

HOUSE BILL No. 2345

By Committee on Judiciary

2-14

1 AN ACT concerning driving; relating to certain fines and application fees;
2 distribution to correctional supervision fund and community corrections
3 supervision fund; amending K.S.A. 2012 Supp. 8-2,144, 8-1015, 8-
4 1025, 8-1567 and 12-4120 and repealing the existing sections.
5

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

7 Section 1. K.S.A. 2012 Supp. 8-2,144 is hereby amended to read as
8 follows: 8-2,144. (a) Driving a commercial motor vehicle under the
9 influence is operating or attempting to operate any commercial motor
10 vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, within this
11 state while:

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

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

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

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

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

31 (B) on a second conviction a class A, nonperson misdemeanor. The
32 person convicted shall be sentenced to not less than 90 days nor more than
33 one year's imprisonment and fined not less than \$1,250 nor more than
34 \$1,750. The person convicted shall serve at least five consecutive days'
35 imprisonment before the person is granted probation, suspension or
36 reduction of sentence or parole or is otherwise released. The five days'

1 imprisonment mandated by this subsection may be served in a work
2 release program only after such person has served 48 consecutive hours'
3 imprisonment, provided such work release program requires such person
4 to return to confinement at the end of each day in the work release
5 program. The person convicted, if placed into a work release program,
6 shall serve a minimum of 120 hours of confinement. Such 120 hours of
7 confinement shall be a period of at least 48 consecutive hours of
8 imprisonment followed by confinement hours at the end of and continuing
9 to the beginning of the offender's work day. The court may place the
10 person convicted under a house arrest program pursuant to K.S.A. 2012
11 Supp. 21-6609, and amendments thereto, to serve the five days'
12 imprisonment mandated by this subsection only after such person has
13 served 48 consecutive hours' imprisonment. The person convicted, if
14 placed under house arrest, shall be monitored by an electronic monitoring
15 device, which verifies the offender's location. The offender shall serve a
16 minimum of 120 hours of confinement within the boundaries of the
17 offender's residence. Any exceptions to remaining within the boundaries of
18 the offender's residence provided for in the house arrest agreement shall
19 not be counted as part of the 120 hours; and

20 (C) on a third or subsequent conviction a nonperson felony. The
21 person convicted shall be sentenced to not less than 90 days nor more than
22 one year's imprisonment and fined not less than \$1,750 nor more than
23 \$2,500. The person convicted shall not be eligible for release on probation,
24 suspension or reduction of sentence or parole until the person has served at
25 least 90 days' imprisonment. The 90 days' imprisonment mandated by this
26 subsection may be served in a work release program only after such person
27 has served 48 consecutive hours' imprisonment, provided such work
28 release program requires such person to return to confinement at the end of
29 each day in the work release program. The person convicted, if placed into
30 a work release program, shall serve a minimum of 2,160 hours of
31 confinement. Such 2,160 hours of confinement shall be a period of at least
32 48 consecutive hours of imprisonment followed by confinement hours at
33 the end of and continuing to the beginning of the offender's work day. The
34 court may place the person convicted under a house arrest program
35 pursuant to K.S.A. 2012 Supp. 21-6609, and amendments thereto, to serve
36 the 90 days' imprisonment mandated by this subsection only after such
37 person has served 48 consecutive hours' imprisonment. The person
38 convicted, if placed under house arrest, shall be monitored by an electronic
39 monitoring device, which verifies the offender's location. The offender
40 shall serve a minimum of 2,160 hours of confinement within the
41 boundaries of the offender's residence. Any exceptions to remaining within
42 the boundaries of the offender's residence provided for in the house arrest
43 agreement shall not be counted as part of the 2,160 hours.

1 (2) In addition, for any conviction pursuant to subsection (b)(1)(C), at
2 the time of the filing of the judgment form or journal entry as required by
3 K.S.A. 22-3426 or K.S.A. 2012 Supp. 21-6711, and amendments thereto,
4 the court shall cause a certified copy to be sent to the officer having the
5 offender in charge. The court shall determine whether the offender, upon
6 release from imprisonment, shall be supervised by community correctional
7 services or court services based upon the risk and needs of the offender.
8 The risk and needs of the offender shall be determined by use of a risk
9 assessment tool specified by the Kansas sentencing commission. The law
10 enforcement agency maintaining custody and control of a defendant for
11 imprisonment shall cause a certified copy of the judgment form or journal
12 entry to be sent to the supervision office designated by the court and upon
13 expiration of the term of imprisonment shall deliver the defendant to a
14 location designated by the supervision office designated by the court. After
15 the term of imprisonment imposed by the court, the person shall be placed
16 on supervision to community correctional services or court services, as
17 determined by the court, for a mandatory one-year period of supervision,
18 which such period of supervision shall not be reduced. During such
19 supervision, the person shall be required to participate in a
20 multidisciplinary model of services for substance use disorders facilitated
21 by a department of social and rehabilitation services designated care
22 coordination agency to include assessment and, if appropriate, referral to a
23 community based substance use disorder treatment including recovery
24 management and mental health counseling as needed. The
25 multidisciplinary team shall include the designated care coordination
26 agency, the supervision officer, the social and rehabilitation services
27 department designated treatment provider and the offender. Any violation
28 of the conditions of such supervision may subject such person to
29 revocation of supervision and imprisonment in jail for the remainder of the
30 period of imprisonment, the remainder of the supervision period, or any
31 combination or portion thereof.

