy of the
38 judgment form or journal entry to be sent to the secretary of corrections
39 within three business days of receipt of the judgment form or journal
40 entry from the court and notify the secretary of corrections when the term
41 of imprisonment expires and upon expiration of the term of imprisonment
42 shall deliver the defendant to a location designated by the secretary.

43 (h) Any person convicted of violating this section or an ordinance

1 ~~which prohibits the acts that this section prohibits~~

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

4 (2) In addition, prior to sentencing for any conviction, the court
5 shall order the person to participate in an alcohol and drug evaluation
6 conducted by a licensed provider with a DUI specialty as provided in
7 K.S.A. 8-1008, and amendments thereto. The person shall be required to
8 follow any recommendation made by the provider after such evaluation,
9 unless otherwise ordered by the court. The provisions of this paragraph
10 shall not apply to any person sentenced to imprisonment for a fourth or
11 subsequent conviction pursuant to subsection (b)(1)(F).

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

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

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

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

1 ~~(*)~~ (g) (1) Except as provided in paragraph (5), in addition to any
2 other penalty which may be imposed upon a ~~first~~ conviction of a violation
3 of this section, the court may order that ~~the convicted person's motor~~
4 ~~vehicle or vehicles~~ *any motor vehicle owned or operated, or both, by the*
5 *convicted person* be impounded or immobilized for a period not to exceed
6 ~~one year~~ *two years* and that the convicted person pay all towing,
7 impoundment and storage fees or other immobilization costs.

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

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

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

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

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

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

31 ~~(1) (1) Except as provided in paragraph (3), in addition to any other~~
32 ~~penalty which may be imposed upon a second or subsequent conviction~~
33 ~~of a violation of this section, the court shall order that each motor vehicle~~
34 ~~owned or leased by the convicted person shall either be equipped with an~~
35 ~~ignition interlock device or be impounded or immobilized for a period of~~
36 ~~two years. The convicted person shall pay all costs associated with the~~
37 ~~installation, maintenance and removal of the ignition interlock device and~~
38 ~~all towing, impoundment and storage fees or other immobilization costs.~~

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

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

1 on the convicted person's motor vehicle subject to impoundment or
2 immobilization expires in less than two years from the date of the
3 impoundment or immobilization, the time of impoundment or
4 immobilization of such vehicle shall be the amount of time remaining on
5 the lease.

6 ~~(m)~~—(1) (h) Prior to filing a complaint alleging a violation of this
7 section, a prosecutor shall request and shall receive from the: (1) Division
8 a record of all prior convictions obtained against such person for any
9 violations of any of the motor vehicle laws of this state:

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

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

21 ~~(o)~~—For the purpose of determining whether a conviction is a first,
22 second, third, fourth or subsequent conviction in sentencing under this
23 section:

24 (1) "Conviction" includes being convicted of a violation of this
25 section or entering into a diversion agreement in lieu of further criminal
26 proceedings on a complaint alleging a violation of this section;

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

32 (3) any convictions occurring during a person's lifetime shall be
33 taken into account when determining the sentence to be imposed for a
34 first, second, third, fourth or subsequent offender;

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

37 (5) a person may enter into a diversion agreement in lieu of further
38 eriminal 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 ~~(p)~~ (j) 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 ~~(q) (1) (A) (k) (1) Except as provided in subsections (1) and~~
5 ~~(m), nothing contained in this section shall be construed as preventing~~
6 ~~any city from enacting ordinances, or any county from adopting~~
7 ~~resolutions, declaring acts prohibited or made unlawful by this act as~~
8 ~~unlawful or prohibited in such city or county and prescribing penalties for~~
9 ~~violation thereof. Except as specifically provided by this subsection,~~

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

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

22 ~~(C) (3) Any such ordinance or resolution shall authorize the court to~~
23 ~~order that the convicted person pay restitution to any victim who suffered~~
24 ~~loss due to the violation for which the person was convicted. Except as~~
25 ~~provided in paragraph (5);~~

26 (4) Any such ordinance or resolution may require or authorize the
27 court to order that the convicted person's motor vehicle or vehicles be
28 impounded or immobilized for a period not to exceed one year and that
29 the convicted person pay all towing, impoundment and storage fees or
30 other immobilization costs in accordance with subsection (g).

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

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

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

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

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

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

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

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

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

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

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

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

42 ~~(o) (1) Upon the filing of a complaint, citation or notice to~~
43 ~~appear alleging a person has violated a city ordinance prohibiting the acts~~

1 prohibited by this section, and prior to conviction thereof, a city attorney
2 shall request and shall receive from the: (A) Division a record of all prior
3 convictions obtained against such person for any violations of any of the
4 motor vehicle laws of this state:

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

11 ~~(3) (2)~~ If the elements of such ordinance violation are the same as
12 the elements of a violation of this section that would constitute, and be
13 punished as, a ~~felony~~ *third or subsequent conviction*, the city attorney
14 shall refer the violation to the appropriate county or district attorney for
15 prosecution. *The county or district attorney shall accept such referral*
16 *and pursue a disposition of such violation, and shall not refer any such*
17 *violation back to the city attorney.*

18 ~~(4) (p)~~ (1) No plea bargaining agreement shall be entered into nor
19 shall any judge approve a plea bargaining agreement entered into for the
20 purpose of permitting a person charged with a violation of this section, or
21 a violation of any ordinance of a city or resolution of any county in this
22 state which prohibits the acts prohibited by this section, to avoid the
23 mandatory penalties established by this section or by the ordinance.

24 (2) For the purpose of this subsection, entering into a diversion
25 agreement pursuant to K.S.A. 12-4413 et seq. or 22-2906 et seq., and
26 amendments thereto, shall not constitute plea bargaining.

27 (q) (1) *A person shall not be eligible to enter into a diversion*
28 *agreement in lieu of further criminal proceedings for a violation of this*
29 *section, or a violation of an ordinance of any city or resolution of any*
30 *county which prohibits the acts that this section prohibits, if such person*
31 *has a prior conviction, as defined in subsection (u), during the person's*
32 *lifetime, of any violation described in subsection (u).*

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

42 ~~(5) (r)~~ The alternatives set out in subsections (a)(1), (a)(2) and (a)(3)
43 may be pleaded in the alternative, and the state, city or county *may*, but

1 shall not be required to, ~~may~~ elect one or two of the three prior to
2 submission of the case to the fact finder.

3 ~~(t)~~ (s) Upon a third or subsequent conviction, the judge of any court
4 in which any person is convicted of violating this section, may revoke the
5 person's license plate or temporary registration certificate of the motor
6 vehicle driven during the violation of this section for a period of one year.
7 Upon revoking any license plate or temporary registration certificate
8 pursuant to this subsection, the court shall require that such license plate
9 or temporary registration certificate be surrendered to the court.

10 ~~(v) For the purpose of this section: (1) "Alcohol concentration"~~
11 ~~means the number of grams of alcohol per 100 milliliters of blood or per~~
12 ~~210 liters of breath.~~

13 ~~(2) "Imprisonment" shall include any restrained environment in~~
14 ~~which the court and law enforcement agency intend to retain custody and~~
15 ~~control of a defendant and such environment has been approved by the~~
16 ~~board of county commissioners or the governing body of a city.~~

17 ~~(3) "Drug" includes toxic vapors as such term is defined in K.S.A.~~
18 ~~2009 Supp. 21-36a12, and amendments thereto.~~

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

28 ~~(x) Upon every conviction of a violation of this section, the court~~
29 ~~shall order such person to submit to a pre-sentence alcohol and drug~~
30 ~~abuse evaluation pursuant to K.S.A. 8-1008, and amendments thereto.~~
31 ~~Such pre-sentence evaluation shall be made available, and shall be~~
32 ~~considered by the sentencing court.~~

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

35 ~~(1) Convictions for a violation of this section, or a violation of an~~
36 ~~ordinance of any city or resolution of any county which prohibits the acts~~
37 ~~that this section prohibits, or entering into a diversion agreement in lieu~~
38 ~~of further criminal proceedings on a complaint alleging any such~~
39 ~~violations, shall be taken into account, but only convictions or diversions~~
40 ~~occurring on or after July 1, 1996. Nothing in this provision shall be~~
41 ~~construed as preventing any court from considering any convictions or~~
42 ~~diversions occurring during the person's lifetime in determining the~~
43 ~~sentence to be imposed within the limits provided for a first, second, third~~

1 or subsequent offender;

2 (2) any convictions for a violation of the following sections
3 occurring during a person's lifetime shall be taken into account: (A)
4 Section 2, and amendments thereto; (B) K.S.A. 8-2,144, and amendments
5 thereto; (C) K.S.A. 32-1131, and amendments thereto; (D) subsection (a)
6 (3) of section 40 of chapter 136 of the 2010 Session Laws of Kansas, and
7 amendments thereto; (E) subsection (g) of section 48 of chapter 136 of
8 the 2010 Session Laws of Kansas, and amendments thereto; and (F)
9 aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or
10 vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was
11 committed while committing a violation of K.S.A. 8-1567, and
12 amendments thereto;

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

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

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

28 (v) As used in this section:

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

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

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

37 Sec. 26. K.S.A. 2010 Supp. 12-4104 is hereby amended to read as
38 follows: 12-4104. (a) The municipal court of each city shall have
39 jurisdiction to hear and determine cases involving violations of the
40 ordinances of the city, including concurrent jurisdiction to hear and
41 determine a violation of an ordinance when the elements of such
42 ordinance violation are the same as the elements of a violation of one of
43 the following state statutes and would constitute, and be punished as, a

1 felony if charged in district court:

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

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

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

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

11 ~~(5) (4) subsection (b)(3) of K.S.A. 2010 Supp. 21-36a06, and~~
12 ~~amendments thereto, possession of marijuana.~~

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

14 Sec. 27. K.S.A. 2010 Supp. 12-4106 is hereby amended to read as
15 follows: 12-4106. (a) The municipal judge shall have the power to
16 administer the oaths and enforce all orders, rules and judgments made by
17 such municipal judge, and may fine or imprison for contempt in the same
18 manner and to the same extent as a judge of the district court.

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

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

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

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

1 disposition.

2 (f) *In all cases alleging a violation of a city ordinance prohibiting*
3 *the acts prohibited by K.S.A. 8-2,144 or 8-1567 or section 2, and*
4 *amendments thereto, the municipal court judge shall ensure that*
5 ~~information concerning persons arrested or charged with a violation of a~~
6 ~~city ordinance prohibiting the acts prohibited by K.S.A. 8-1567, and~~
7 ~~amendments thereto, is forwarded to the Kansas bureau of investigation~~
8 ~~central repository; the municipal court:~~

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

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

18 (3) *reports the filing of such case to the Kansas bureau of*
19 *investigation central repository; and*

20 (4) *on and after July 1, 2013, reports the filing of such case*
21 *electronically to the Kansas bureau of investigation central repository.*

22 Sec. 28. K.S.A. 12-4413 is hereby amended to read as follows: 12-
23 4413. As used in K.S.A. 8-1009; and 12-4413 to 12-4418, inclusive ~~and~~
24 ~~22-3609~~:

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

26 (b) "Complaint" means complaint, citation or notice to appear in a
27 municipal court.

28 (c) "Diversion" means referral of a defendant in a criminal case
29 charging an alcohol related offense to a supervised performance program
30 prior to adjudication.

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

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

37 Sec. 29. K.S.A. 12-4414 is hereby amended to read as follows: 12-
38 4414. (a) *Except as provided in K.S.A. 8-1567 and section 2, and*
39 *amendments thereto, after a complaint has been filed charging a*
40 *defendant with violation of an alcohol or drug related offense and prior to*
41 *conviction thereof, and after the city attorney has considered the factors*
42 *listed in K.S.A. 12-4415, and amendments thereto, if it appears to the*
43 *city attorney that diversion of the defendant would be in the interests of*

1 justice and of benefit to the defendant and the community, the city
2 attorney may propose a diversion agreement to the defendant. The terms
3 of each diversion agreement shall be established by the city attorney in
4 accordance with K.S.A. 12-4416, *and amendments thereto*.

5 (b) Each city attorney shall adopt written policies and guidelines for
6 the implementation of a diversion program in accordance with K.S.A. 8-
7 1009; *and* 12-4412 to 12-4417 ~~and 22-3609~~, inclusive, *and amendments*
8 *thereto*. Such policies and guidelines shall provide for a diversion
9 conference and other procedures in those cases where the city attorney
10 elects to offer diversion in lieu of further criminal proceedings on the
11 complaint.

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

21 Sec. 30. K.S.A. 12-4415 is hereby amended to read as follows: 12-
22 4415. (a) In determining whether diversion of a defendant is in the
23 interests of justice and of benefit to the defendant and the community, the
24 city attorney shall consider at least the following factors among all factors
25 considered:

26 (1) The nature of the crime charged and the circumstances
27 surrounding it;

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

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

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

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

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

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

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

42 (9) provisions for restitution; and

43 (10) any mitigating circumstances.

