

HOUSE BILL No. 2439

By Representatives Jennings, Brim, Delperdang, Mastroni, Ryckman, Schwab, E. Smith, Tarwater and Wheeler

12-21

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to involuntary manslaughter; **aggravated battery**; involving certain
3 violations of driving under the influence of alcohol or drugs; amending
4 K.S.A. 2017 Supp. 8-262, 8-2,144, **8-1013**, 8-1025, 8-1567, 21-5405,
5 **21-5413**, 21-6811, 38-2312 and 75-52,148 and repealing the existing
6 sections.

7
8 **{WHEREAS, The provisions of the amendments to the sections in**
9 **this act shall be known as Caitlin's law.**

10 **Now, therefore:}**

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

12 Section 1. K.S.A. 2017 Supp. 21-5405 is hereby amended to read as
13 follows: 21-5405. (a) Involuntary manslaughter is the killing of a human
14 being committed:

15 (1) Recklessly;

16 (2) in the commission of, or attempt to commit, or flight from any
17 felony, other than an inherently dangerous felony as defined in K.S.A.
18 2017 Supp. 21-5402, and amendments thereto, that is enacted for the
19 protection of human life or safety or a misdemeanor that is enacted for the
20 protection of human life or safety, including acts described in K.S.A. 8-
21 1566 and ~~subsection (a) of 8-1568(a)~~, and amendments thereto, but
22 excluding the acts described in K.S.A. 8-1567, and amendments thereto;

23 (3) in the commission of, or attempt to commit, or flight from an act
24 described in K.S.A. 8-1567, and amendments thereto; ~~or~~

25 (4) during the commission of a lawful act in an unlawful manner; *or*

26 (5) *in the commission of, or attempt to commit, or flight from an act*
27 *described in K.S.A. 8-1567, and amendments thereto, while:*

28 (A) *in violation of any restriction imposed on such person's driving*
29 *privileges pursuant to article 10 of chapter 8 of the Kansas Statutes*
30 *Annotated, and amendments thereto;*

31 (B) *such person's driving privileges are suspended or revoked*
32 *pursuant to article 10 of chapter 8 of the Kansas Statutes Annotated, and*
33 *amendments thereto; or*

1 (C) *such person has been deemed a habitual violator as defined in*
2 *K.S.A. 8-285, and amendments thereto, including at least one violation of*
3 *K.S.A. 8-1567, and amendments thereto, or violating an ordinance of any*
4 *city in this state, any resolution of any county in this state or any law of*
5 *another state, which ordinance, resolution or law declares to be unlawful*
6 *the acts prohibited by that statute.*

7 (b) Involuntary manslaughter as defined in:

8 (1) Subsection (a)(1), (a)(2) or (a)(4) is a severity level 5, person
9 felony; ~~and~~

10 (2) subsection (a)(3) is a severity level 4, person felony; *and*

11 (3) *subsection (a)(5) is a severity level 3, person felony.*

12 **Sec. 2. K.S.A. 2017 Supp. 21-5413 is hereby amended to read as**
13 **follows: 21-5413. (a) Battery is:**

14 **(1) Knowingly or recklessly causing bodily harm to another**
15 **person; or**

16 **(2) knowingly causing physical contact with another person when**
17 **done in a rude, insulting or angry manner.**

18 **(b) Aggravated battery is:**

19 **(1) (A) Knowingly causing great bodily harm to another person**
20 **or disfigurement of another person;**

21 **(B) knowingly causing bodily harm to another person with a**
22 **deadly weapon, or in any manner whereby great bodily harm,**
23 **disfigurement or death can be inflicted; or**

24 **(C) knowingly causing physical contact with another person when**
25 **done in a rude, insulting or angry manner with a deadly weapon, or in**
26 **any manner whereby great bodily harm, disfigurement or death can**
27 **be inflicted;**

28 **(2) (A) recklessly causing great bodily harm to another person or**
29 **disfigurement of another person; ~~or~~**

30 **(B) recklessly causing bodily harm to another person with a**
31 **deadly weapon, or in any manner whereby great bodily harm,**
32 **disfigurement or death can be inflicted; or**

33 **(3) (A) committing an act described in K.S.A. 8-1567, and**
34 **amendments thereto, when great bodily harm to another person or**
35 **disfigurement of another person results from such act; or**

36 **(B) committing an act described in K.S.A. 8-1567, and**
37 **amendments thereto, when bodily harm to another person results**
38 **from such act under circumstances whereby great bodily harm,**
39 **disfigurement or death can result from such act; or**

40 **(4) committing an act described in K.S.A. 8-1567, and amendments**
41 **thereto, when great bodily harm to another person or disfigurement of**
42 **another person results from such act while:**