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

38 (c) Any person convicted of a violation of this section, or a violation
39 of a city ordinance or county resolution prohibiting the acts prohibited by
40 this section, who had one or more children under the age of 14 years in the
41 vehicle at the time of the offense shall have such person's punishment
42 enhanced by one month of imprisonment. This imprisonment shall be
43 served consecutively to any other minimum mandatory penalty imposed

1 for a violation of this section, or a violation of a city ordinance or county
2 resolution prohibiting the acts prohibited by this section. Any enhanced
3 penalty imposed shall not exceed the maximum sentence allowable by law.
4 During the service of the enhanced penalty, the judge may order the person
5 on house arrest, work release or other conditional release.

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

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

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

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

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

39 (i) Upon conviction of a person of a violation of this section or a
40 violation of a city ordinance or county resolution prohibiting the acts
41 prohibited by this section, the division, upon receiving a report of
42 conviction, shall: (1) Disqualify the person from driving a commercial
43 motor vehicle under K.S.A. 8-2,142, and amendments thereto; and (2)

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

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

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

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

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

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

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

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

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

42 (1) Convictions for a violation of K.S.A. 8-1567, and amendments
43 thereto, or a violation of an ordinance of any city or resolution of any

1 county which prohibits the acts that such section prohibits, or entering into
2 a diversion agreement in lieu of further criminal proceedings on a
3 complaint alleging any such violations, shall be taken into account, but
4 only convictions or diversions occurring on or after July 1, 2001. Nothing
5 in this provision shall be construed as preventing any court from
6 considering any convictions or diversions occurring during the person's
7 lifetime in determining the sentence to be imposed within the limits
8 provided for a first, second, third, fourth or subsequent offense;

9 (2) any convictions for a violation of the following sections occurring
10 during a person's lifetime shall be taken into account: (A) This section; (B)
11 refusing to submit to a test to determine the presence of alcohol or drugs,
12 K.S.A. 2012 Supp. 8-1025, and amendments thereto; (C) operating a
13 vessel under the influence of alcohol or drugs, K.S.A. 32-1131, and
14 amendments thereto; (D) involuntary manslaughter while driving under
15 the influence of alcohol or drugs, K.S.A. 21-3442, prior to its repeal, or
16 subsection (a)(3) of K.S.A. 2012 Supp. 21-5405, and amendments thereto;
17 and (E) aggravated vehicular homicide, K.S.A. 21-3405a, prior to its
18 repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the
19 crime was committed while committing a violation of K.S.A. 8-1567, and
20 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 (n)(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 any
25 law of another state which would constitute a crime described in
26 subsection (n)(1) or (n)(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 (n)(1) or (n)(2) if committed off
30 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 (n)(1)
34 or (n)(2) arising from the same arrest shall only be counted as one
35 conviction.

36 (o) For the purpose of this section:

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

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

43 (3) "drug" includes toxic vapors as such term is defined in K.S.A.

1 2012 Supp. 21-5712, and amendments thereto.

2 (p) On and after July 1, 2011, the amount of \$250 from each fine
3 imposed pursuant to this section shall be remitted by the clerk of the
4 district court to the state treasurer in accordance with the provisions of
5 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
6 remittance, the state treasurer shall ~~credit~~ *deposit* the entire amount *in the*
7 *state treasury and credit 33% to the community corrections supervision*
8 *fund established by K.S.A. 2012 Supp. 75-52,113, and amendments*
9 *thereto, and 67% to the correctional supervision fund established by*
10 *K.S.A. 2012 Supp. 21-6607, and amendments thereto.*

11 Sec. 2. K.S.A. 2012 Supp. 8-1015 is hereby amended to read as
12 follows: 8-1015. (a) (1) Except as provided in subsection (a)(2), whenever
13 a person's driving privileges have been suspended for one year as provided
14 in subsection (a) of K.S.A. 8-1014, and amendments thereto, after 90 days
15 of such suspension, such person may apply to the division for such
16 person's driving privileges to be restricted for the remainder of the one-
17 year suspension period to driving only a motor vehicle equipped with an
18 ignition interlock device and only for the purposes of getting to and from:
19 Work, school or an alcohol treatment program; and the ignition interlock
20 provider for maintenance and downloading of data from the device.

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

29 (3) Except as provided in subsection (a)(4), whenever a person's
30 driving privileges have been suspended for one year as provided in
31 subsection (b) of K.S.A. 8-1014, and amendments thereto, after 45 days of
32 such suspension, such person may apply to the division for such person's
33 driving privileges to be restricted for the remainder of the one-year
34 suspension period to driving only a motor vehicle equipped with an
35 ignition interlock device and only for the purposes of getting to and from:
36 Work, school or an alcohol treatment program; and the ignition interlock
37 provider for maintenance and downloading of data from the device.

38 (4) Whenever a person's driving privileges have been suspended for
39 one year as provided in subsection (b)(2)(A) of K.S.A. 8-1014, and
40 amendments thereto, after 45 days of such suspension, such person may
41 apply to the division for such person's driving privileges to be restricted
42 for the remainder of the one-year suspension period to driving only a
43 motor vehicle equipped with an ignition interlock device and only under

1 the circumstances provided by subsections (a)(1), (2), (3) and (4) of
2 K.S.A. 8-292, and amendments thereto.