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

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

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

11 ~~(3)(1) During the time of the alleged alcohol related offense was~~
12 ~~involved in a motor vehicle accident or collision resulting in personal~~
13 ~~injury or death; or~~

14 ~~(2) has a prior conviction of a violation of: (A) Section 2, and~~
15 ~~amendments thereto; (B) K.S.A. 8-2,144, and amendments thereto; (C)~~
16 ~~K.S.A. 8-1567, and amendments thereto; (D) K.S.A. 32-1131, and~~
17 ~~amendments thereto; (E) subsection (a)(3) of section 40 of chapter 136 of~~
18 ~~the 2010 Session Laws of Kansas, and amendments thereto; (F)~~
19 ~~subsection (g) of section 48 of chapter 136 of the 2010 Session Laws of~~
20 ~~Kansas, and amendments thereto; and (G) aggravated vehicular~~
21 ~~homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular battery,~~
22 ~~K.S.A. 21-3405b, prior to its repeal, if the crime was committed while~~
23 ~~committing a violation of K.S.A. 8-1567, and amendments thereto.~~

24 ~~(c) As used in this section, "conviction" also means: (1) Entering~~
25 ~~into a diversion agreement in lieu of further criminal proceedings on a~~
26 ~~complaint alleging a violation of a crime described in subsection (b)(2);~~
27 ~~(2) conviction of a violation of a law of another state, or an ordinance of~~
28 ~~a city in this state or of another state, or a resolution of a county in this~~
29 ~~state or of another state, which would constitute a crime described in~~
30 ~~subsection (b)(2); and (3) receiving punishment under the uniform code~~
31 ~~of military justice or Kansas code of military justice for an act which was~~
32 ~~committed on a military reservation and which would constitute a crime~~
33 ~~described in subsection (b)(2) if committed off a military reservation in~~
34 ~~this state.~~

35 Sec. 31. K.S.A. 12-4416 is hereby amended to read as follows: 12-
36 4416. (a) A diversion agreement shall provide that if the defendant fulfills
37 the obligations of the program described therein, as determined by the
38 city attorney, the city attorney shall act to have the criminal charges
39 against the defendant dismissed with prejudice. The diversion agreement
40 shall include specifically the waiver of all rights under the law or the
41 constitution of Kansas or of the United States to counsel, a speedy
42 arraignment, a speedy trial, and the right to trial by jury. The diversion
43 agreement may include, but is not limited to, provisions concerning

1 payment of restitution, including court costs and diversion costs,
2 residence in a specified facility, maintenance of gainful employment, and
3 participation in programs offering medical, educational, vocational, social
4 and psychological services, corrective and preventive guidance and other
5 rehabilitative services. The diversion agreement shall state:

6 (1) The defendant's full name;

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

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

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

11 (5) the date the complaint was filed; and

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

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

23 (1) Pay a fine specified by the agreement in an amount equal to an
24 amount authorized by K.S.A. 8-1567 *or section 2*, and amendments
25 thereto, for a first offense or, in lieu of payment of the fine, perform
26 community service specified by the agreement, consonant with K.S.A. 8-
27 1567 *or section 2*, and amendments thereto; and

28 (2) ~~enroll in and successfully complete an alcohol and drug safety~~
29 ~~action program or a treatment program, or both, as provided in K.S.A. 8-~~
30 ~~1008, and amendments thereto, and specified by the agreement, and pay~~
31 ~~the assessment required by K.S.A. 8-1008, and amendments thereto.~~
32 *participate in an alcohol and drug evaluation conducted by a licensed*
33 *provider with a DUI specialty as provided in K.S.A. 8-1008, and*
34 *amendments thereto, and follow any recommendation made by the*
35 *provider after such evaluation.*

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

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

1 proceedings on the complaint. If the defendant declines to accept
2 diversion, the municipal court shall resume the criminal proceedings on
3 the complaint.

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

9 Sec. 32. K.S.A. 2010 Supp. 12-4516 is hereby amended to read as
10 follows: 12-4516. (a) (1) Except as provided in subsection (b) ~~or~~, (c) *and*
11 (d), any person who has been convicted of a violation of a city ordinance
12 of this state may petition the convicting court for the expungement of
13 such conviction and related arrest records if three or more years have
14 elapsed since the person:

15 (A) Satisfied the sentence imposed; or

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

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

23 (b) No person may petition for expungement until five or more years
24 have elapsed since the person satisfied the sentence imposed or the terms
25 of a diversion agreement or was discharged from probation, parole,
26 conditional release or a suspended sentence, if such person was convicted
27 of the violation of a city ordinance which would also constitute:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 ~~(f)~~ (g) When the court has ordered an arrest record, conviction or
40 diversion expunged, the order of expungement shall state the information
41 required to be contained in the petition. The clerk of the court shall send a
42 certified copy of the order of expungement to the Kansas bureau of
43 investigation which shall notify the federal bureau of investigation, the

1 secretary of corrections and any other criminal justice agency which may
2 have a record of the arrest, conviction or diversion. After the order of
3 expungement is entered, the petitioner shall be treated as not having been
4 arrested, convicted or diverted of the crime, except that:

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

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

11 (A) In any application for employment as a detective with a private
12 detective agency, as defined by K.S.A. 75-7b01, and amendments thereto;
13 as security personnel with a private patrol operator, as defined by K.S.A.
14 75-7b01, and amendments thereto; or with an institution, as defined in
15 K.S.A. 76-12a01, and amendments thereto, of the department of social
16 and rehabilitation services;

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

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

23 (D) to aid in determining the petitioner's qualifications for executive
24 director of the Kansas racing and gaming commission, for employment
25 with the commission or for work in sensitive areas in parimutuel racing
26 as deemed appropriate by the executive director of the commission, or to
27 aid in determining qualifications for licensure or renewal of licensure by
28 the commission;

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

34 (F) upon application for a commercial driver's license under K.S.A.
35 8-2,125 through 8-2,142, and amendments thereto;

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

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

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

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

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

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

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

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

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

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

31 (1) The person whose record was expunged;

32 (2) a private detective agency or a private patrol operator, and the
33 request is accompanied by a statement that the request is being made in
34 conjunction with an application for employment with such agency or
35 operator by the person whose record has been expunged;

36 (3) a court, upon a showing of a subsequent conviction of the person
37 whose record has been expunged;

38 (4) the secretary of social and rehabilitation services, or a designee
39 of the secretary, for the purpose of obtaining information relating to
40 employment in an institution, as defined in K.S.A. 76-12a01, and
41 amendments thereto, of the department of social and rehabilitation
42 services of any person whose record has been expunged;

43 (5) a person entitled to such information pursuant to the terms of the

- 1 expungement order;
- 2 (6) a prosecuting attorney, and such request is accompanied by a
3 statement that the request is being made in conjunction with a prosecution
4 of an offense that requires a prior conviction as one of the elements of
5 such offense;
- 6 (7) the supreme court, the clerk or disciplinary administrator thereof,
7 the state board for admission of attorneys or the state board for discipline
8 of attorneys, and the request is accompanied by a statement that the
9 request is being made in conjunction with an application for admission,
10 or for an order of reinstatement, to the practice of law in this state by the
11 person whose record has been expunged;
- 12 (8) the Kansas lottery, and the request is accompanied by a statement
13 that the request is being made to aid in determining qualifications for
14 employment with the Kansas lottery or for work in sensitive areas within
15 the Kansas lottery as deemed appropriate by the executive director of the
16 Kansas lottery;
- 17 (9) the governor or the Kansas racing and gaming commission, or a
18 designee of the commission, and the request is accompanied by a
19 statement that the request is being made to aid in determining
20 qualifications for executive director of the commission, for employment
21 with the commission, for work in sensitive areas in parimutuel racing as
22 deemed appropriate by the executive director of the commission or for
23 licensure, renewal of licensure or continued licensure by the commission;
- 24 (10) the Kansas racing and gaming commission, or a designee of the
25 commission, and the request is accompanied by a statement that the
26 request is being made to aid in determining qualifications of the
27 following under the Kansas expanded lottery act: (A) Lottery gaming
28 facility managers and prospective managers, racetrack gaming facility
29 managers and prospective managers, licensees and certificate holders;
30 and (B) their officers, directors, employees, owners, agents and
31 contractors;
- 32 (11) the state gaming agency, and the request is accompanied by a
33 statement that the request is being made to aid in determining
34 qualifications: (A) To be an employee of the state gaming agency; or (B)
35 to be an employee of a tribal gaming commission or to hold a license
36 issued pursuant to a tribal-state gaming compact;
- 37 (12) the Kansas securities commissioner, or a designee of the
38 commissioner, and the request is accompanied by a statement that the
39 request is being made in conjunction with an application for registration
40 as a broker-dealer, agent, investment adviser or investment adviser
41 representative by such agency and the application was submitted by the
42 person whose record has been expunged;
- 43 (13) the attorney general, and the request is accompanied by a

1 statement that the request is being made to aid in determining
2 qualifications for a license to carry a concealed weapon pursuant to the
3 personal and family protection act;

4 (14) the Kansas sentencing commission;

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

10 (16) a law enforcement agency and the request is accompanied by a
11 statement that the request is being made to aid in determining eligibility
12 for employment as a law enforcement officer as defined by K.S.A. 22-
13 2202, and amendments thereto.

14 Sec. 33. K.S.A. 2010 Supp. 12-4517 is hereby amended to read as
15 follows: 12-4517. (a) (1) The municipal court judge shall ensure that all
16 persons convicted of violating municipal ordinance provisions that
17 prohibit conduct comparable to a class A or B misdemeanor or assault as
18 defined in ~~K.S.A. 21-3408~~ *section 47 of chapter 136 of the 2010 Session*
19 *Laws of Kansas*, and amendments thereto, under a Kansas criminal
20 statute are fingerprinted and processed.

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

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

33 Sec. 34. K.S.A. 2010 Supp. 22-2802 is hereby amended to read as
34 follows: 22-2802. (1) Any person charged with a crime shall, at the
35 person's first appearance before a magistrate, be ordered released pending
36 preliminary examination or trial upon the execution of an appearance
37 bond in an amount specified by the magistrate and sufficient to assure the
38 appearance of such person before the magistrate when ordered and to
39 assure the public safety. If the person is being bound over for a felony, the
40 bond shall also be conditioned on the person's appearance in the district
41 court or by way of a two-way electronic audio-video communication as
42 provided in subsection (14) at the time required by the court to answer the
43 charge against such person and at any time thereafter that the court

1 requires. Unless the magistrate makes a specific finding otherwise, if the
2 person is being bonded out for a person felony or a person misdemeanor,
3 the bond shall be conditioned on the person being prohibited from having
4 any contact with the alleged victim of such offense for a period of at least
5 72 hours. The magistrate may impose such of the following additional
6 conditions of release as will reasonably assure the appearance of the
7 person for preliminary examination or trial:

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

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

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

15 (d) place the person under a house arrest program pursuant to ~~K.S.A.~~
16 ~~21-4603b~~ *section 249 of chapter 136 of the 2010 Session Laws of Kansas,*
17 *and amendments thereto; or*

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

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

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

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

43 (4) A deposit of cash in the amount of the bond may be made in lieu

1 of the execution of the bond pursuant to ~~paragraph~~ *subsection* (3). Except
2 as provided in ~~paragraph~~ *subsection* (5), such deposit shall be in the full
3 amount of the bond and in no event shall a deposit of cash in less than the
4 full amount of bond be permitted. Any person charged with a crime who
5 is released on a cash bond shall be entitled to a refund of all moneys paid
6 for the cash bond, after deduction of any outstanding restitution, costs,
7 fines and fees, after the final disposition of the criminal case if the person
8 complies with all requirements to appear in court. The court may not
9 exclude the option of posting bond pursuant to ~~paragraph~~ *subsection* (3).

10 (5) Except as provided further, the amount of the appearance bond
11 shall be the same whether executed as described in subsection (3) or
12 posted with a deposit of cash as described in subsection (4). When the
13 appearance bond has been set at \$2,500 or less and the most serious
14 charge against the person is a misdemeanor, a severity level 8, 9 or 10
15 nonperson felony, a drug severity level 4 felony or a violation of K.S.A.
16 8-1567, and amendments thereto, the magistrate may allow the person to
17 deposit cash with the clerk in the amount of 10% of the bond, provided
18 the person meets at least the following qualifications:

19 (A) Is a resident of the state of Kansas;

20 (B) has a criminal history score category of G, H or I;

21 (C) has no prior history of failure to appear for any court
22 appearances;

23 (D) has no detainer or hold from any other jurisdiction;

24 (E) has not been extradited from, and is not awaiting extradition to,
25 another state; and

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

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

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

34 (8) In determining which conditions of release will reasonably
35 assure appearance and the public safety, the magistrate shall, on the basis
36 of available information, take into account the nature and circumstances
37 of the crime charged; the weight of the evidence against the defendant;
38 the defendant's family ties, employment, financial resources, character,
39 mental condition, length of residence in the community, record of
40 convictions, record of appearance or failure to appear at court
41 proceedings or of flight to avoid prosecution; the likelihood or propensity
42 of the defendant to commit crimes while on release, including whether
43 the defendant will be likely to threaten, harass or cause injury to the

1 victim of the crime or any witnesses thereto; and whether the defendant is
2 on probation or parole from a previous offense at the time of the alleged
3 commission of the subsequent offense.

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

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

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

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

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

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

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

42 Sec. 35. K.S.A. 22-2908 is hereby amended to read as follows: 22-
43 2908. (a) In determining whether diversion of a defendant is in the

1 interests of justice and of benefit to the defendant and the community, the
2 county or district attorney shall consider at least the following factors
3 among all factors considered:

4 (1) The nature of the crime charged and the circumstances
5 surrounding it;

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

7 (3) whether the defendant is a first-time offender and if the
8 defendant has previously participated in diversion, according to the
9 certification of the Kansas bureau of investigation or the division of
10 vehicles of the department of revenue;

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

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

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

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

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

20 (9) provisions for restitution; and

21 (10) any mitigating circumstances.