43 **(A) In violation of any restriction imposed on such person's driving**

1 *privileges pursuant to article 10 of chapter 8 of the Kansas Statutes*
2 *Annotated, and amendments thereto;*

3 *(B) such person's driving privileges are suspended or revoked*
4 *pursuant to article 10 of chapter 8 of the Kansas Statutes Annotated, and*
5 *amendments thereto; or*

6 *(C) such person has been deemed a habitual violator as defined in*
7 *K.S.A. 8-285, and amendments thereto, including at least one violation of*
8 *K.S.A. 8-1567, and amendments thereto, or violating an ordinance of any*
9 *city in this state, any resolution of any county in this state or any law of*
10 *another state, which ordinance, resolution or law declares to be unlawful*
11 *the acts prohibited by that statute.*

12 **(c) Battery against a law enforcement officer is:**

13 **(1) Battery, as defined in subsection (a)(2), committed against a:**

14 **(A) Uniformed or properly identified university or campus police**
15 **officer while such officer is engaged in the performance of such**
16 **officer's duty;**

17 **(B) uniformed or properly identified state, county or city law**
18 **enforcement officer, other than a state correctional officer or**
19 **employee, a city or county correctional officer or employee or a**
20 **juvenile detention facility officer, or employee, while such officer is**
21 **engaged in the performance of such officer's duty;**

22 **(C) judge, while such judge is engaged in the performance of such**
23 **judge's duty;**

24 **(D) attorney, while such attorney is engaged in the performance**
25 **of such attorney's duty; or**

26 **(E) community corrections officer or court services officer, while**
27 **such officer is engaged in the performance of such officer's duty;**

28 **(2) battery, as defined in subsection (a)(1), committed against a:**

29 **(A) Uniformed or properly identified university or campus police**
30 **officer while such officer is engaged in the performance of such**
31 **officer's duty; or**

32 **(B) uniformed or properly identified state, county or city law**
33 **enforcement officer, other than a state correctional officer or**
34 **employee, a city or county correctional officer or employee or a**
35 **juvenile detention facility officer, or employee, while such officer is**
36 **engaged in the performance of such officer's duty;**

37 **(C) judge, while such judge is engaged in the performance of such**
38 **judge's duty;**

39 **(D) attorney, while such attorney is engaged in the performance**
40 **of such attorney's duty; or**

41 **(E) community corrections officer or court services officer, while**
42 **such officer is engaged in the performance of such officer's duty; or**

43 **(3) battery, as defined in subsection (a) committed against a:**

1 **(A) State correctional officer or employee by a person in custody**
2 **of the secretary of corrections, while such officer or employee is**
3 **engaged in the performance of such officer's or employee's duty;**

4 **(B) state correctional officer or employee by a person confined in**
5 **such juvenile correctional facility, while such officer or employee is**
6 **engaged in the performance of such officer's or employee's duty;**

7 **(C) juvenile detention facility officer or employee by a person**
8 **confined in such juvenile detention facility, while such officer or**
9 **employee is engaged in the performance of such officer's or**
10 **employee's duty; or**

11 **(D) city or county correctional officer or employee by a person**
12 **confined in a city holding facility or county jail facility, while such**
13 **officer or employee is engaged in the performance of such officer's or**
14 **employee's duty.**

15 **(d) Aggravated battery against a law enforcement officer is:**

16 **(1) An aggravated battery, as defined in subsection (b)(1)(A)**
17 **committed against a:**

18 **(A) Uniformed or properly identified state, county or city law**
19 **enforcement officer while the officer is engaged in the performance of**
20 **the officer's duty;**

21 **(B) uniformed or properly identified university or campus police**
22 **officer while such officer is engaged in the performance of such**
23 **officer's duty;**

24 **(C) judge, while such judge is engaged in the performance of such**
25 **judge's duty;**

26 **(D) attorney, while such attorney is engaged in the performance**
27 **of such attorney's duty; or**

28 **(E) community corrections officer or court services officer, while**
29 **such officer is engaged in the performance of such officer's duty;**

30 **(2) an aggravated battery, as defined in subsection (b)(1)(B) or (b)**
31 **(1)(C), committed against a:**

32 **(A) Uniformed or properly identified state, county or city law**
33 **enforcement officer while the officer is engaged in the performance of**
34 **the officer's duty;**

35 **(B) uniformed or properly identified university or campus police**
36 **officer while such officer is engaged in the performance of such**
37 **officer's duty;**

38 **(C) judge, while such judge is engaged in the performance of such**
39 **judge's duty;**

40 **(D) attorney, while such attorney is engaged in the performance**
41 **of such attorney's duty; or**