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

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

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

19 (A) Except as provided in subsection (b)(1)(B), when a person has
20 completed the suspension pursuant to subsection (b)(1)(A) of K.S.A. 8-
21 1014, and amendments thereto, the division shall restrict the person's
22 driving privileges for 180 days to driving only a motor vehicle equipped
23 with an ignition interlock device.

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

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

37 (A) Except as provided in subsection (b)(2)(B), when a person has
38 completed the suspension pursuant to subsection (b)(1)(A) of K.S.A. 8-
39 1014, and amendments thereto, the division shall restrict the person's
40 driving privileges to driving only under the circumstances provided by
41 subsections (a)(1), (2), (3) and (4) of K.S.A. 8-292, and amendments
42 thereto.

43 (B) In lieu of the restrictions set out in subsection (b)(2)(A), the

1 division, upon request of the person whose driving privileges are to be
2 restricted, may restrict the person's driving privileges to driving only a
3 motor vehicle equipped with an ignition interlock device.

4 (c) Except as provided in subsection (b), when a person has
5 completed the suspension pursuant to subsection (a) or (b) of K.S.A. 8-
6 1014, and amendments thereto, the division shall restrict the person's
7 driving privileges pursuant to subsection (a) or (b) of K.S.A. 8-1014, and
8 amendments thereto, to driving only a motor vehicle equipped with an
9 ignition interlock device. Upon restricting a person's driving privileges
10 pursuant to this subsection, the division shall issue a copy of the order
11 imposing the restrictions which is required to be carried by the person at
12 any time the person is operating a motor vehicle on the highways of this
13 state.

14 (d) Whenever an ignition interlock device is required by law, such
15 ignition interlock device shall be approved by the division and maintained
16 at the person's expense. Proof of the installation of such ignition interlock
17 device, for the entire period required by the applicable law, shall be
18 provided to the division before the person's driving privileges are fully
19 reinstated.

20 (e) Except as provided further, any person whose license is restricted
21 to operating only a motor vehicle with an ignition interlock device
22 installed may operate an employer's vehicle without an ignition interlock
23 device installed during normal business activities, provided that the person
24 does not partly or entirely own or control the employer's vehicle or
25 business. The provisions of this subsection shall not apply to any person
26 whose driving privileges have been restricted for the remainder of the one-
27 year suspension period as provided in subsection (a)(1) or (a)(3).

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

35 (g) Any person who has had the person's driving privileges
36 suspended, restricted or revoked pursuant to subsection (a), (b) or (c) of
37 K.S.A. 8-1014, prior to the amendments by this act and section 14 of
38 chapter 105 of the 2011 Session Laws of Kansas, may apply to the division
39 to have the suspension, restriction or revocation penalties modified in
40 conformity with the provisions of subsection (a), (b) or (c) of K.S.A. 8-
41 1014, and amendments thereto. The division shall assess an application fee
42 of \$100 for a person to apply to modify the suspension, restriction or
43 revocation penalties previously issued. The division shall modify the

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

4 (h) The division shall remit all application fees collected pursuant to
5 subsections (a) and (g) to the state treasurer in accordance with the
6 provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of
7 each such remittance, the state treasurer shall deposit the entire amount in
8 the state treasury and shall credit such moneys to the division of vehicles
9 operating fund until an aggregate amount of \$100,000 is credited to the
10 division of vehicles operating fund each fiscal year. On and after an
11 aggregate amount of \$100,000 is credited to such fund each fiscal year, ~~the~~
12 ~~entire amount of such remittance shall be credited~~ *the state treasurer shall*
13 *credit 33% of such remittance* to the community corrections supervision
14 fund created by K.S.A. 2012 Supp. 75-52,113, and amendments thereto,
15 *and 67% of such remittance to the correctional supervision fund created*
16 *by K.S.A. 2012 Supp. 21-6607, and amendments thereto.* The application
17 fee established in this section shall be the only fee collected or moneys in
18 the nature of a fee collected for such application. Such fee shall only be
19 established by an act of the legislature and no other authority is established
20 by law or otherwise to collect a fee.

21 Sec. 3. K.S.A. 2012 Supp. 8-1025 is hereby amended to read as
22 follows: 8-1025. (a) Refusing to submit to a test to determine the presence
23 of alcohol or drugs is refusing to submit to or complete a test or tests
24 deemed consented to under subsection (a) of K.S.A. 8-1001, and
25 amendments thereto, if such person has:

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

29 (2) any prior conviction for a violation of K.S.A. 8-1567 or 8-2,144,
30 and amendments thereto, or a violation of an ordinance of any city or
31 resolution of any county which prohibits the acts that such section
32 prohibits, or entering into a diversion agreement in lieu of further criminal
33 proceedings on a complaint alleging any such violations, which occurred:
34 (A) On or after July 1, 2001; and (B) when such person was 18 years of
35 age or older.