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

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

34 ~~(2) (1) The complaint alleges that the defendant committed a class A~~
35 ~~or B felony or for crimes committed on or after July 1, 1993, an off-grid~~
36 ~~crime, a severity level 1, 2 or 3 felony for nondrug crimes or drug~~
37 ~~severity level 1 or 2 felony for drug crimes;;~~

38 ~~(2) the complaint alleges a domestic violence offense, as defined in~~
39 ~~K.S.A. 21-3110, as amended by section 5 of chapter 101 of the 2010~~
40 ~~Session Laws of Kansas, and amendments thereto, and the defendant has~~
41 ~~participated in two or more diversions in the previous five-year period~~
42 ~~upon complaints alleging a domestic violence offense; or~~

43 ~~(3) the complaint alleges a violation of K.S.A. 8-1567 or section 2,~~

1 *and amendments thereto, and the defendant has a prior conviction of a*
2 *violation of: (A) Section 2, and amendments thereto; (B) K.S.A. 8-2,144,*
3 *and amendments thereto; (C) K.S.A. 8-1567, and amendments thereto;*
4 *(D) K.S.A. 32-1131, and amendments thereto; (E) subsection (a)(3) of*
5 *section 40 of chapter 136 of the 2010 Session Laws of Kansas, and*
6 *amendments thereto; (F) subsection (g) of section 48 of chapter 136 of*
7 *the 2010 Session Laws of Kansas, and amendments thereto; and (G)*
8 *aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or*
9 *vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was*
10 *committed while committing a violation of K.S.A. 8-1567, and*
11 *amendments thereto.*

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

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

32 *Sec. 36. K.S.A. 2010 Supp. 22-2909 is hereby amended to read as*
33 *follows: 22-2909. (a) A diversion agreement shall provide that if the*
34 *defendant fulfills the obligations of the program described therein, as*
35 *determined by the attorney general or county or district attorney, such*
36 *attorney shall act to have the criminal charges against the defendant*
37 *dismissed with prejudice. The diversion agreement shall include*
38 *specifically the waiver of all rights under the law or the constitution of*
39 *Kansas or of the United States to a speedy arraignment, preliminary*
40 *examinations and hearings, and a speedy trial, and in the case of*
41 *diversion under subsection (c) waiver of the rights to counsel and trial by*
42 *jury. The diversion agreement may include, but is not limited to,*
43 *provisions concerning payment of restitution, including court costs and*

1 diversion costs, residence in a specified facility, maintenance of gainful
2 employment, and participation in programs offering medical, educational,
3 vocational, social and psychological services, corrective and preventive
4 guidance and other rehabilitative services. If a county creates a local fund
5 under the property crime restitution and compensation act, a county or
6 district attorney may require in all diversion agreements as a condition of
7 diversion the payment of a diversion fee in an amount not to exceed
8 \$100. Such fees shall be deposited into the local fund and disbursed
9 pursuant to recommendations of the local board under the property crime
10 restitution and victims compensation act.

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

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

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

34 ~~(2) enroll in and successfully complete an alcohol and drug safety~~
35 ~~action program or a treatment program, or both, as provided in K.S.A. 8-~~
36 ~~1008, and amendments thereto, and specified by the agreement, and pay~~
37 ~~the assessment required by K.S.A. 8-1008, and amendments thereto.~~
38 *participate in an alcohol and drug evaluation conducted by a licensed*
39 *provider with a DUI specialty as provided in K.S.A. 8-1008, and*
40 *amendments thereto, and follow any recommendation made by the*
41 *provider after such evaluation.*

42 (d) *If a diversion agreement is entered into in lieu of further*
43 *criminal proceedings on a complaint alleging a domestic violence*

1 *offense, as defined in K.S.A. 21-3110, as amended by section 5 of chapter*
2 *101 of the 2010 Session Laws of Kansas, and amendments thereto, the*
3 *diversion agreement shall include a requirement that the defendant*
4 *undergo a domestic violence offender assessment and follow all*
5 *recommendations unless otherwise agreed to with the prosecutor in the*
6 *diversion agreement. The defendant shall be required to pay for such*
7 *assessment and, unless otherwise agreed to with the prosecutor in the*
8 *diversion agreement, for completion of all recommendations.*

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

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

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

32 (g)(h) Except as provided in subsection (h), if a diversion agreement
33 is entered into in lieu of further criminal proceedings alleging
34 commission of a misdemeanor by the defendant, while under 21 years of
35 age, under K.S.A. 2010 Supp. 21-36a01 through 21-36a17, and
36 amendments thereto, or K.S.A. 41-719, 41-727, 41-804, 41-2719 or 41-
37 2720, and amendments thereto, the agreement shall require the defendant
38 to submit to and complete an alcohol and drug evaluation by a
39 community-based alcohol and drug safety action program certified
40 pursuant to K.S.A. 8-1008, and amendments thereto, and to pay a fee not
41 to exceed the fee established by that statute for such evaluation. If the
42 attorney general or county or district attorney finds that the defendant is
43 indigent, the fee may be waived *participate in an alcohol and drug*

1 *evaluation conducted by a licensed provider with a DUI specialty as*
2 *provided in K.S.A. 8-1008, and amendments thereto, and follow any*
3 *recommendation made by the provider after such evaluation.*

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

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

14 ~~(j)~~(k) At the time of filing the diversion agreement with the district
15 court, the attorney general or county or district attorney shall forward to
16 the division of vehicles of the state department of revenue a copy of any
17 diversion agreement entered into in lieu of further criminal proceedings
18 on a complaint alleging a violation of K.S.A. 8-1567 *or section 2*, and
19 amendments thereto. The copy of the agreement shall be made available
20 upon request to the attorney general or any county, district or city
21 attorney or court.

22 Sec. 37. K.S.A. 22-2910 is hereby amended to read as follows: 22-
23 2910. No defendant shall be required to enter any plea to a criminal
24 charge as a condition for diversion. No statements made by the defendant
25 or counsel in any diversion conference or in any other discussion of a
26 proposed diversion agreement shall be admissible as evidence in criminal
27 proceedings on crimes charged or facts alleged in the complaint. Except
28 for sentencing proceedings and as otherwise provided in subsection (c) of
29 K.S.A. 22-2909, and amendments thereto and as otherwise provided in
30 K.S.A. 8-285 and 8-1567 *and section 2*, and amendments to these
31 sections, the following shall not be admissible as evidence in criminal
32 proceedings which are resumed under K.S.A. 22-2911, *and amendments*
33 *thereto*: (1) Participation in a diversion program; (2) the facts of such
34 participation; or (3) the diversion agreement entered into.

35 Sec. 38. K.S.A. 22-3610 is hereby amended to read as follows: 22-
36 3610. (a) When a case is appealed to the district court, such court shall
37 hear and determine the cause on the original complaint, unless the
38 complaint shall be found defective, in which case the court may order a
39 new complaint to be filed and the case shall proceed as if the original
40 complaint had not been set aside. The case shall be tried *de novo* in the
41 district court.

42 (b) Notwithstanding subsection (a), appeal from a conviction
43 rendered pursuant to subsection (b) of K.S.A. 12-4416, *and amendments*

1 *thereto*, shall be conducted only on the record of the stipulation of facts
2 relating to the complaint.

3 *(c) Notwithstanding subsection (a), if the complaint in the case*
4 *appealed to the district court is one in which the number of prior*
5 *convictions is required to be reflected in the charging document and the*
6 *prosecutor can establish that the defendant has obtained additional*
7 *convictions since the complaint was filed in municipal court, the*
8 *prosecutor may be allowed to amend the complaint to reflect the proper*
9 *number of prior convictions.*

10 Sec. 39. K.S.A. 2010 Supp. 22-3717 is hereby amended to read as
11 follows: 22-3717. (a) Except as otherwise provided by this section;
12 K.S.A. 1993 Supp. 21-4628, prior to its repeal; K.S.A. 21-4635 through
13 21-4638, *prior to their repeal*; K.S.A. 21-4624, *prior to its repeal*; K.S.A.
14 21-4642, *prior to its repeal*; sections 260, 263, 264 and 265 of chapter
15 136 of the 2010 Session Laws of Kansas, and amendments thereto; K.S.A.
16 8-1567, and amendments thereto; ~~K.S.A. 21-4642~~ *section 266 of chapter*
17 *136 of the 2010 Session Laws of Kansas, and amendments thereto; and*
18 ~~K.S.A. 21-4624~~ *section 257 of chapter 136 of the 2010 Session Laws of*
19 *Kansas, and amendments thereto, an inmate, including an inmate*
20 *sentenced pursuant to K.S.A. 21-4618, prior to its repeal, or section 276*
21 *of chapter 136 of the 2010 Session Laws of Kansas, and amendments*
22 *thereto, shall be eligible for parole after serving the entire minimum*
23 *sentence imposed by the court, less good time credits.*

24 (b) (1) Except as provided by K.S.A. 21-4635 through 21-4638,
25 *prior to their repeal, and sections 260, 263, 264 and 265 of chapter 136*
26 *of the 2010 Session Laws of Kansas, and amendments thereto, an inmate*
27 *sentenced to imprisonment for the crime of capital murder, or an inmate*
28 *sentenced for the crime of murder in the first degree based upon a finding*
29 *of premeditated murder, committed on or after July 1, 1994, shall be*
30 *eligible for parole after serving 25 years of confinement, without*
31 *deduction of any good time credits.*

32 (2) Except as provided by subsection (b)(1) or (b)(4), K.S.A. 1993
33 Supp. 21-4628, prior to its repeal, ~~and~~ K.S.A. 21-4635 through 21-4638,
34 *prior to their repeal, and sections 260, 263, 264 and 265 of chapter 136*
35 *of the 2010 Session Laws of Kansas, and amendments thereto, an inmate*
36 *sentenced to imprisonment for an off-grid offense committed on or after*
37 *July 1, 1993, but prior to July 1, 1999, shall be eligible for parole after*
38 *serving 15 years of confinement, without deduction of any good time*
39 *credits and an inmate sentenced to imprisonment for an off-grid offense*
40 *committed on or after July 1, 1999, shall be eligible for parole after*
41 *serving 20 years of confinement without deduction of any good time*
42 *credits.*

43 (3) Except as provided by K.S.A. 1993 Supp. 21-4628 prior to its

1 repeal, an inmate sentenced for a class A felony committed before July 1,
2 1993, including an inmate sentenced pursuant to K.S.A. 21-4618, *prior to*
3 *its repeal, or section 276 of chapter 136 of the 2010 Session Laws of*
4 *Kansas*, and amendments thereto, shall be eligible for parole after serving
5 15 years of confinement, without deduction of any good time credits.

6 (4) An inmate sentenced to imprisonment for a violation of
7 subsection (a) of K.S.A. 21-3402, *prior to its repeal, or subsection (a) of*
8 *section 38 of chapter 136 of the 2010 Session Laws of Kansas*, and
9 amendments thereto, committed on or after July 1, 1996, but prior to July
10 1, 1999, shall be eligible for parole after serving 10 years of confinement
11 without deduction of any good time credits.

12 (5) An inmate sentenced to imprisonment pursuant to K.S.A. 21-
13 4643, *prior to its repeal, or section 267 of chapter 136 of the 2010*
14 *Session Laws of Kansas*, and amendments thereto, committed on or after
15 July 1, 2006, shall be eligible for parole after serving the mandatory term
16 of imprisonment without deduction of any good time credits.

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

21 (A) The aggregate minimum sentences, as determined pursuant to
22 K.S.A. 21-4608, *prior to its repeal, or section 246 of chapter 136 of the*
23 *2010 Session Laws of Kansas*, and amendments thereto, less good time
24 credits for those crimes which are not class A felonies; and

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

27 (2) (A) If an inmate is sentenced to imprisonment pursuant to K.S.A.
28 21-4643, ~~and amendments thereto~~ *prior to its repeal*, for crimes
29 committed on or after July 1, 2006, *but prior to July 1, 2011*, the inmate
30 shall be eligible for parole after serving the mandatory term of
31 imprisonment.

32 (B) *If an inmate is sentenced to imprisonment pursuant to section*
33 *267 of chapter 136 of the 2010 Session Laws of Kansas, and amendments*
34 *thereto, for crimes committed on or after July 1, 2011, the inmate shall be*
35 *eligible for parole after serving the mandatory term of imprisonment.*

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

41 (A) Except as provided in subparagraphs (D) and (E), persons
42 sentenced for nondrug severity level 1 through 4 crimes and drug severity
43 levels 1 and 2 crimes must serve 36 months, plus the amount of good

1 time and program credit earned and retained pursuant to K.S.A. 21-4722,
2 *prior to its repeal, or section 302 of chapter 136 of the 2010 Session*
3 *Laws of Kansas*, and amendments thereto, on postrelease supervision.

4 (B) Except as provided in subparagraphs (D) and (E), persons
5 sentenced for nondrug severity levels 5 and 6 crimes and drug severity
6 level 3 crimes must serve 24 months, plus the amount of good time and
7 program credit earned and retained pursuant to K.S.A. 21-4722, *prior to*
8 *its repeal, or section 302 of chapter 136 of the 2010 Session Laws of*
9 *Kansas*, and amendments thereto, on postrelease supervision.

10 (C) Except as provided in subparagraphs (D) ~~and~~, (E) *and (H)*,
11 persons sentenced for nondrug severity level 7 through 10 crimes and
12 drug severity level 4 crimes must serve 12 months, plus the amount of
13 good time and program credit earned and retained pursuant to K.S.A. 21-
14 4722, *prior to its repeal, or section 302 of chapter 136 of the 2010*
15 *Session Laws of Kansas*, and amendments thereto, on postrelease
16 supervision.

17 (D) (i) The sentencing judge shall impose the postrelease
18 supervision period provided in subparagraph (d)(1)(A), (d)(1)(B) or (d)
19 (1)(C), unless the judge finds substantial and compelling reasons to
20 impose a departure based upon a finding that the current crime of
21 conviction was sexually motivated. In that event, departure may be
22 imposed to extend the postrelease supervision to a period of up to 60
23 months.

24 (ii) If the sentencing judge departs from the presumptive postrelease
25 supervision period, the judge shall state on the record at the time of
26 sentencing the substantial and compelling reasons for the departure.
27 Departures in this section are subject to appeal pursuant to K.S.A. 21-
28 4721, *prior to its repeal, or section 301 of chapter 136 of the 2010*
29 *Session Laws of Kansas*, and amendments thereto.

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

32 (a) Written briefs or oral arguments submitted by either the
33 defendant or the state;

34 (b) any evidence received during the proceeding;

35 (c) the presentence report, the victim's impact statement and any
36 psychological evaluation as ordered by the court pursuant to subsection
37 (e) of K.S.A. 21-4714, *prior to its repeal, or subsection (e) of section 294*
38 *of chapter 136 of the 2010 Session Laws of Kansas*, and amendments
39 thereto; and

40 (d) any other evidence the court finds trustworthy and reliable.