42 **(E) community corrections officer or court services officer, while**
43 **such officer is engaged in the performance of such officer's duty; or**

- 1 **(3) knowingly causing, with a motor vehicle, bodily harm to a:**
- 2 **(A) Uniformed or properly identified state, county or city law**
- 3 **enforcement officer while the officer is engaged in the performance of**
- 4 **the officer's duty; or**
- 5 **(B) uniformed or properly identified university or campus police**
- 6 **officer while such officer is engaged in the performance of such**
- 7 **officer's duty.**
- 8 **(e) Battery against a school employee is a battery, as defined in**
- 9 **subsection (a), committed against a school employee in or on any**
- 10 **school property or grounds upon which is located a building or**
- 11 **structure used by a unified school district or an accredited nonpublic**
- 12 **school for student instruction or attendance or extracurricular**
- 13 **activities of pupils enrolled in kindergarten or any of the grades one**
- 14 **through 12 or at any regularly scheduled school sponsored activity or**
- 15 **event, while such employee is engaged in the performance of such**
- 16 **employee's duty.**
- 17 **(f) Battery against a mental health employee is a battery, as**
- 18 **defined in subsection (a), committed against a mental health employee**
- 19 **by a person in the custody of the secretary for aging and disability**
- 20 **services, while such employee is engaged in the performance of such**
- 21 **employee's duty.**
- 22 **(g) (1) Battery is a class B person misdemeanor.**
- 23 **(2) Aggravated battery as defined in:**
- 24 **(A) Subsection (b)(1)(A) or (b)(4) is a severity level 4, person**
- 25 **felony;**
- 26 **(B) subsection (b)(1)(B) or (b)(1)(C) is a severity level 7, person**
- 27 **felony;**
- 28 **(C) subsection (b)(2)(A) or (b)(3)(A) is a severity level 5, person**
- 29 **felony; and**
- 30 **(D) subsection (b)(2)(B) or (b)(3)(B) is a severity level 8, person**
- 31 **felony.**
- 32 **(3) Battery against a law enforcement officer as defined in:**
- 33 **(A) Subsection (c)(1) is a class A person misdemeanor;**
- 34 **(B) subsection (c)(2) is a severity level 7, person felony; and**
- 35 **(C) subsection (c)(3) is a severity level 5, person felony.**
- 36 **(4) Aggravated battery against a law enforcement officer as**
- 37 **defined in:**
- 38 **(A) Subsection (d)(1) or (d)(3) is a severity level 3, person felony;**
- 39 **and**
- 40 **(B) subsection (d)(2) is a severity level 4, person felony.**
- 41 **(5) Battery against a school employee is a class A person**
- 42 **misdemeanor.**
- 43 **(6) Battery against a mental health employee is a severity level 7,**

1 person felony.

2 (h) As used in this section:

3 (1) "Correctional institution" means any institution or facility
4 under the supervision and control of the secretary of corrections;

5 (2) "state correctional officer or employee" means any officer or
6 employee of the Kansas department of corrections or any independent
7 contractor, or any employee of such contractor, whose duties include
8 working at a correctional institution;

9 (3) "juvenile detention facility officer or employee" means any
10 officer or employee of a juvenile detention facility as defined in K.S.A.
11 2017 Supp. 38-2302, and amendments thereto;

12 (4) "city or county correctional officer or employee" means any
13 correctional officer or employee of the city or county or any
14 independent contractor, or any employee of such contractor, whose
15 duties include working at a city holding facility or county jail facility;

16 (5) "school employee" means any employee of a unified school
17 district or an accredited nonpublic school for student instruction or
18 attendance or extracurricular activities of pupils enrolled in
19 kindergarten or any of the grades one through 12;

20 (6) "mental health employee" means: (A) An employee of the
21 Kansas department for aging and disability services working at a
22 Larned state hospital, Osawatomie state hospital, Kansas neurological
23 institute and Parsons state hospital and training center and the
24 treatment staff as defined in K.S.A. 59-29a02, and amendments
25 thereto; and (B) contractors and employees of contractors under
26 contract to provide services to the Kansas department for aging and
27 disability services working at any such institution or facility;

28 (7) "judge" means a duly elected or appointed justice of the
29 supreme court, judge of the court of appeals, judge of any district
30 court of Kansas, district magistrate judge or municipal court judge;

31 (8) "attorney" means a: (A) County attorney, assistant county
32 attorney, special assistant county attorney, district attorney, assistant
33 district attorney, special assistant district attorney, attorney general,
34 assistant attorney general or special assistant attorney general; and
35 (B) public defender, assistant public defender, contract counsel for the
36 state board of indigents' defense services or an attorney who is
37 appointed by the court to perform services for an indigent person as
38 provided by article 45 of chapter 22 of the Kansas Statutes Annotated,
39 and amendments thereto;