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

38 (A) On a first conviction a class A, nonperson misdemeanor. The
39 person convicted shall be sentenced to not less than 90 days nor more than
40 one year's imprisonment and fined not less than \$1,250 nor more than
41 \$1,750. The person convicted shall serve at least five consecutive days'
42 imprisonment before the person is granted probation, suspension or
43 reduction of sentence or parole or is otherwise released. The five days'

1 imprisonment mandated by this subsection may be served in a work
2 release program only after such person has served 48 consecutive hours'
3 imprisonment, provided such work release program requires such person
4 to return to confinement at the end of each day in the work release
5 program. The person convicted, if placed into a work release program,
6 shall serve a minimum of 120 hours of confinement. Such 120 hours of
7 confinement shall be a period of at least 48 consecutive hours of
8 imprisonment followed by confinement hours at the end of and continuing
9 to the beginning of the offender's work day. The court may place the
10 person convicted under a house arrest program pursuant to K.S.A. 2012
11 Supp. 21-6609, and amendments thereto, to serve the five days'
12 imprisonment mandated by this subsection only after such person has
13 served 48 consecutive hours' imprisonment. The person convicted, if
14 placed under house arrest, shall be monitored by an electronic monitoring
15 device, which verifies the offender's location. The offender shall serve a
16 minimum of 120 hours of confinement within the boundaries of the
17 offender's residence. Any exceptions to remaining within the boundaries of
18 the offender's residence provided for in the house arrest agreement shall
19 not be counted as part of the 120 hours;

20 (B) on a second conviction a class A, nonperson misdemeanor, except
21 as provided in subsection (b)(1)(C). The person convicted shall be
22 sentenced to not less than 90 days nor more than one year's imprisonment
23 and fined not less than \$1,750 nor more than \$2,500. The person convicted
24 shall not be eligible for release on probation, suspension or reduction of
25 sentence or parole until the person has served at least 90 days'
26 imprisonment. The 90 days' imprisonment mandated by this subsection
27 may be served in a work release program only after such person has served
28 48 consecutive hours' imprisonment, provided such work release program
29 requires such person to return to confinement at the end of each day in the
30 work release program. The person convicted, if placed into a work release
31 program, shall serve a minimum of 2,160 hours of confinement. Such
32 2,160 hours of confinement shall be a period of at least 48 consecutive
33 hours of imprisonment followed by confinement hours at the end of and
34 continuing to the beginning of the offender's work day. The court may
35 place the person convicted under a house arrest program pursuant to
36 K.S.A. 2012 Supp. 21-6609, and amendments thereto, to serve the 90 days'
37 imprisonment mandated by this subsection only after such person has
38 served 48 consecutive hours' imprisonment. The person convicted, if
39 placed under house arrest, shall be monitored by an electronic monitoring
40 device, which verifies the offender's location. The offender shall serve a
41 minimum of 2,160 hours of confinement within the boundaries of the
42 offender's residence. Any exceptions to remaining within the boundaries of
43 the offender's residence provided for in the house arrest agreement shall

1 not be counted as part of the 2,160 hours;

2 (C) on a second conviction a nonperson felony if the person has
3 prior conviction which occurred within the preceding 10 years, not
4 including any period of incarceration. The person convicted shall be
5 sentenced to not less than 90 days nor more than one year's imprisonment
6 and fined not less than \$1,750 nor more than \$2,500. The person convicted
7 shall not be eligible for release on probation, suspension or reduction of
8 sentence or parole until the person has served at least 90 days'
9 imprisonment. The 90 days' imprisonment mandated by this subsection
10 may be served in a work release program only after such person has served
11 48 consecutive hours' imprisonment, provided such work release program
12 requires such person to return to confinement at the end of each day in the
13 work release program. The person convicted, if placed into a work release
14 program, shall serve a minimum of 2,160 hours of confinement. Such
15 2,160 hours of confinement shall be a period of at least 48 consecutive
16 hours of imprisonment followed by confinement hours at the end of and
17 continuing to the beginning of the offender's work day. The court may
18 place the person convicted under a house arrest program pursuant to
19 K.S.A. 2012 Supp. 21-6609, and amendments thereto, to serve the 90 days'
20 imprisonment mandated by this subsection only after such person has
21 served 48 consecutive hours' imprisonment. The person convicted, if
22 placed under house arrest, shall be monitored by an electronic monitoring
23 device, which verifies the offender's location. The offender shall serve a
24 minimum of 2,160 hours of confinement within the boundaries of the
25 offender's residence. Any exceptions to remaining within the boundaries of
26 the offender's residence provided for in the house arrest agreement shall
27 not be counted as part of the 2,160 hours; and

28 (D) on a third or subsequent conviction a nonperson felony. The
29 person convicted shall be sentenced to not less than 90 days nor more than
30 one year's imprisonment and fined \$2,500. The person convicted shall not
31 be eligible for release on probation, suspension or reduction of sentence or
32 parole until the person has served at least 90 days' imprisonment. The 90
33 days' imprisonment mandated by this subsection may be served in a work
34 release program only after such person has served 72 consecutive hours'
35 imprisonment, provided such work release program requires such person
36 to return to confinement at the end of each day in the work release
37 program. The person convicted, if placed into a work release program,
38 shall serve a minimum of 2,160 hours of confinement. Such 2,160 hours of
39 confinement shall be a period of at least 72 consecutive hours of
40 imprisonment followed by confinement hours at the end of and continuing
41 to the beginning of the offender's work day. The court may place the
42 person convicted under a house arrest program pursuant to K.S.A. 2012
43 Supp. 21-6609, and amendments thereto, to serve the 90 days'

1 imprisonment mandated by this subsection only after such person has
2 served 72 consecutive hours' imprisonment. The person convicted, if
3 placed under house arrest, shall be monitored by an electronic monitoring
4 device, which verifies the offender's location. The offender shall serve a
5 minimum of 2,160 hours of confinement within the boundaries of the
6 offender's residence. Any exceptions to remaining within the boundaries of
7 the offender's residence provided for in the house arrest agreement shall
8 not be counted as part of the 2,160 hours.