41 (iv) The sentencing judge may order that a psychological evaluation
42 be prepared and the recommended programming be completed by the
43 offender. The department of corrections or the parole board shall ensure

1 that court ordered sex offender treatment be carried out.

2 (v) In carrying out the provisions of subparagraph (d)(1)(D), the
3 court shall refer to K.S.A. 21-4718, *prior to its repeal, or section 298 of*
4 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments
5 thereto.

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

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

16 (viii) Persons convicted of K.S.A. 21-3510 or 21-3511, *prior to their*
17 *repeal, or section 72 of chapter 136 of the 2010 Session Laws of Kansas*,
18 and amendments thereto, shall be required to participate in a treatment
19 program for sex offenders during the postrelease supervision period.

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

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

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

36 (H) *Notwithstanding any other provision of law, persons convicted*
37 *of a violation of K.S.A. 8-2,144 or 8-1567 or section 2, and amendments*
38 *thereto, committed on or after July 1, 2011, shall serve 24 months, plus*
39 *the amount of good time and program credit earned and retained*
40 *pursuant to section 302 of chapter 136 of the 2010 Session Laws of*
41 *Kansas, and amendments thereto, on postrelease supervision. Such*
42 *persons released by the parole board pursuant to subsection (w) shall*
43 *serve 24 months, plus the remainder of their sentence, plus the amount of*

1 *good time and program credit earned and retained pursuant to section*
2 *302 of chapter 136 of the 2010 Session Laws of Kansas, and amendments*
3 *thereto, on postrelease supervision.*

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

5 (A) Rape, K.S.A. 21-3502, *prior to its repeal, or section 67 of*
6 *chapter 136 of the 2010 Session Laws of Kansas, and amendments*
7 *thereto;*

8 (B) indecent liberties with a child, K.S.A. 21-3503, *prior to its*
9 *repeal, or subsection (a) of section 70 of chapter 136 of the 2010 Session*
10 *Laws of Kansas, and amendments thereto;*

11 (C) aggravated indecent liberties with a child, K.S.A. 21-3504, *prior*
12 *to its repeal, or subsection (b) of section 70 of chapter 136 of the 2010*
13 *Session Laws of Kansas, and amendments thereto;*

14 (D) criminal sodomy, subsection (a)(2) and (a)(3) of K.S.A. 21-
15 3505, *prior to its repeal, or subsection (a)(3) and (a)(4) of section 68 of*
16 *chapter 136 of the 2010 Session Laws of Kansas, and amendments*
17 *thereto;*

18 (E) aggravated criminal sodomy, K.S.A. 21-3506, *prior to its repeal,*
19 *or subsection (b) of section 68 of chapter 136 of the 2010 Session Laws*
20 *of Kansas, and amendments thereto;*

21 (F) indecent solicitation of a child, K.S.A. 21-3510, *prior to its*
22 *repeal, or subsection (a) of section 72 of chapter 136 of the 2010 Session*
23 *Laws of Kansas, and amendments thereto;*

24 (G) aggravated indecent solicitation of a child, K.S.A. 21-3511,
25 *prior to its repeal, or subsection (b) of section 72 of chapter 136 of the*
26 *2010 Session Laws of Kansas, and amendments thereto;*

27 (H) sexual exploitation of a child, K.S.A. 21-3516, *prior to its*
28 *repeal, or section 74 of chapter 136 of the 2010 Session Laws of Kansas,*
29 *and amendments thereto;*

30 (I) aggravated sexual battery, K.S.A. 21-3518, *prior to its repeal, or*
31 *subsection (b) of section 69 of chapter 136 of the 2010 Session Laws of*
32 *Kansas, and amendments thereto;*

33 (J) aggravated incest, K.S.A. 21-3603, *prior to its repeal, or*
34 *subsection (b) of section 81 of chapter 136 of the 2010 Session Laws of*
35 *Kansas, and amendments thereto; or*

36 (K) an attempt, conspiracy or criminal solicitation, as defined in
37 K.S.A. 21-3301, 21-3302 or 21-3303, *prior to their repeal, or sections*
38 *33, 34 or 35 of chapter 136 of the 2010 Session Laws of Kansas, and*
39 *amendments thereto, of a sexually violent crime as defined in this section.*

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

43 (e) If an inmate is sentenced to imprisonment for a crime committed

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

7 (f) If a person is sentenced to prison for a crime committed on or
8 after July 1, 1993, while on probation, parole, conditional release or in a
9 community corrections program, for a crime committed prior to July 1,
10 1993, and the person is not eligible for retroactive application of the
11 sentencing guidelines and amendments thereto pursuant to K.S.A. 21-
12 4724, *prior to its repeal*, and amendments thereto, the new sentence shall
13 not be aggregated with the old sentence, but shall begin when the person
14 is paroled or reaches the conditional release date on the old sentence. If
15 the offender was past the offender's conditional release date at the time
16 the new offense was committed, the new sentence shall not be aggregated
17 with the old sentence but shall begin when the person is ordered released
18 by the Kansas parole board or reaches the maximum sentence expiration
19 date on the old sentence, whichever is earlier. The new sentence shall
20 then be served as otherwise provided by law. The period of postrelease
21 supervision shall be based on the new sentence, except that those
22 offenders whose old sentence is a term of imprisonment for life, imposed
23 pursuant to K.S.A. 1993 Supp. 21-4628, prior to its repeal, or an
24 indeterminate sentence with a maximum term of life imprisonment, for
25 which there is no conditional release or maximum sentence expiration
26 date, shall remain on postrelease supervision for life or until discharged
27 from supervision by the Kansas parole board.

28 (g) Subject to the provisions of this section, the Kansas parole board
29 may release on parole those persons confined in institutions who are
30 eligible for parole when: (1) The board believes that the inmate should be
31 released for hospitalization, for deportation or to answer the warrant or
32 other process of a court and is of the opinion that there is reasonable
33 probability that the inmate can be released without detriment to the
34 community or to the inmate; or (2) the secretary of corrections has
35 reported to the board in writing that the inmate has satisfactorily
36 completed the programs required by any agreement entered under K.S.A.
37 75-5210a, and amendments thereto, or any revision of such agreement,
38 and the board believes that the inmate is able and willing to fulfill the
39 obligations of a law abiding citizen and is of the opinion that there is
40 reasonable probability that the inmate can be released without detriment
41 to the community or to the inmate. Parole shall not be granted as an
42 award of clemency and shall not be considered a reduction of sentence or
43 a pardon.

1 (h) The Kansas parole board shall hold a parole hearing at least the
2 month prior to the month an inmate will be eligible for parole under
3 subsections (a), (b) and (c). At least the month preceding the parole
4 hearing, the county or district attorney of the county where the inmate
5 was convicted shall give written notice of the time and place of the public
6 comment sessions for the inmate to any victim of the inmate's crime who
7 is alive and whose address is known to the county or district attorney or,
8 if the victim is deceased, to the victim's family if the family's address is
9 known to the county or district attorney. Except as otherwise provided,
10 failure to notify pursuant to this section shall not be a reason to postpone
11 a parole hearing. In the case of any inmate convicted of an off-grid felony
12 or a class A felony the secretary of corrections shall give written notice of
13 the time and place of the public comment session for such inmate at least
14 one month preceding the public comment session to any victim of such
15 inmate's crime or the victim's family pursuant to K.S.A. 74-7338, and
16 amendments thereto. If notification is not given to such victim or such
17 victim's family in the case of any inmate convicted of an off-grid felony
18 or a class A felony, the board shall postpone a decision on parole of the
19 inmate to a time at least 30 days after notification is given as provided in
20 this section. Nothing in this section shall create a cause of action against
21 the state or an employee of the state acting within the scope of the
22 employee's employment as a result of the failure to notify pursuant to this
23 section. If granted parole, the inmate may be released on parole on the
24 date specified by the board, but not earlier than the date the inmate is
25 eligible for parole under subsections (a), (b) and (c). At each parole
26 hearing and, if parole is not granted, at such intervals thereafter as it
27 determines appropriate, the Kansas parole board shall consider: (1)
28 Whether the inmate has satisfactorily completed the programs required by
29 any agreement entered under K.S.A. 75-5210a, and amendments thereto,
30 or any revision of such agreement; and (2) all pertinent information
31 regarding such inmate, including, but not limited to, the circumstances of
32 the offense of the inmate; the presentence report; the previous social
33 history and criminal record of the inmate; the conduct, employment, and
34 attitude of the inmate in prison; the reports of such physical and mental
35 examinations as have been made, including, but not limited to, risk
36 factors revealed by any risk assessment of the inmate; comments of the
37 victim and the victim's family including in person comments,
38 contemporaneous comments and prerecorded comments made by any
39 technological means; comments of the public; official comments; any
40 recommendation by the staff of the facility where the inmate is
41 incarcerated; proportionality of the time the inmate has served to the
42 sentence a person would receive under the Kansas sentencing guidelines
43 for the conduct that resulted in the inmate's incarceration; and capacity of

1 state correctional institutions.

2 (i) In those cases involving inmates sentenced for a crime committed
3 after July 1, 1993, the parole board will review the inmates proposed
4 release plan. The board may schedule a hearing if they desire. The board
5 may impose any condition they deem necessary to insure public safety,
6 aid in the reintegration of the inmate into the community, or items not
7 completed under the agreement entered into under K.S.A. 75-5210a, and
8 amendments thereto. The board may not advance or delay an inmate's
9 release date. Every inmate while on postrelease supervision shall remain
10 in the legal custody of the secretary of corrections and is subject to the
11 orders of the secretary.

12 (j) (1) Before ordering the parole of any inmate, the Kansas parole
13 board shall have the inmate appear either in person or via a video
14 conferencing format and shall interview the inmate unless impractical
15 because of the inmate's physical or mental condition or absence from the
16 institution. Every inmate while on parole shall remain in the legal custody
17 of the secretary of corrections and is subject to the orders of the secretary.
18 Whenever the Kansas parole board formally considers placing an inmate
19 on parole and no agreement has been entered into with the inmate under
20 K.S.A. 75-5210a, and amendments thereto, the board shall notify the
21 inmate in writing of the reasons for not granting parole. If an agreement
22 has been entered under K.S.A. 75-5210a, and amendments thereto, and
23 the inmate has not satisfactorily completed the programs specified in the
24 agreement, or any revision of such agreement, the board shall notify the
25 inmate in writing of the specific programs the inmate must satisfactorily
26 complete before parole will be granted. If parole is not granted only
27 because of a failure to satisfactorily complete such programs, the board
28 shall grant parole upon the secretary's certification that the inmate has
29 successfully completed such programs. If an agreement has been entered
30 under K.S.A. 75-5210a, and amendments thereto, and the secretary of
31 corrections has reported to the board in writing that the inmate has
32 satisfactorily completed the programs required by such agreement, or any
33 revision thereof, the board shall not require further program participation.
34 However, if the board determines that other pertinent information
35 regarding the inmate warrants the inmate's not being released on parole,
36 the board shall state in writing the reasons for not granting the parole. If
37 parole is denied for an inmate sentenced for a crime other than a class A
38 or class B felony or an off-grid felony, the board shall hold another parole
39 hearing for the inmate not later than one year after the denial unless the
40 parole board finds that it is not reasonable to expect that parole would be
41 granted at a hearing if held in the next three years or during the interim
42 period of a deferral. In such case, the parole board may defer subsequent
43 parole hearings for up to three years but any such deferral by the board

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

10 (2) Inmates sentenced for a class A or class B felony who have not
11 had a parole board hearing in the five years prior to July 1, 2010, shall
12 have such inmates' cases reviewed by the parole board on or before July
13 1, 2012. Such review shall begin with the inmates with the oldest deferral
14 date and progress to the most recent. Such review shall be done utilizing
15 existing resources unless the parole board determines that such resources
16 are insufficient. If the parole board determines that such resources are
17 insufficient, then the provisions of this paragraph are subject to
18 appropriations therefor.

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

22 (l) The Kansas parole board shall adopt rules and regulations in
23 accordance with K.S.A. 77-415 et seq., and amendments thereto, not
24 inconsistent with the law and as it may deem proper or necessary, with
25 respect to the conduct of parole hearings, postrelease supervision reviews,
26 revocation hearings, orders of restitution, reimbursement of expenditures
27 by the state board of indigents' defense services and other conditions to
28 be imposed upon parolees or releasees. Whenever an order for parole or
29 postrelease supervision is issued it shall recite the conditions thereof.

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

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

41 (2) to the extent practicable, shall order as a condition of parole or
42 postrelease supervision that the parolee or the person on postrelease
43 supervision make progress towards or successfully complete the

1 equivalent of a secondary education if the inmate has not previously
2 completed such educational equivalent and is capable of doing so;

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

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

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

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

31 (o) Whenever the Kansas parole board grants the parole of an
32 inmate, the board, within ~~40~~ 14 days of the date of the decision to grant
33 parole, shall give written notice of the decision to the county or district
34 attorney of the county where the inmate was sentenced.

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

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

42 (r) An inmate who is allocated regular good time credits as provided
43 in K.S.A. 22-3725, and amendments thereto, may receive meritorious

1 good time credits in increments of not more than 90 days per meritorious
2 act. These credits may be awarded by the secretary of corrections when
3 an inmate has acted in a heroic or outstanding manner in coming to the
4 assistance of another person in a life threatening situation, preventing
5 injury or death to a person, preventing the destruction of property or
6 taking actions which result in a financial savings to the state.

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

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

21 (u) An inmate sentenced to imprisonment pursuant to K.S.A. 21-
22 4643, *prior to its repeal, or section 267 of chapter 136 of the 2010*
23 *Session Laws of Kansas*, and amendments thereto, for crimes committed
24 on or after July 1, 2006, shall be placed on parole for life and shall not be
25 discharged from supervision by the Kansas parole board. When the board
26 orders the parole of an inmate pursuant to this subsection, the board shall
27 order as a condition of parole that the inmate be electronically monitored
28 for the duration of the inmate's natural life.