9 (2) The court may order that the term of imprisonment imposed
10 pursuant to subsection (b)(1)(C) or (b)(1)(D) be served in a state facility in
11 the custody of the secretary of corrections in a facility designated by the
12 secretary for the provision of substance abuse treatment pursuant to the
13 provisions of K.S.A. 2012 Supp. 21-6804, and amendments thereto. The
14 person shall remain imprisoned at the state facility only while participating
15 in the substance abuse treatment program designated by the secretary and
16 shall be returned to the custody of the sheriff for execution of the balance
17 of the term of imprisonment upon completion of or the person's discharge
18 from the substance abuse treatment program. Custody of the person shall
19 be returned to the sheriff for execution of the sentence imposed in the
20 event the secretary of corrections determines: (A) That substance abuse
21 treatment resources or the capacity of the facility designated by the
22 secretary for the incarceration and treatment of the person is not available;
23 (B) the person fails to meaningfully participate in the treatment program of
24 the designated facility; (C) the person is disruptive to the security or
25 operation of the designated facility; or (D) the medical or mental health
26 condition of the person renders the person unsuitable for confinement at
27 the designated facility. The determination by the secretary that the person
28 either is not to be admitted into the designated facility or is to be
29 transferred from the designated facility is not subject to review. The sheriff
30 shall be responsible for all transportation expenses to and from the state
31 correctional facility.

32 (3) In addition, for any conviction pursuant to subsection (b)(1)(B),
33 (b)(1)(C) or (b)(1)(D), at the time of the filing of the judgment form or
34 journal entry as required by K.S.A. 22-3426 or K.S.A. 2012 Supp. 21-
35 6711, and amendments thereto, the court shall cause a certified copy to be
36 sent to the officer having the offender in charge. The court shall determine
37 whether the offender, upon release from imprisonment, shall be supervised
38 by community correctional services or court services based upon the risk
39 and needs of the offender. The risk and needs of the offender shall be
40 determined by use of a risk assessment tool specified by the Kansas
41 sentencing commission. The law enforcement agency maintaining custody
42 and control of a defendant for imprisonment shall cause a certified copy of
43 the judgment form or journal entry to be sent to the supervision office

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

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

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

37 (d) The court may establish the terms and time for payment of any
38 fines, fees, assessments and costs imposed pursuant to this section. Any
39 assessments and costs shall be required to be paid not later than 90 days
40 after imposed, and any remainder of the fine shall be paid prior to the final
41 release of the defendant by the court.

42 (e) In lieu of payment of a fine imposed pursuant to this section, the
43 court may order that the person perform community service specified by

1 the court. The person shall receive a credit on the fine imposed in an
2 amount equal to \$5 for each full hour spent by the person in the specified
3 community service. The community service ordered by the court shall be
4 required to be performed not later than one year after the fine is imposed
5 or by an earlier date specified by the court. If by the required date the
6 person performs an insufficient amount of community service to reduce to
7 zero the portion of the fine required to be paid by the person, the
8 remaining balance of the fine shall become due on that date.

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

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

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

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

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

25 (1) Convictions for a violation of K.S.A. 8-1567, and amendments
26 thereto, or a violation of an ordinance of any city or resolution of any
27 county which prohibits the acts that such section prohibits, or entering into
28 a diversion agreement in lieu of further criminal proceedings on a
29 complaint alleging any such violations, shall be taken into account, but
30 only convictions or diversions occurring: (A) On or after July 1, 2001; and
31 (B) when such person was 18 years of age or older. Nothing in this
32 provision shall be construed as preventing any court from considering any
33 convictions or diversions occurring during the person's lifetime in
34 determining the sentence to be imposed within the limits provided for a
35 first, second, third, fourth or subsequent offense;

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

1 2012 Supp. 21-5405, and amendments thereto; and (E) aggravated
2 vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular
3 battery, K.S.A. 21-3405b, prior to its repeal, if the crime was committed
4 while committing a violation of K.S.A. 8-1567, and amendments thereto;

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

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

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

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

26 (7) a person may enter into a diversion agreement in lieu of further
27 criminal proceedings for a violation of this section, or an ordinance which
28 prohibits the acts of this section, only once during the person's lifetime.

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

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

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

1 (3) An ordinance may grant to a municipal court jurisdiction over a
2 violation of such ordinance which is concurrent with the jurisdiction of the
3 district court over a violation of this section, notwithstanding that the
4 elements of such ordinance violation are the same as the elements of a
5 violation of this section that would constitute, and be punished as, a felony.

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

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

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

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

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

21 (l) No plea bargaining agreement shall be entered into nor shall any
22 judge approve a plea bargaining agreement entered into for the purpose of
23 permitting a person charged with a violation of this section, or a violation
24 of any ordinance of a city or resolution of any county in this state which
25 prohibits the acts prohibited by this section, to avoid the mandatory
26 penalties established by this section or by the ordinance. For the purpose
27 of this subsection, entering into a diversion agreement pursuant to K.S.A.
28 12-4413 et seq. or 22-2906 et seq., and amendments thereto, shall not
29 constitute plea bargaining.

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

35 (n) On and after July 1, 2012, the amount of \$250 from each fine
36 imposed pursuant to this section shall be remitted by the clerk of the
37 district court to the state treasurer in accordance with the provisions of
38 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
39 remittance, the state treasurer shall ~~credit~~ *deposit* the entire amount *in the*
40 *state treasury and credit 33% to the community corrections supervision*
41 *fund established by K.S.A. 2012 Supp. 75-52,113, and amendments*
42 *thereto, and 67% to the correctional supervision fund established by*
43 *K.S.A. 2012 Supp. 21-6607, and amendments thereto.*

1 Sec. 4. K.S.A. 2012 Supp. 8-1567 is hereby amended to read as
2 follows: 8-1567. (a) Driving under the influence is operating or attempting
3 to operate any vehicle within this state while:

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

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

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

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

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

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

19 (A) On a first conviction a class B, nonperson misdemeanor. The
20 person convicted shall be sentenced to not less than 48 consecutive hours
21 nor more than six months' imprisonment, or in the court's discretion 100
22 hours of public service, and fined not less than \$750 nor more than \$1,000.
23 The person convicted shall serve at least 48 consecutive hours'
24 imprisonment or 100 hours of public service either before or as a condition
25 of any grant of probation or suspension, reduction of sentence or parole.
26 The court may place the person convicted under a house arrest program
27 pursuant to K.S.A. 2012 Supp. 21-6609, and amendments thereto, to serve
28 the remainder of the sentence only after such person has served 48
29 consecutive hours' imprisonment;

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

1 to the beginning of the offender's work day. The court may place the
2 person convicted under a house arrest program pursuant to K.S.A. 2012
3 Supp. 21-6609, and amendments thereto, to serve the five days'
4 imprisonment mandated by this subsection only after such person has
5 served 48 consecutive hours' imprisonment. The person convicted, if
6 placed under house arrest, shall be monitored by an electronic monitoring
7 device, which verifies the offender's location. The offender shall serve a
8 minimum of 120 hours of confinement within the boundaries of the
9 offender's residence. Any exceptions to remaining within the boundaries of
10 the offender's residence provided for in the house arrest agreement shall
11 not be counted as part of the 120 hours;

12 (C) on a third conviction a class A, nonperson misdemeanor, except
13 as provided in subsection (b)(1)(D). The person convicted shall be
14 sentenced to not less than 90 days nor more than one year's imprisonment
15 and fined not less than \$1,750 nor more than \$2,500. The person convicted
16 shall not be eligible for release on probation, suspension or reduction of
17 sentence or parole until the person has served at least 90 days'
18 imprisonment. The 90 days' imprisonment mandated by this subsection
19 may be served in a work release program only after such person has served
20 48 consecutive hours' imprisonment, provided such work release program
21 requires such person to return to confinement at the end of each day in the
22 work release program. The person convicted, if placed into a work release
23 program, shall serve a minimum of 2,160 hours of confinement. Such
24 2,160 hours of confinement shall be a period of at least 48 consecutive
25 hours of imprisonment followed by confinement hours at the end of and
26 continuing to the beginning of the offender's work day. The court may
27 place the person convicted under a house arrest program pursuant to
28 K.S.A. 2012 Supp. 21-6609, and amendments thereto, to serve the 90 days'
29 imprisonment mandated by this subsection only after such person has
30 served 48 consecutive hours' imprisonment. The person convicted, if
31 placed under house arrest, shall be monitored by an electronic monitoring
32 device, which verifies the offender's location. The offender shall serve a
33 minimum of 2,160 hours of confinement within the boundaries of the
34 offender's residence. Any exceptions to remaining within the boundaries of
35 the offender's residence provided for in the house arrest agreement shall
36 not be counted as part of the 2,160 hours;

37 (D) on a third conviction a nonperson felony if the person has a prior
38 conviction which occurred within the preceding 10 years, not including
39 any period of incarceration. The person convicted shall be sentenced to not
40 less than 90 days nor more than one year's imprisonment and fined not less
41 than \$1,750 nor more than \$2,500. The person convicted shall not be
42 eligible for release on probation, suspension or reduction of sentence or
43 parole until the person has served at least 90 days' imprisonment. The 90

1 days' imprisonment mandated by this subsection may be served in a work
2 release program only after such person has served 48 consecutive hours'
3 imprisonment, provided such work release program requires such person
4 to return to confinement at the end of each day in the work release
5 program. The person convicted, if placed into a work release program,
6 shall serve a minimum of 2,160 hours of confinement. Such 2,160 hours of
7 confinement shall be a period of at least 48 consecutive hours of
8 imprisonment followed by confinement hours at the end of and continuing
9 to the beginning of the offender's work day. The court may place the
10 person convicted under a house arrest program pursuant to K.S.A. 2012
11 Supp. 21-6609, and amendments thereto, to serve the 90 days'
12 imprisonment mandated by this subsection only after such person has
13 served 48 consecutive hours' imprisonment. The person convicted, if
14 placed under house arrest, shall be monitored by an electronic monitoring
15 device, which verifies the offender's location. The offender shall serve a
16 minimum of 2,160 hours of confinement within the boundaries of the
17 offender's residence. Any exceptions to remaining within the boundaries of
18 the offender's residence provided for in the house arrest agreement shall
19 not be counted as part of the 2,160 hours; and