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

35 (w) (1) *Notwithstanding any other provision of law, the Kansas*
36 *parole board may release an inmate who has entered into an agreement*
37 *pursuant to section 3, and amendments thereto, when the secretary of*
38 *corrections has reported to the board in writing that the inmate has*
39 *satisfactorily completed the programs required by any agreement entered*
40 *under section 3, and amendments thereto, or any revision of such*
41 *agreement, and the board believes that the inmate is able and willing to*
42 *fulfill the obligations of a law abiding citizen and is of the opinion that*
43 *there is reasonable probability that the inmate can be released without*

1 *detriment to the community or to the inmate. Release shall not be granted*
2 *as an award of clemency and shall not be considered a reduction of*
3 *sentence or a pardon.*

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

11 Sec. 40. K.S.A. 22-4704 is hereby amended to read as follows: 22-
12 4704. (a) In accordance with the provisions of K.S.A. 77-415 *et seq.*, and
13 amendments thereto, the director shall adopt appropriate rules and
14 regulations for agencies in the executive branch of government and for
15 criminal justice agencies other than those that are part of the judicial
16 branch of government to implement the provisions of this act.

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

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

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

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

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

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

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

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

40 (8) governing the exercise of the rights of inspection and challenge
41 provided in this act.

42 (d) The rules and regulations adopted by the director shall not
43 include any provision that allows the charging of a fee for information

1 requests for the purpose of participating in a block parent program,
2 including but not limited to, the McGruff house program.

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

5 (f) (1) *On or before July 1, 2012, the director shall adopt rules and*
6 *regulations requiring district courts to report the filing of all cases*
7 *alleging a violation of K.S.A. 8-2,144 or 8-1567 or section 2, and*
8 *amendments thereto, to the central repository.*

9 (2) *On or before July 1, 2013, the director shall adopt rules and*
10 *regulations requiring district courts to electronically report all case*
11 *filings for violations of K.S.A. 8-2,144 and 8-1567 and section 2, and*
12 *amendments thereto, to the central repository.*

13 Sec. 41. K.S.A. 22-4705 is hereby amended to read as follows: 22-
14 4705. (a) The following events are reportable events under this act:

15 (1) Issuance of an arrest warrant;

16 (2) an arrest;

17 (3) release of a person after arrest without the filing of a charge;

18 (4) *the filing of a charge;*

19 ~~(4)~~ (5) dismissal or quashing of an indictment or criminal
20 information;

21 ~~(5)~~ (6) an acquittal, conviction or other disposition at or following
22 trial, including a finding of probation before judgment;

23 ~~(6)~~ (7) imposition of a sentence;

24 ~~(7)~~ (8) commitment to a correctional facility, whether state or locally
25 operated;

26 ~~(8)~~ (9) release from detention or confinement;

27 ~~(9)~~ (10) an escape from confinement;

28 ~~(10)~~ (11) a pardon, reprieve, commutation of sentence or other
29 change in a sentence, including a change ordered by a court;

30 ~~(11)~~ (12) judgment of an appellate court that modifies or reverses the
31 lower court decision;

32 ~~(12)~~ (13) order of a court in a collateral proceeding that affects a
33 person's conviction, sentence or confinement, including any expungement
34 or annulment of arrests or convictions pursuant to state statute; and

35 ~~(13)~~ (14) any other event arising out of or occurring during the
36 course of criminal justice proceedings declared to be reportable by rule or
37 regulation of the director.

38 (b) There is hereby established a criminal justice information system
39 central repository for the collection, storage, and dissemination of
40 criminal history record information. The central repository shall be
41 operated by the Kansas bureau of investigation under the administrative
42 control of the director.

43 (c) Except as otherwise provided by this subsection, every criminal

1 justice agency shall report criminal history record information, whether
2 collected manually or by means of an automated system, to the central
3 repository, in accordance with rules and regulations adopted pursuant to
4 this act. A criminal justice agency shall report to the central repository
5 those reportable events involving a violation of a county resolution or city
6 ordinance only when required by rules and regulations adopted by the
7 director.

8 (d) Reporting methods may include:

9 (1) Submittal of criminal history record information by a criminal
10 justice agency directly to the central repository;

11 (2) if the information can readily be collected and reported through
12 the court system, submittal to the central repository by the administrative
13 office of the courts; or

14 (3) if the information can readily be collected and reported through
15 criminal justice agencies that are part of a geographically based
16 information system, submittal to the central repository by the agencies.

17 (e) Nothing in this section shall prevent a criminal justice agency
18 from maintaining more detailed information than is required to be
19 reported to the central repository. However, the dissemination of that
20 criminal history record information is governed by the provisions of this
21 act.

22 (f) The director may determine, by rule and regulation, the
23 reportable events to be reported by each criminal justice agency, in order
24 to avoid duplication in reporting.

25 Sec. 42. K.S.A. 2010 Supp. 28-176 is hereby amended to read as
26 follows: 28-176. (a) The court shall order any person convicted or
27 diverted, or adjudicated or diverted under a preadjudication program
28 pursuant to K.S.A. 22-2906 et seq., K.S.A. 2010 Supp. 38-2346 et seq., or
29 12-4414, and amendments thereto, of a misdemeanor or felony contained
30 in chapters 21, 41 or 65 of the Kansas Statutes Annotated, and
31 amendments thereto, or a violation of K.S.A. 8-2,144 or 8-1567, and
32 amendments thereto, or a violation of a municipal ordinance *or county*
33 *resolution* prohibiting the acts prohibited by such statutes, unless the
34 municipality *or county* has an agreement with the laboratory providing
35 services that sets a restitution amount to be paid by the person that is
36 directly related to the cost of laboratory services, to pay a separate court
37 cost of \$400 for every individual offense if forensic science or laboratory
38 services or forensic computer examination services are provided, in
39 connection with the investigation, by:

40 (1) The Kansas bureau of investigation;

41 (2) the Sedgwick county regional forensic science center;

42 (3) the Johnson county sheriff's laboratory;

43 (4) the heart of America regional computer forensics laboratory; or

- 1 (5) the Wichita-Sedgwick county computer forensics crimes unit.
- 2 (b) Such fees shall be in addition to and not in substitution for any
3 and all fines and penalties otherwise provided for by law for such offense.
- 4 (c) The court shall not lessen or waive such fees unless the court has
5 determined such person is indigent and the basis for the court's
6 determination is reflected in the court's order.
- 7 (d) Such fees shall be deposited into the designated fund of the
8 laboratory or forensic science or computer center that provided such
9 services. Fees for services provided by:
- 10 (1) The Kansas bureau of investigation shall be deposited in the
11 Kansas bureau of investigation forensic laboratory and materials fee fund;
- 12 (2) the Sedgwick county regional forensic science center shall be
13 deposited in the Sedgwick county general fund;
- 14 (3) the Johnson county sheriff's laboratory shall be deposited in the
15 Johnson county sheriff's laboratory analysis fee fund;
- 16 (4) the heart of America regional computer forensics laboratory shall
17 be deposited in the general treasury account maintained by such
18 laboratory; and
- 19 (5) the Wichita-Sedgwick county computer forensic crimes unit shall
20 be retained by the Sedgwick county sheriff. All funds retained by the
21 sheriff pursuant to the provisions of this section shall be credited to a
22 special fund of the sheriff's office.
- 23 (e) Disbursements from the funds and accounts described in
24 subsection (d) shall be made for the following:
- 25 (1) Forensic science or laboratory services;
- 26 (2) forensic computer examination services;
- 27 (3) purchase and maintenance of laboratory equipment and supplies;
- 28 (4) education, training and scientific development of personnel; and
- 29 (5) from the Kansas bureau of investigation forensic laboratory and
30 materials fee fund, the destruction of seized property and chemicals as
31 described in K.S.A. 22-2512 and 60-4117, and amendments thereto.
- 32 Sec. 43. K.S.A. 2010 Supp. 60-427 is hereby amended to read as
33 follows: 60-427. (a) As used in this section:
- 34 (1) "Patient" means a person who, for the sole purpose of securing
35 preventive, palliative, or curative treatment, or a diagnosis preliminary to
36 such treatment, of such person's physical or mental condition, consults a
37 physician, or submits to an examination by a physician.
- 38 (2) "Physician" means a person licensed or reasonably believed by
39 the patient to be licensed to practice medicine or one of the healing arts as
40 defined in K.S.A. 65-2802 and amendments thereto in the state or
41 jurisdiction in which the consultation or examination takes place.
- 42 (3) "Holder of the privilege" means the patient while alive and not
43 under guardianship or conservatorship or the guardian or conservator of

1 the patient, or the personal representative of a deceased patient.

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

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

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

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

1 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 the
5 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 the
7 report or record specifically provides that the information shall not be
8 disclosed.

9 (f) No person has a privilege under this section if the judge finds that
10 sufficient evidence, aside from the communication has been introduced to
11 warrant a finding that the services of the physician were sought or
12 obtained to enable or aid anyone to commit or to plan to commit a crime
13 or a tort, or to escape detection or apprehension after the commission of a
14 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 a
24 privilege in any prosecution for unlawfully obtaining or distributing a
25 prescription-only drug under K.S.A. 2010 Supp. 21-36a08, and
26 amendments thereto.

27 Sec. 44. K.S.A. 2010 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 a
12 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 ~~K.S.A. 8-1567, and amendments~~
15 ~~thereto~~ *those statutes*;

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

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

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

23 (c) Lists of persons' names and addresses contained in or derived
24 from motor vehicle records shall not be sold, given or received for the
25 purposes prohibited by K.S.A. 2010 Supp. 45-230, and amendments
26 thereto, except that:

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

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

33 (i) Have safety-related defects,

34 (ii) fail to comply with emission standards; or

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

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

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

41 (ii) in conducting antifraud activities by identifying potential
42 undisclosed drivers of a motor vehicle currently insured by an insurer
43 licensed to do business in this state by providing only the following

1 information: drivers license number, license type, date of birth, name,
2 address, issue date and expiration date;

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

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

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

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

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

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

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

41 (e) The secretary of revenue, the secretary's agents or employees, the
42 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 from
2 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 full
5 or partial motor vehicle record shall be charged by the division, except
6 that the director may charge a lesser fee pursuant to a contract between
7 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 reproduction
10 of any full or partial motor vehicle record requested. Except for the fees
11 charged pursuant to a contract for motor vehicle records authorized by
12 this subsection pertaining to motor vehicle titles or motor vehicle
13 registrations or pursuant to subsection (c)(1)(B)(ii) or (c)(1)(D), \$1 shall
14 be credited to the highway patrol training center fund for each motor
15 vehicle record provided by the division of vehicles.

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

18 Sec. 45. K.S.A. 2010 Supp. 74-7301 is hereby amended to read as
19 follows: 74-7301. As used in this act:

20 (a) "Allowance expense" means reasonable charges incurred for
21 reasonably needed products, services and accommodations, including
22 those for medical care, rehabilitation, rehabilitative occupational training
23 and other remedial treatment and care and for the replacement of items of
24 clothing or bedding which were seized for evidence. Such term includes a
25 total charge not in excess of \$5,000 for expenses in any way related to
26 funeral, cremation or burial; but such term shall not include that portion
27 of a charge for a room in a hospital, clinic, convalescent or nursing home
28 or any other institution engaged in providing nursing care and related
29 services, in excess of a reasonable and customary charge for semi-private
30 accommodations, unless other accommodations are medically required.
31 Such term includes a total charge not in excess of \$1,000 for expenses in
32 any way related to crime scene cleanup.

33 (b) "Board" means the crime victims compensation board
34 established under K.S.A. 74-7303, and amendments thereto.

35 (c) "Claimant" means any of the following persons claiming
36 compensation under this act: A victim; a dependent of a deceased victim;
37 a third person other than a collateral source; or an authorized person
38 acting on behalf of any of them.

39 (d) "Collateral source" means a source of benefits or advantages for
40 economic loss otherwise reparable under this act which the victim or
41 claimant has received, or which is readily available to the victim or
42 claimant, from:

43 (1) The offender;

1 (2) the government of the United States or any agency thereof, a
2 state or any of its political subdivisions or an instrumentality or two or
3 more states, unless the law providing for the benefits or advantages
4 makes them excess or secondary to benefits under this act;

5 (3) social security, medicare and medicaid;

6 (4) state-required temporary nonoccupational disability insurance;

7 (5) workers' compensation;

8 (6) wage continuation programs of any employer;

9 (7) proceeds of a contract of insurance payable to the victim for loss
10 which the victim sustained because of the criminally injurious conduct; or

11 (8) a contract providing prepaid hospital and other health care
12 services or benefits for disability.

13 (e) "Criminally injurious conduct" means conduct that: (1) (A)
14 Occurs or is attempted in this state or occurs to a person whose domicile
15 is in Kansas who is the victim of a violent crime which occurs in another
16 state, possession, or territory of the United States of America may make
17 an application for compensation if:

18 (i) The crimes would be compensable had it occurred in the state of
19 Kansas; and

20 (ii) the places the crimes occurred are states, possessions or
21 territories of the United States of America not having eligible crime
22 victim compensation programs;

23 (B) poses a substantial threat or personal injury or death; and

24 (C) either is punishable by fine, imprisonment or death or would be
25 so punishable but for the fact that the person engaging in the conduct
26 lacked capacity to commit the crime under the laws of this state; or

27 (2) is an act of terrorism, as defined in 18 U.S.C. § 2331, or a violent
28 crime that posed a substantial threat or caused personal injury or death,
29 committed outside of the United States against a person whose domicile
30 is in Kansas, except that criminally injurious conduct does not include
31 any conduct resulting in injury or death sustained as a member of the
32 United States armed forces while serving on active duty.