20 (E) on a fourth or subsequent conviction a nonperson felony. The
21 person convicted shall be sentenced to not less than 90 days nor more than
22 one year's imprisonment and fined \$2,500. The person convicted shall not
23 be eligible for release on probation, suspension or reduction of sentence or
24 parole until the person has served at least 90 days' imprisonment. The 90
25 days' imprisonment mandated by this subsection may be served in a work
26 release program only after such person has served 72 consecutive hours'
27 imprisonment, provided such work release program requires such person
28 to return to confinement at the end of each day in the work release
29 program. The person convicted, if placed into a work release program,
30 shall serve a minimum of 2,160 hours of confinement. Such 2,160 hours of
31 confinement shall be a period of at least 72 consecutive hours of
32 imprisonment followed by confinement hours at the end of and continuing
33 to the beginning of the offender's work day. The court may place the
34 person convicted under a house arrest program pursuant to K.S.A. 2012
35 Supp. 21-6609, and amendments thereto, to serve the 90 days'
36 imprisonment mandated by this subsection only after such person has
37 served 72 consecutive hours' imprisonment. The person convicted, if
38 placed under house arrest, shall be monitored by an electronic monitoring
39 device, which verifies the offender's location. The offender shall serve a
40 minimum of 2,160 hours of confinement within the boundaries of the
41 offender's residence. Any exceptions to remaining within the boundaries of
42 the offender's residence provided for in the house arrest agreement shall
43 not be counted as part of the 2,160 hours.

1 (2) The court may order that the term of imprisonment imposed
2 pursuant to subsection (b)(1)(D) or (b)(1)(E) be served in a state facility in
3 the custody of the secretary of corrections in a facility designated by the
4 secretary for the provision of substance abuse treatment pursuant to the
5 provisions of K.S.A. 2012 Supp. 21-6804, and amendments thereto. The
6 person shall remain imprisoned at the state facility only while participating
7 in the substance abuse treatment program designated by the secretary and
8 shall be returned to the custody of the sheriff for execution of the balance
9 of the term of imprisonment upon completion of or the person's discharge
10 from the substance abuse treatment program. Custody of the person shall
11 be returned to the sheriff for execution of the sentence imposed in the
12 event the secretary of corrections determines: (A) That substance abuse
13 treatment resources or the capacity of the facility designated by the
14 secretary for the incarceration and treatment of the person is not available;
15 (B) the person fails to meaningfully participate in the treatment program of
16 the designated facility; (C) the person is disruptive to the security or
17 operation of the designated facility; or (D) the medical or mental health
18 condition of the person renders the person unsuitable for confinement at
19 the designated facility. The determination by the secretary that the person
20 either is not to be admitted into the designated facility or is to be
21 transferred from the designated facility is not subject to review. The sheriff
22 shall be responsible for all transportation expenses to and from the state
23 correctional facility.

24 (3) In addition, for any conviction pursuant to subsection (b)(1)(C),
25 (b)(1)(D) or (b)(1)(E), at the time of the filing of the judgment form or
26 journal entry as required by K.S.A. 22-3426 or K.S.A. 2012 Supp. 21-
27 6711, and amendments thereto, the court shall cause a certified copy to be
28 sent to the officer having the offender in charge. The court shall determine
29 whether the offender, upon release from imprisonment, shall be supervised
30 by community correctional services or court services based upon the risk
31 and needs of the offender. The risk and needs of the offender shall be
32 determined by use of a risk assessment tool specified by the Kansas
33 sentencing commission. The law enforcement agency maintaining custody
34 and control of a defendant for imprisonment shall cause a certified copy of
35 the judgment form or journal entry to be sent to the supervision office
36 designated by the court and upon expiration of the term of imprisonment
37 shall deliver the defendant to a location designated by the supervision
38 office designated by the court. After the term of imprisonment imposed by
39 the court, the person shall be placed on supervision to community
40 correctional services or court services, as determined by the court, for a
41 mandatory one-year period of supervision, which such period of
42 supervision shall not be reduced. During such supervision, the person shall
43 be required to participate in a multidisciplinary model of services for

1 substance use disorders facilitated by a department of social and
2 rehabilitation services designated care coordination agency to include
3 assessment and, if appropriate, referral to a community based substance
4 use disorder treatment including recovery management and mental health
5 counseling as needed. The multidisciplinary team shall include the
6 designated care coordination agency, the supervision officer, the social and
7 rehabilitation services department designated treatment provider and the
8 offender. Any violation of the conditions of such supervision may subject
9 such person to revocation of supervision and imprisonment in jail for the
10 remainder of the period of imprisonment, the remainder of the supervision
11 period, or any combination or portion thereof.

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

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

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

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

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

1 person performs an insufficient amount of community service to reduce to
2 zero the portion of the fine required to be paid by the person, the
3 remaining balance of the fine shall become due on that date.

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

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

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

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

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

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

30 (2) any convictions for a violation of the following sections occurring
31 during a person's lifetime shall be taken into account: (A) Refusing to
32 submit to a test to determine the presence of alcohol or drugs, K.S.A. 2012
33 Supp. 8-1025, and amendments thereto; (B) driving a commercial motor
34 vehicle under the influence, K.S.A. 8-2,144, and amendments thereto; (C)
35 operating a vessel under the influence of alcohol or drugs, K.S.A. 32-1131,
36 and amendments thereto; (D) involuntary manslaughter while driving
37 under the influence of alcohol or drugs, K.S.A. 21-3442, prior to its repeal,
38 or subsection (a)(3) of K.S.A. 2012 Supp. 21-5405, and amendments
39 thereto; and (E) aggravated vehicular homicide, K.S.A. 21-3405a, prior to
40 its repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the
41 crime was committed while committing a violation of K.S.A. 8-1567, and
42 amendments thereto;

43 (3) "conviction" includes: (A) Entering into a diversion agreement in

1 lieu of further criminal proceedings on a complaint alleging a violation of
2 a crime described in subsection (i)(2); (B) conviction of a violation of an
3 ordinance of a city in this state, a resolution of a county in this state or any
4 law of another state which would constitute a crime described in
5 subsection (i)(1) or (i)(2); and (C) receiving punishment under the uniform
6 code of military justice or Kansas code of military justice for an act which
7 was committed on a military reservation and which would constitute a
8 crime described in subsection (i)(1) or (i)(2) if committed off a military
9 reservation in this state;

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

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

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

18 (j) Upon conviction of a person of a violation of this section or a
19 violation of a city ordinance or county resolution prohibiting the acts
20 prohibited by this section, the division, upon receiving a report of
21 conviction, shall suspend, restrict or suspend and restrict the person's
22 driving privileges as provided by K.S.A. 8-1014, and amendments thereto.

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

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

33 (3) On and after July 1, 2007, and retroactive for ordinance violations
34 committed on or after July 1, 2006, an ordinance may grant to a municipal
35 court jurisdiction over a violation of such ordinance which is concurrent
36 with the jurisdiction of the district court over a violation of this section,
37 notwithstanding that the elements of such ordinance violation are the same
38 as the elements of a violation of this section that would constitute, and be
39 punished as, a felony.

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

43 (l) (1) Upon the filing of a complaint, citation or notice to appear

1 alleging a person has violated a city ordinance prohibiting the acts
2 prohibited by this section, and prior to conviction thereof, a city attorney
3 shall request and shall receive from the:

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

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

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

12 (m) No plea bargaining agreement shall be entered into nor shall any
13 judge approve a plea bargaining agreement entered into for the purpose of
14 permitting a person charged with a violation of this section, or a violation
15 of any ordinance of a city or resolution of any county in this state which
16 prohibits the acts prohibited by this section, to avoid the mandatory
17 penalties established by this section or by the ordinance. For the purpose
18 of this subsection, entering into a diversion agreement pursuant to K.S.A.
19 12-4413 et seq. or 22-2906 et seq., and amendments thereto, shall not
20 constitute plea bargaining.

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

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

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

32 (3) "drug" includes toxic vapors as such term is defined in K.S.A.
33 2012 Supp. 21-5712, and amendments thereto.

34 (p) (1) The amount of the increase in fines as specified in this section
35 shall be remitted by the clerk of the district court to the state treasurer in
36 accordance with the provisions of K.S.A. 75-4215, and amendments
37 thereto. Upon receipt of remittance of the increase provided in this act, the
38 state treasurer shall deposit the entire amount in the state treasury and the
39 state treasurer shall credit 50% to the community alcoholism and
40 intoxication programs fund and 50% to the department of corrections
41 alcohol and drug abuse treatment fund, which is hereby created in the state
42 treasury.

43 (2) On and after July 1, 2011, the amount of \$250 from each fine

1 imposed pursuant to this section shall be remitted by the clerk of the
2 district court to the state treasurer in accordance with the provisions of
3 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
4 remittance, the state treasurer shall ~~credit~~ *deposit* the entire amount *in the*
5 *state treasury and credit 33% to the community corrections supervision*
6 *fund established by K.S.A. 2012 Supp. 75-52,113, and amendments*
7 *thereto, and 67% to the correctional supervision fund established by*
8 *K.S.A. 2012 Supp. 21-6607, and amendments thereto.*

9 Sec. 5. K.S.A. 2012 Supp. 12-4120 is hereby amended to read as
10 follows: 12-4120. On and after July 1, 2012, the amount of \$250 from
11 each fine imposed for a violation of a city ordinance prohibiting the acts
12 prohibited by K.S.A. 8-1567 or 8-2,144 or K.S.A. 2012 Supp. 8-1025, and
13 amendments thereto, shall be remitted by the judge or clerk of the
14 municipal court to the state treasurer in accordance with the provisions of
15 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
16 remittance, the state treasurer shall ~~credit~~ *deposit* the entire amount *in the*
17 *state treasury and credit 33% to the community corrections supervision*
18 *fund established by K.S.A. 2012 Supp. 75-52,113, and amendments*
19 *thereto, and 67% to the correctional supervision fund established by*
20 *K.S.A. 2012 Supp. 21-6607, and amendments thereto.*

21 Sec. 6. K.S.A. 2012 Supp. 8-2,144, 8-1015, 8-1025, 8-1567 and 12-
22 4120 are hereby repealed.

23 Sec. 7. This act shall take effect and be in force from and after its
24 publication in the statute book.