33 Such term shall not include conduct arising out of the ownership,
34 maintenance or use of a motor vehicle, except for violations of K.S.A. 8-
35 2,144 or 8-1567, and amendments thereto, or violations of municipal
36 ordinances or county resolutions prohibiting the acts prohibited by ~~that~~
37 ~~statute those statutes~~, or violations of K.S.A. 8-1602, ~~21-3404, 21-3405~~
38 ~~and 21-3414~~ or section 40, 41 or subsection (b) of section 48 of chapter
39 136 of the 2010 Session Laws of Kansas, and amendments thereto, or
40 when such conduct was intended to cause personal injury or death.

41 (f) "Dependent" means a natural person wholly or partially
42 dependent upon the victim for care or support, and includes a child of the
43 victim born after the victim's death.

1 (g) "Dependent's economic loss" means loss after decedent's death
2 of contributions of things of economic value to the decedent's dependents,
3 not including services they would have received from the decedent if the
4 decedent had not suffered the fatal injury, less expenses of the dependents
5 avoided by reason of decedent's death.

6 (h) "Dependent's replacement services loss" means loss reasonably
7 incurred by dependents after decedent's death in obtaining ordinary and
8 necessary services in lieu of those the decedent would have performed for
9 their benefit if the decedent had not suffered the fatal injury, less expenses
10 of the dependents avoided by reason of decedent's death and not
11 subtracted in calculating dependent's economic loss.

12 (i) "Economic loss" means economic detriment consisting only of
13 allowable expense, work loss, replacement services loss and, if injury
14 causes death, dependent's economic loss and dependent's replacement
15 service loss. Noneconomic detriment is not loss, but economic detriment
16 is loss although caused by pain and suffering or physical impairment.

17 (j) "Noneconomic detriment" means pain, suffering, inconvenience,
18 physical impairment and nonpecuniary damage.

19 (k) "Replacement services loss" means expenses reasonably incurred
20 in obtaining ordinary and necessary services in lieu of those the injured
21 person would have performed, not for income, but for the benefit of self
22 or family, if such person had not been injured.

23 (l) "Work loss" means loss of income from work the injured person
24 would have performed if such person had not been injured, and expenses
25 reasonably incurred by such person in obtaining services in lieu of those
26 the person would have performed for income, reduced by any income
27 from substitute work actually performed by such person or by income
28 such person would have earned in available appropriate substitute work
29 that the person was capable of performing but unreasonably failed to
30 undertake.

31 (m) "Victim" means a person who suffers personal injury or death as
32 a result of: (1) Criminally injurious conduct; (2) the good faith effort of
33 any person to prevent criminally injurious conduct; or (3) the good faith
34 effort of any person to apprehend a person suspected of engaging in
35 criminally injurious conduct.

36 (n) "Crime scene cleanup" means removal of blood, stains, odors or
37 other debris caused by the crime or the processing of the crime scene.

38 Sec. 46. Section 14 of chapter 136 of the 2010 Session Laws of
39 Kansas, is hereby amended to read as follows: Sec. 14. A person may
40 be guilty of a crime without having a culpable mental state if
41 the crime is:

42 (a) A misdemeanor, cigarette or tobacco infraction or traffic
43 infraction and the statute defining the crime clearly indicates a legislative

1 purpose to impose absolute liability for the conduct described;

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

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

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

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

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

10 Sec. 47. Section 48 of chapter 136 of the 2010 Session Laws of
11 Kansas, is hereby amended to read as follows: Sec. 48. (a) Battery is:

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

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

16 (b) Aggravated battery is:

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

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

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

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

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

31 (c) Battery against a law enforcement officer is:

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

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

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

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

43 (A) Uniformed or properly identified university or campus police

- 1 officer while such officer is engaged in the performance of such officer's
2 duty; or
- 3 (B) uniformed or properly identified state, county or city law
4 enforcement officer, other than a state correctional officer or employee, a
5 city or county correctional officer or employee, a juvenile correctional
6 facility officer or employee or a juvenile detention facility officer, or
7 employee, while such officer is engaged in the performance of such
8 officer's duty; or
- 9 (3) battery, as defined in subsection (a) committed against a:
- 10 (A) State correctional officer or employee by a person in custody of
11 the secretary of corrections, while such officer or employee is engaged in
12 the performance of such officer's or employee's duty;
- 13 (B) juvenile correctional facility officer or employee by a person
14 confined in such juvenile correctional facility, while such officer or
15 employee is engaged in the performance of such officer's or employee's
16 duty;
- 17 (C) juvenile detention facility officer or employee by a person
18 confined in such juvenile detention facility, while such officer or
19 employee is engaged in the performance of such officer's or employee's
20 duty; or
- 21 (D) city or county correctional officer or employee by a person
22 confined in a city holding facility or county jail facility, while such officer
23 or employee is engaged in the performance of such officer's or
24 employee's duty.
- 25 (d) Aggravated battery against a law enforcement officer is:
- 26 (1) An aggravated battery, as defined in subsection (b)(1)(a)
27 committed against a:
- 28 (A) Uniformed or properly identified state, county or city law
29 enforcement officer while the officer is engaged in the performance of the
30 officer's duty; or
- 31 (B) uniformed or properly identified university or campus police
32 officer while such officer is engaged in the performance of such officer's
33 duty;
- 34 (2) an aggravated battery, as defined in subsection (b)(1)(B) or (b)
35 (1)(C), committed against a:
- 36 (A) Uniformed or properly identified state, county or city law
37 enforcement officer while the officer is engaged in the performance of the
38 officer's duty; or
- 39 (B) uniformed or properly identified university or campus police
40 officer while such officer is engaged in the performance of such officer's
41 duty; or
- 42 (3) knowingly causing, with a motor vehicle, bodily harm to a:
- 43 (A) Uniformed or properly identified state, county or city law

1 enforcement officer while the officer is engaged in the performance of the
2 officer's duty; or

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

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

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

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

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

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

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

29 (2) Aggravated battery as defined in:

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

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

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

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

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

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

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

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

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

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

42 and

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

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

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

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

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

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

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

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

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

16 (3) "juvenile correctional facility officer or employee" means any
17 officer or employee of the juvenile justice authority or any independent
18 contractor, or any employee of such contractor, working at a juvenile
19 correctional facility, as defined in K.S.A. ~~2009~~ 2010 Supp. 38-2302, and
20 amendments thereto;

21 (4) "juvenile detention facility officer or employee" means any
22 officer or employee of a juvenile detention facility as defined in K.S.A.
23 ~~2009~~ 2010 Supp. 38-2302, and amendments thereto;

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

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

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

38 Sec. 48. Section 254 of chapter 136 of the 2010 Session Laws of
39 Kansas, is hereby amended to read as follows: Sec. 254. (a) (1)
40 Except as provided in subsections (b) ~~and~~, (c) *and* (d), any person
41 convicted in this state of a traffic infraction, cigarette or tobacco
42 infraction, misdemeanor or a class D or E felony, ~~or~~ for crimes
43 committed on or after July 1, 1993, nondrug crimes ranked in severity

1 levels 6 through 10 or any felony ranked in severity level 4 of the drug
2 grid, may petition the convicting court for the expungement of such
3 conviction or related arrest records if three or more years have elapsed
4 since the person: (A) Satisfied the sentence imposed; or (B) was
5 discharged from probation, a community correctional services program,
6 parole, postrelease supervision, conditional release or a suspended
7 sentence.

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

13 (b) Except as provided in ~~subsection (e)~~ *subsections (c) and (d)*, no
14 person may petition for expungement until five or more years have
15 elapsed since the person satisfied the sentence imposed, the terms of a
16 diversion agreement or was discharged from probation, a community
17 correctional services program, parole, postrelease supervision,
18 conditional release or a suspended sentence, if such person was convicted
19 of a class A, B or C felony, or for crimes committed on or after July 1,
20 1993, if convicted of an off-grid felony or any nondrug crime ranked in
21 severity levels 1 through 5 or any felony ranked in severity levels 1
22 through 3 of the drug grid, or:

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

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

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

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

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

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

1 with those statutes;

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

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

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

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

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

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

20 (3) criminal sodomy as defined in subsection (a)(3) or (a)(4) of
21 section 68 of chapter 136 of the 2010 Session Laws of Kansas, and
22 amendments thereto;

23 (4) aggravated criminal sodomy as defined in section 68 of chapter
24 136 of the 2010 Session Laws of Kansas, and amendments thereto;

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

28 (6) sexual exploitation of a child as defined in section 74 of chapter
29 136 of the 2010 Session Laws of Kansas, and amendments thereto;

30 (7) aggravated incest as defined in section 81 of chapter 136 of the
31 2010 Session Laws of Kansas, and amendments thereto;

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

35 (9) abuse of a child as defined in section 79 of chapter 136 of the
36 2010 Session Laws of Kansas, and amendments thereto;

37 (10) capital murder as defined in section 36 of chapter 136 of the
38 2010 Session Laws of Kansas, and amendments thereto;

39 (11) murder in the first degree as defined in section 37 of chapter
40 136 of the 2010 Session Laws of Kansas, and amendments thereto;

41 (12) murder in the second degree as defined in section 38 of chapter
42 136 of the 2010 Session Laws of Kansas, and amendments thereto;

43 (13) voluntary manslaughter as defined in section 39 of chapter 136

1 *of the 2010 Session Laws of Kansas*, and amendments thereto;

2 (14) involuntary manslaughter as defined in section 40 *of chapter*
3 *136 of the 2010 Session Laws of Kansas*, and amendments thereto;

4 (15) sexual battery as defined in section 69 *of chapter 136 of the*
5 *2010 Session Laws of Kansas*, and amendments thereto, when the victim
6 was less than 18 years of age at the time the crime was committed;

7 (16) aggravated sexual battery as defined in section 69 *of chapter*
8 *136 of the 2010 Session Laws of Kansas*, and amendments thereto;

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

11 ~~(18) (17) a violation of K.S.A. 8-2,144, and amendments thereto,~~
12 ~~including any diversion for such violation; or~~

13 ~~(19) (18) any conviction for any offense in effect at any time prior to~~
14 ~~the effective date of this act, that is comparable to any offense as~~
15 ~~provided in this subsection.~~

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

20 (A) Defendant's full name;

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

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

24 (D) crime for which the defendant was arrested, convicted or
25 diverted;

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

27 (F) identity of the convicting court, arresting law enforcement
28 authority or diverting authority.

29 (2) Except as provided further, there shall be no docket fee for filing
30 a petition pursuant to this section. On and after July 1, 2009 through June
31 30, 2010, the supreme court may impose a charge, not to exceed \$10 per
32 case, to fund the costs of non-judicial personnel. The charge established
33 in this section shall be the only fee collected or moneys in the nature of a
34 fee collected for the case. Such charge shall only be established by an act
35 of the legislature and no other authority is established by law or otherwise
36 to collect a fee.

37 (3) All petitions for expungement shall be docketed in the original
38 criminal action. Any person who may have relevant information about the
39 petitioner may testify at the hearing. The court may inquire into the
40 background of the petitioner and shall have access to any reports or
41 records relating to the petitioner that are on file with the secretary of
42 corrections or the Kansas parole board.

43 (e) At the hearing on the petition, the court shall order the

1 petitioner's arrest record, conviction or diversion expunged if the court
2 finds that:

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

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

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

9 (f) When the court has ordered an arrest record, conviction or
10 diversion expunged, the order of expungement shall state the information
11 required to be contained in the petition. The clerk of the court shall send a
12 certified copy of the order of expungement to the Kansas bureau of
13 investigation which shall notify the federal bureau of investigation, the
14 secretary of corrections and any other criminal justice agency which may
15 have a record of the arrest, conviction or diversion. After the order of
16 expungement is entered, the petitioner shall be treated as not having been
17 arrested, convicted or diverted of the crime, except that:

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

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

24 (A) In any application for licensure as a private detective, private
25 detective agency, certification as a firearms trainer pursuant to K.S.A.
26 ~~2009~~ 2010 Supp. 75-7b21, and amendments thereto, or employment as a
27 detective with a private detective agency, as defined by K.S.A. 75-7b01,
28 and amendments thereto; as security personnel with a private patrol
29 operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with
30 an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of
31 the department of social and rehabilitation services;

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

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

38 (D) to aid in determining the petitioner's qualifications for executive
39 director of the Kansas racing and gaming commission, for employment
40 with the commission or for work in sensitive areas in parimutuel racing
41 as deemed appropriate by the executive director of the commission, or to
42 aid in determining qualifications for licensure or renewal of licensure by
43 the commission;

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

6 (F) upon application for a commercial driver's license under K.S.A.
7 8-2,125 through 8-2,142, and amendments thereto;

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

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

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

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

18 (K) for applications received on and after July 1, 2006, to aid in
19 determining the petitioner's qualifications for a license to carry a
20 concealed weapon pursuant to the personal and family protection act,
21 K.S.A. ~~2009~~ 2010 Supp. 75-7c01 et seq., and amendments thereto;

22 (3) the court, in the order of expungement, may specify other
23 circumstances under which the conviction is to be disclosed;

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

27 (5) upon commitment to the custody of the secretary of corrections,
28 any previously expunged record in the possession of the secretary of
29 corrections may be reinstated and the expungement disregarded, and the
30 record continued for the purpose of the new commitment.

31 (g) Whenever a person is convicted of a crime, pleads guilty and
32 pays a fine for a crime, is placed on parole, postrelease supervision or
33 probation, is assigned to a community correctional services program, is
34 granted a suspended sentence or is released on conditional release, the
35 person shall be informed of the ability to expunge the arrest records or
36 conviction. Whenever a person enters into a diversion agreement, the
37 person shall be informed of the ability to expunge the diversion.

38 (h) Subject to the disclosures required pursuant to subsection (f), in
39 any application for employment, license or other civil right or privilege,
40 or any appearance as a witness, a person whose arrest records, conviction
41 or diversion of a crime has been expunged under this statute may state
42 that such person has never been arrested, convicted or diverted of such
43 crime, but the expungement of a felony conviction does not relieve an

1 individual of complying with any state or federal law relating to the use
2 or possession of firearms by persons convicted of a felony.

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

9 (1) The person whose record was expunged;

10 (2) a private detective agency or a private patrol operator, and the
11 request is accompanied by a statement that the request is being made in
12 conjunction with an application for employment with such agency or
13 operator by the person whose record has been expunged;

14 (3) a court, upon a showing of a subsequent conviction of the person
15 whose record has been expunged;

16 (4) the secretary of social and rehabilitation services, or a designee
17 of the secretary, for the purpose of obtaining information relating to
18 employment in an institution, as defined in K.S.A. 76-12a01, and
19 amendments thereto, of the department of social and rehabilitation
20 services of any person whose record has been expunged;

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

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

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

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

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

- 1 licensure, renewal of licensure or continued licensure by the commission;
- 2 (10) the Kansas racing and gaming commission, or a designee of the
3 commission, and the request is accompanied by a statement that the
4 request is being made to aid in determining qualifications of the
5 following under the Kansas expanded lottery act: (A) Lottery gaming
6 facility managers and prospective managers, racetrack gaming facility
7 managers and prospective managers, licensees and certificate holders;
8 and (B) their officers, directors, employees, owners, agents and
9 contractors;
- 10 (11) the Kansas sentencing commission;
- 11 (12) the state gaming agency, and the request is accompanied by a
12 statement that the request is being made to aid in determining
13 qualifications: (A) To be an employee of the state gaming agency; or (B)
14 to be an employee of a tribal gaming commission or to hold a license
15 issued pursuant to a tribal-gaming compact;
- 16 (13) the Kansas securities commissioner or a designee of the
17 commissioner, and the request is accompanied by a statement that the
18 request is being made in conjunction with an application for registration
19 as a broker-dealer, agent, investment adviser or investment adviser
20 representative by such agency and the application was submitted by the
21 person whose record has been expunged;
- 22 (14) the Kansas commission on peace officers' standards and
23 training and the request is accompanied by a statement that the request is
24 being made to aid in determining certification eligibility as a law
25 enforcement officer pursuant to K.S.A. 74-5601 et seq., and amendments
26 thereto;
- 27 (15) a law enforcement agency and the request is accompanied by a
28 statement that the request is being made to aid in determining eligibility
29 for employment as a law enforcement officer as defined by K.S.A. 22-
30 2202, and amendments thereto; or
- 31 (16) the attorney general and the request is accompanied by a
32 statement that the request is being made to aid in determining
33 qualifications for a license to carry a concealed weapon pursuant to the
34 personal and family protection act.
- 35 Sec. 49. Section 285 of chapter 136 of the 2010 Session Laws of
36 Kansas, is hereby amended to read as follows: Sec. 285. (a) The
37 provisions of this section shall be applicable to the sentencing guidelines
38 grid for nondrug crimes. The following sentencing guidelines grid shall
39 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	653 650 592	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 31
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 23	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	18 17 15	16 15 13	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	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	10 9 8	9 8 7	8 7 6	8 7 6	7 6 5	7 6 5	6 5 5

LEGEND

Presumptive Probation
Presumptive Imprisonment
No/No/No
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 is
6 the crime severity scale which classifies current crimes of conviction. The
7 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 in
10 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 the
13 severity of the crime of conviction when compared to all other crimes and
14 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 the
17 sentencing judge select the center of the range and reserve the upper and
18 lower limits for aggravating and mitigating factors insufficient to warrant
19 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 section 48 of *chapter 136 of the*
41 *2010 Session Laws of Kansas*, and amendments thereto, aggravated
42 battery against a law enforcement officer committed prior to July 1, 2006,
43 or a violation of section 47 of *chapter 136 of the 2010 Session Laws of*

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

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

8 (i) (1) The sentence for the violation of the felony provision of
9 subsection (b)(1)(D) of K.S.A. 8-1567, subsection (b)(3) of section 49 of
10 chapter 136 of the 2010 Session Laws of Kansas, subsections (b)(3) and
11 (b)(4) of section 109 of chapter 136 of the 2010 Session Laws of Kansas,
12 section 223 of chapter 136 of the 2010 Session Laws of Kansas and
13 section 227 of chapter 136 of the 2010 Session Laws of Kansas, and
14 amendments thereto, shall be as provided by the specific mandatory
15 sentencing requirements of that section and shall not be subject to the
16 provisions of this section or section 288 of chapter 136 of the 2010
17 Session Laws of Kansas, and amendments thereto.

18 (2) If because of the offender's criminal history classification the
19 offender is subject to presumptive imprisonment or if the judge departs
20 from a presumptive probation sentence and the offender is subject to
21 imprisonment, the provisions of this section and section 288 of chapter
22 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall
23 apply and the offender shall not be subject to the mandatory sentence as
24 provided in section 109 of chapter 136 of the 2010 Session Laws of
25 Kansas, and amendments thereto.

26 (3) Notwithstanding the provisions of any other section, the term of
27 imprisonment imposed for the violation of the felony provision of
28 subsection (b)(1)(D) of K.S.A. 8-1567, subsection (b)(3) of section 49 of
29 chapter 136 of the 2010 Session Laws of Kansas, subsections (b)(3) and
30 (b)(4) of section 109 of chapter 136 of the 2010 Session Laws of Kansas,
31 section 223 and section 227 of chapter 136 of the 2010 Session Laws of
32 Kansas, and amendments thereto, shall not be served in a state facility in
33 the custody of the secretary of corrections, except that the term of
34 imprisonment for felony violations of subsection (b)(1)(D) of K.S.A. 8-
35 1567, and amendments thereto, may be served in a state correctional
36 facility designated by the secretary of corrections if the secretary
37 determines that substance abuse treatment resources and facility capacity
38 is available. The secretary's determination regarding the availability of
39 treatment resources and facility capacity shall not be subject to review.

40 (4) Notwithstanding the provisions of any other section, the
41 sentencing court shall retain jurisdiction to modify the sentence imposed
42 for the violation of subsection (b)(1)(D) of K.S.A. 8-1567, and
43 amendments thereto.

1 (j) (1) The sentence for any persistent sex offender whose current
2 convicted crime carries a presumptive term of imprisonment shall be
3 double the maximum duration of the presumptive imprisonment term.
4 The sentence for any persistent sex offender whose current conviction
5 carries a presumptive nonprison term shall be presumed imprisonment
6 and shall be double the maximum duration of the presumptive
7 imprisonment term.

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

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

12 (ii) at the time of the conviction under paragraph (A)(i) has at least
13 one conviction for a sexually violent crime, as defined in K.S.A. 22-3717,
14 and amendments thereto, in this state or comparable felony under the
15 laws of another state, the federal government or a foreign government; or

16 (B) (i) has been convicted of rape, as defined in K.S.A. 21-3502,
17 prior to its repeal, or section 67 of *chapter 136 of the 2010 Session Laws*
18 *of Kansas*, and amendments thereto; and

19 (ii) at the time of the conviction under paragraph (B)(i) has at least
20 one conviction for rape in this state or comparable felony under the laws
21 of another state, the federal government or a foreign government.

22 (3) Except as provided in paragraph (2)(B), the provisions of this
23 subsection shall not apply to any person whose current convicted crime is
24 a severity level 1 or 2 felony.

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

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

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

35 (B) the commission of felony violations of K.S.A. ~~2009~~ 2010 Supp.
36 21-36a01 through 21-36a17, and amendments thereto; and

37 (C) its members have a common name or common identifying sign
38 or symbol; and

39 (D) its members, individually or collectively, engage in or have
40 engaged in the commission, attempted commission, conspiracy to commit
41 or solicitation of two or more person felonies or felony violations of
42 K.S.A. ~~2009~~ 2010 Supp. 21-36a01 through 21-36a17, and amendments
43 thereto, or any substantially similar offense from another jurisdiction.

1 (l) Except as provided in subsection (o), the sentence for a violation
2 of subsection (a)(1) of section 93 *of chapter 136 of the 2010 Session*
3 *Laws of Kansas*, and amendments thereto, *or any attempt or conspiracy,*
4 *as defined in sections 33 and 34 of chapter 136 of the 2010 Session Laws*
5 *of Kansas, and amendments thereto, to commit such offense*, when such
6 person being sentenced has a prior conviction for a violation of
7 subsection (a) or (b) of K.S.A. 21-3715, prior to its repeal, 21-3716, prior
8 to its repeal, subsection (a)(1) or (a)(2) of section 93 *of chapter 136 of*
9 *the 2010 Session Laws of Kansas* or subsection (b) of section 93 *of*
10 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments
11 thereto, *or any attempt or conspiracy to commit such offenses*, shall be
12 ~~presumed~~ *presumptive* imprisonment.

13 (m) The sentence for a violation of K.S.A 22-4903 or subsection (a)
14 (2) of section 138 *of chapter 136 of the 2010 Session Laws of Kansas*,
15 and amendments thereto, shall be presumptive imprisonment. If an
16 offense under such sections is classified in grid blocks 5-E, 5-F, 5-G, 5-H
17 or 5-I, the court may impose an optional nonprison sentence as provided
18 in subsection (q).

19 (n) The sentence for a violation of criminal deprivation of property,
20 as defined in section 89 *of chapter 136 of the 2010 Session Laws of*
21 *Kansas*, and amendments thereto, when such property is a motor vehicle,
22 and when such person being sentenced has any combination of two or
23 more prior convictions of subsection (b) of K.S.A. 21-3705, prior to its
24 repeal, or of criminal deprivation of property, as defined in section 89 *of*
25 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments
26 thereto, when such property is a motor vehicle, shall be presumptive
27 imprisonment. Such sentence shall not be considered a departure and
28 shall not be subject to appeal.

29 (o) The sentence for a felony violation of theft of property as defined
30 in section 87 *of chapter 136 of the 2010 Session Laws of Kansas*, and
31 amendments thereto, or burglary as defined in subsection (a) of section 93
32 *of chapter 136 of the 2010 Session Laws of Kansas*, and amendments
33 thereto, when such person being sentenced has no prior convictions for a
34 violation of K.S.A. 21-3701 or 21-3715, prior to their repeal, or theft of
35 property as defined in section 87 *of chapter 136 of the 2010 Session*
36 *Laws of Kansas*, and amendments thereto, or burglary as defined in
37 subsection (a) of section 93 *of chapter 136 of the 2010 Session Laws of*
38 *Kansas*, and amendments thereto; or the sentence for a felony violation of
39 theft of property as defined in section 87 *of chapter 136 of the 2010*
40 *Session Laws of Kansas*, and amendments thereto, when such person
41 being sentenced has one or two prior felony convictions for a violation of
42 K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal, or theft of
43 property as defined in section 87 *of chapter 136 of the 2010 Session Laws*

1 *of Kansas*, and amendments thereto, or burglary as defined in section 93
2 *of chapter 136 of the 2010 Session Laws of Kansas*, and amendments
3 thereto; or the sentence for a felony violation of burglary as defined in
4 subsection (a) of section 93 *of chapter 136 of the 2010 Session Laws of*
5 *Kansas*, and amendments thereto, when such person being sentenced has
6 one prior felony conviction for a violation of K.S.A. 21-3701, 21-3715 or
7 21-3716, prior to their repeal, or theft of property as defined in section 87
8 *of chapter 136 of the 2010 Session Laws of Kansas*, and amendments
9 thereto, or burglary as defined in section 93 *of chapter 136 of the 2010*
10 *Session Laws of Kansas*, and amendments thereto, shall be the sentence
11 as provided by this section, except that the court may order an optional
12 nonprison sentence for a defendant to participate in a drug treatment
13 program, including, but not limited to, an approved after-care plan, if the
14 court makes the following findings on the record:

15 (1) Substance abuse was an underlying factor in the commission of
16 the crime;

17 (2) substance abuse treatment in the community is likely to be more
18 effective than a prison term in reducing the risk of offender recidivism;
19 and

20 (3) participation in an intensive substance abuse treatment program
21 will serve community safety interests.

22 A defendant sentenced to an optional nonprison sentence under this
23 subsection shall be supervised by community correctional services. The
24 provisions of subsection (f)(1) of section 305 *of chapter 136 of the 2010*
25 *Session Laws of Kansas*, and amendments thereto, shall apply to a
26 defendant sentenced under this subsection. The sentence under this
27 subsection shall not be considered a departure and shall not be subject to
28 appeal.

29 (p) The sentence for a felony violation of theft of property as defined
30 in section 87 *of chapter 136 of the 2010 Session Laws of Kansas*, and
31 amendments thereto, when such person being sentenced has any
32 combination of three or more prior felony convictions for violations of
33 K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal, or theft of
34 property as defined in section 87 *of chapter 136 of the 2010 Session Laws*
35 *of Kansas*, and amendments thereto, or burglary as defined in section 93
36 *of chapter 136 of the 2010 Session Laws of Kansas*; or the sentence for a
37 violation of burglary as defined in subsection (a) of section 93 *of chapter*
38 *136 of the 2010 Session Laws of Kansas*, and amendments thereto, when
39 such person being sentenced has any combination of two or more prior
40 convictions for violations of K.S.A. 21-3701, 21-3715 and 21-3716, prior
41 to their repeal, or theft of property as defined in section 87 *of chapter 136*
42 *of the 2010 Session Laws of Kansas*, and amendments thereto, or burglary
43 as defined in section 93 *of chapter 136 of the 2010 Session Laws of*

1 *Kansas*, and amendments thereto, shall be presumed imprisonment and
2 the defendant shall be sentenced to prison as provided by this section,
3 except that the court may recommend that an offender be placed in the
4 custody of the secretary of corrections, in a facility designated by the
5 secretary to participate in an intensive substance abuse treatment
6 program, upon making the following findings on the record:

7 (1) Substance abuse was an underlying factor in the commission of
8 the crime;

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

12 (3) participation in an intensive substance abuse treatment program
13 with the possibility of an early release from imprisonment will serve
14 community safety interests by promoting offender reformation.

15 The intensive substance abuse treatment program shall be determined
16 by the secretary of corrections, but shall be for a period of at least four
17 months. Upon the successful completion of such intensive treatment
18 program, the offender shall be returned to the court and the court may
19 modify the sentence by directing that a less severe penalty be imposed in
20 lieu of that originally adjudged within statutory limits. If the offender's
21 term of imprisonment expires, the offender shall be placed under the
22 applicable period of postrelease supervision. The sentence under this
23 subsection shall not be considered a departure and shall not be subject to
24 appeal.

25 (q) As used in this section, an "optional nonprison sentence" is a
26 sentence which the court may impose, in lieu of the presumptive
27 sentence, upon making the following findings on the record:

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

31 (2) the recommended treatment program is available and the
32 offender can be admitted to such program within a reasonable period of
33 time; or

34 (3) the nonprison sanction will serve community safety interests by
35 promoting offender reformation.

36 Any decision made by the court regarding the imposition of an
37 optional nonprison sentence shall not be considered a departure and shall
38 not be subject to appeal.

39 (r) The sentence for a violation of subsection (c)(2) of section 48 of
40 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments
41 thereto, shall be presumptive imprisonment and shall be served
42 consecutively to any other term or terms of imprisonment imposed. Such
43 sentence shall not be considered a departure and shall not be subject to

1 appeal.

2 (s) *The sentence for a violation of section 76 of chapter 136 of the*
3 *2010 Session Laws of Kansas, and amendments thereto, shall be*
4 *presumptive imprisonment. Such sentence shall not be considered a*
5 *departure and shall not be subject to appeal.*

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

11 (2) *The sentence imposed pursuant to paragraph (1) shall be*
12 *presumptive imprisonment and shall be served consecutively to any other*
13 *term or terms of imprisonment imposed. Such sentence shall not be*
14 *considered a departure and shall not be subject to appeal.*

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

21 (u) *The sentence for a violation of subsection (b)(1)(C) of K.S.A. 8-*
22 *2,144 or a violation of subsection (b)(1)(C) of section 2, and amendments*
23 *thereto, shall be presumptive imprisonment. Such sentence shall not be*
24 *considered a departure and shall not be subject to appeal. Notwithstanding the provisions of any other section, an offense under*
25 *subsection (b)(1)(C) of K.S.A. 8-2,144 or an offense under subsection (b)*
26 *(1)(C) of section 2, and amendments thereto, shall be classified in the*
27 *following grid block, except when, because of the offender's criminal*
28 *history classification, the offense is classified in a grid block which*
29 *exceeds the grid block specified:*

30 (1) *A 3rd conviction shall be classified in grid block 7-G;*

31 (2) *a 4th conviction shall be classified in grid block 7-F;*

32 (3) *a 5th conviction shall be classified in grid block 7-E;*

33 (4) *a 6th conviction shall be classified in grid block 7-D;*

34 (5) *a 7th conviction shall be classified in grid block 7-C;*

35 (6) *an 8th conviction shall be classified in grid block 7-B; and*

36 (7) *a 9th or subsequent conviction shall be classified in grid block*
37 *7-A.*

38 (v) *The sentence for a violation of subsection (b)(1)(F) of K.S.A. 8-*
39 *1567, and amendments thereto, shall be presumptive imprisonment. Such*
40 *sentence shall not be considered a departure and shall not be subject to*
41 *appeal. Notwithstanding the provisions of any other section, an offense*
42 *under subsection (b)(1)(F) of K.S.A. 8-1567, and amendments thereto,*
43

1 shall be classified in the following grid block, except when, because of
2 the offender's criminal history classification, the offense is classified in a
3 grid block which exceeds the grid block specified:

- 4 (1) A 4th conviction shall be classified in grid block 7-G;
- 5 (2) a 5th conviction shall be classified in grid block 7-F;
- 6 (3) a 6th conviction shall be classified in grid block 7-E;
- 7 (4) a 7th conviction shall be classified in grid block 7-D;
- 8 (5) an 8th conviction shall be classified in grid block 7-C;
- 9 (6) a 9th conviction shall be classified in grid block 7-B; and
- 10 (7) a 10th or subsequent conviction shall be classified in grid block
11 7-A.

12 Sec. 50. Section 292 of chapter 136 of the 2010 Session Laws of
13 Kansas, is hereby amended to read as follows: Sec. 292. In addition to the
14 provisions of section 291 of chapter 136 of the 2010 Session Laws of
15 Kansas, and amendments thereto, the following shall apply in
16 determining an offender's criminal history classification as contained in
17 the presumptive sentencing guidelines grids:

18 (a) Every three prior adult convictions or juvenile adjudications of
19 class A and class B person misdemeanors in the offender's criminal
20 history, or any combination thereof, shall be rated as one adult conviction
21 or one juvenile adjudication of a person felony for criminal history
22 purposes. Every three prior adult convictions or juvenile adjudications of
23 assault as defined in subsection (a) of section 47 of chapter 136 of the
24 2010 Session Laws of Kansas, and amendments thereto, occurring within
25 a period commencing three years prior to the date of conviction for the
26 current crime of conviction shall be rated as one adult conviction or one
27 juvenile adjudication of a person felony for criminal history purposes.

28 (b) A conviction of criminal use of weapons as defined in subsection
29 (a)(8) or (a)(13) of section 186 of chapter 136 of the 2010 Session Laws
30 of Kansas, and amendments thereto, or possession of a firearm on the
31 grounds or in the state capitol building as defined in section 194 of
32 chapter 136 of the 2010 Session Laws of Kansas, and amendments
33 thereto, will be scored as a select class B nonperson misdemeanor
34 conviction or adjudication and shall not be scored as a person
35 misdemeanor for criminal history purposes.

36 (c) (1) If the current crime of conviction was committed before
37 July 1, 1996, and is for subsection (b) of K.S.A. 21-3404, as in effect on
38 June 30, 1996, involuntary manslaughter in the commission of driving
39 under the influence, then, each prior adult conviction or juvenile
40 adjudication for K.S.A. 8-1567, and amendments thereto, shall count as
41 one person felony for criminal history purposes.

42 (2) If the current crime of conviction was committed on or after July
43 1, 1996, and prior to July 1, 2011, and is for a violation of subsection (a)

1 (3) of section 40 of chapter 136 of the 2010 Session Laws of Kansas, and
2 amendments thereto, each prior adult conviction, diversion in lieu of
3 criminal prosecution or juvenile adjudication for: (A) An act described in
4 K.S.A. 8-1567, and amendments thereto; or (B) a violation of a law of
5 another state or an ordinance of any city, or resolution of any county,
6 which prohibits the act described in K.S.A. 8-1567, and amendments
7 thereto, shall count as one person felony for criminal history purposes.

8 (3) *If the current crime of conviction was committed on or after July*
9 *1, 2011, and is for a violation of subsection (a)(3) of section 40 of*
10 *chapter 136 of the 2010 Session Laws of Kansas or a violation of*
11 *subsection (g) of section 48 of chapter 136 of the 2010 Session Laws of*
12 *Kansas, and amendments thereto, each prior adult conviction, diversion*
13 *in lieu of criminal prosecution or juvenile adjudication for the following*
14 *shall count as one person felony for criminal history purposes: (A)*
15 *Section 2, and amendments thereto; (B) K.S.A. 8-2,144, and amendments*
16 *thereto; (C) K.S.A. 8-1567, and amendments thereto; (D) K.S.A. 32-1131,*
17 *and amendments thereto; (E) subsection (a)(3) of section 40 of chapter*
18 *136 of the 2010 Session Laws of Kansas, and amendments thereto; (F)*
19 *subsection (g) of section 48 of chapter 136 of the 2010 Session Laws of*
20 *Kansas, and amendments thereto; and (G) aggravated vehicular*
21 *homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular battery,*
22 *K.S.A. 21-3405b, prior to its repeal, if the crime was committed while*
23 *committing a violation of K.S.A. 8-1567, and amendments thereto.*

24 (d) Prior burglary adult convictions and juvenile adjudications will
25 be scored for criminal history purposes as follows:

26 (1) As a prior person felony if the prior conviction or adjudication
27 was classified as a burglary as defined in subsection (a)(1) of section 93
28 of chapter 136 of the 2010 Session Laws of Kansas, and amendments
29 thereto.

30 (2) As a prior nonperson felony if the prior conviction or
31 adjudication was classified as a burglary as defined in subsection (a)(2) or
32 (a)(3) of section 93 of chapter 136 of the 2010 Session Laws of Kansas,
33 and amendments thereto.

34 The facts required to classify prior burglary adult convictions and
35 juvenile adjudications shall be established by the state by a
36 preponderance of the evidence.

37 (e) Out-of-state convictions and juvenile adjudications shall be used
38 in classifying the offender's criminal history. An out-of-state crime will be
39 classified as either a felony or a misdemeanor according to the convicting
40 jurisdiction. If a crime is a felony in another state, it will be counted as a
41 felony in Kansas. The state of Kansas shall classify the crime as person or
42 nonperson. In designating a crime as person or nonperson comparable
43 offenses shall be referred to. If the state of Kansas does not have a

1 comparable offense, the out-of-state conviction shall be classified as a
2 nonperson crime. Convictions or adjudications occurring within the
3 federal system, other state systems, the District of Columbia, foreign,
4 tribal or military courts are considered out-of-state convictions or
5 adjudications. The facts required to classify out-of-state adult convictions
6 and juvenile adjudications shall be established by the state by a
7 preponderance of the evidence.

8 (f) Except as provided in subsections (d)(3)(B), (d)(3)(C), (d)(3)(D)
9 and (d)(4) of section 291 *of chapter 136 of the 2010 Session Laws of*
10 *Kansas*, and amendments thereto, juvenile adjudications will be applied
11 in the same manner as adult convictions. Out-of-state juvenile
12 adjudications will be treated as juvenile adjudications in Kansas.

13 (g) A prior felony conviction of an attempt, a conspiracy or a
14 solicitation as provided in section 33, 34 or 35 *of chapter 136 of the 2010*
15 *Session Laws of Kansas*, and amendments thereto, to commit a crime
16 shall be treated as a person or nonperson crime in accordance with the
17 designation assigned to the underlying crime.

18 (h) Drug crimes are designated as nonperson crimes for criminal
19 history scoring.

20 Sec. 51. Section 299 of chapter 136 of the 2010 Session Laws of
21 Kansas, is hereby amended to read as follows: Sec. 299. (a) When a
22 departure sentence is appropriate, the sentencing judge may depart from
23 the sentencing guidelines as provided in this section.

24 (1) The sentencing judge shall not impose a downward dispositional
25 departure sentence for any crime of extreme sexual violence, as defined
26 in section 296 *of chapter 136 of the 2010 Session Laws of Kansas*, and
27 amendments thereto. The sentencing judge shall not impose a downward
28 durational departure sentence for any crime of extreme sexual violence,
29 as defined in section 296 *of chapter 136 of the 2010 Session Laws of*
30 *Kansas*, and amendments thereto, to less than 50% of the center of the
31 range of the sentence for such crime.

32 (2) *The sentencing judge shall not impose a downward dispositional*
33 *departure sentence or a downward durational departure sentence for a*
34 *violation of subsection (b)(1)(C) of K.S.A. 8-2,144 or subsection (b)(1)*
35 *(F) of K.S.A. 8-1567 or subsection (b)(1)(C) of section 2, and*
36 *amendments thereto.*

37 (b) When a sentencing judge departs in setting the duration of a
38 presumptive term of imprisonment:

39 (1) The judge shall consider and apply the sentencing guidelines,
40 which is to impose a sentence that is proportionate to the severity of the
41 crime of conviction and the offender's criminal history; and

42 (2) the presumptive term of imprisonment set in such departure shall
43 not total more than double the maximum duration of the presumptive

1 imprisonment term.

2 (c) When a sentencing judge imposes a prison term as a
3 dispositional departure:

4 (1) The judge shall consider and apply the primary purpose of the
5 sentencing guidelines, which is to impose a sentence that is proportionate
6 to the severity of the crime of conviction; and

7 (2) the term of imprisonment shall not exceed the maximum
8 duration of the presumptive imprisonment term listed within the
9 sentencing grid. Any sentence inconsistent with the provisions of this
10 section shall constitute an additional departure and shall require
11 substantial and compelling reasons independent of the reasons given for
12 the dispositional departure.

13 (d) If the sentencing judge imposes a nonprison sentence as a
14 dispositional departure from the guidelines, the recommended duration
15 shall be as provided in subsection (c) of section 248 *of chapter 136 of the*
16 *2010 Session Laws of Kansas*, and amendments thereto.

17 Sec. 52. K.S.A. 8-241, 8-285, 8-1008, 8-1009, 8-1016, 8-1017, 8-
18 1501, 12-4413, 12-4414, 12-4415, 12-4416, 22-2908, 22-2910, 22-3610,
19 22-4704 and 22-4705 and K.S.A. 2009 Supp. 8-1567, as amended by
20 section 3 of chapter 153 of the 2010 Session Laws of Kansas, 21-4704, as
21 amended by section 6 of chapter 147 of the 2010 Session Laws of
22 Kansas, 22-2908, as amended by section 9 of chapter 101 of the 2010
23 Session Laws of Kansas, and 22-2909, as amended by section 10 of
24 chapter 101 of the 2010 Session Laws of Kansas, and K.S.A. 2010 Supp.
25 8-235, 8-262, 8-2,142, 8-2,144, 8-1001, 8-1012, 8-1013, 8-1014, 8-1015,
26 8-1020, 8-1020a, 8-1021, 8-1022, 8-1102, 8-1567, 12-4104, 12-4106, 12-
27 4516, 12-4517, 21-4704, 22-2802, 22-2909, 22-3717, 22-3717c, 28-176,
28 60-427, 74-2012 and 74-7301 and sections 14, 48, 254, 285, 292 and 299
29 of chapter 136 of the 2010 Session Laws of Kansas are hereby repealed.

30 Sec. 53. This act shall take effect and be in force from and after its
31 publication in the statute book.