40 (9) "community corrections officer" means an employee of a
41 community correctional services program responsible for supervision
42 of adults or juveniles as assigned by the court to community
43 corrections supervision and any other employee of a community

1 **correctional services program that provides enhanced supervision of**
2 **offenders such as house arrest and surveillance programs; and**

3 **(10) "court services officer" means an employee of the Kansas**
4 **judicial branch or local judicial district responsible for supervising,**
5 **monitoring or writing reports relating to adults or juveniles as**
6 **assigned by the court, or performing related duties as assigned by the**
7 **court.**

8 ~~Sec. 2-~~ **3.** K.S.A. 2017 Supp. 8-262 is hereby amended to read as
9 follows: 8-262. (a) (1) Any person who drives a motor vehicle on any
10 highway of this state at a time when such person's privilege so to do is
11 canceled, suspended or revoked or while such person's privilege to obtain
12 a driver's license is suspended or revoked pursuant to K.S.A. 8-252a, and
13 amendments thereto, shall be guilty of a class B nonperson misdemeanor
14 on the first conviction and a class A nonperson misdemeanor on the second
15 or subsequent conviction.

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

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

23 (4) Except as otherwise provided by subsection (c), if a person: (A) Is
24 convicted of a violation of this section, committed while the person's
25 privilege to drive or privilege to obtain a driver's license was suspended or
26 revoked for a violation of K.S.A. 8-2,144 or 8-1567 or K.S.A. 2017 Supp.
27 8-1025, and amendments thereto, or any ordinance of any city or
28 resolution of any county or a law of another state, which ordinance or
29 resolution or law prohibits the acts prohibited by those statutes; and (B) is
30 or has been also convicted of a violation of K.S.A. 8-2,144 or 8-1567 or
31 K.S.A. 2017 Supp. 8-1025, and amendments thereto, or any ordinance of
32 any city or resolution of any county or law of another state, which
33 ordinance or resolution or law prohibits the acts prohibited by those
34 statutes, committed while the person's privilege to drive or privilege to
35 obtain a driver's license was so suspended or revoked, the person shall not
36 be eligible for suspension of sentence, probation or parole until the person
37 has served at least 90 days' imprisonment, and any fine imposed on such
38 person shall be in addition to such a term of imprisonment.

39 (b) The division, upon receiving a record of the conviction of any
40 person under this section, or any ordinance of any city or resolution of any
41 county or a law of another state which is in substantial conformity with
42 this section, upon a charge of driving a vehicle while the license of such
43 person is revoked or suspended, shall extend the period of such suspension

1 or revocation for an additional period of 90 days.

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

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

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

12 (C) was convicted of vehicular homicide, K.S.A. 21-3405, prior to its
13 repeal, or K.S.A. 2017 Supp. 21-5406, and amendments thereto,
14 involuntary manslaughter while driving under the influence of alcohol or
15 drugs, K.S.A. 21-3442, prior to its repeal, or involuntary manslaughter as
16 defined in ~~subsection (a)(3) of~~ K.S.A. 2017 Supp. 21-5405(a)(3) and (a)
17 (5), and amendments thereto, or any other murder or manslaughter crime
18 resulting from the operation of a motor vehicle; or

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

21 (2) The person convicted shall not be eligible for release on
22 probation, suspension or reduction of sentence or parole until the person
23 has served at least 90 days' imprisonment. The 90 days' imprisonment
24 mandated by this subsection may be served in a work release program only
25 after such person has served 48 consecutive hours' imprisonment, provided
26 such work release program requires such person to return to confinement
27 at the end of each day in the work release program. The court may place
28 the person convicted under a house arrest program pursuant to K.S.A.
29 2017 Supp. 21-6609, and amendments thereto, or any municipal ordinance
30 to serve the remainder of the minimum sentence only after such person has
31 served 48 consecutive hours' imprisonment.

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

37 ~~Sec. 3.~~ **4.** K.S.A. 2017 Supp. 8-2,144 is hereby amended to read as
38 follows: 8-2,144. (a) Driving a commercial motor vehicle under the
39 influence is operating or attempting to operate any commercial motor
40 vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, within this
41 state while:

42 (1) The alcohol concentration in the person's blood or breath, as
43 shown by any competent evidence, including other competent evidence, as

1 defined in K.S.A. 8-1013(f)(1), and amendments thereto, is 0.04 or more;

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

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

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

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

17 (B) on a second conviction a class A, nonperson misdemeanor. The
18 person convicted shall be sentenced to not less than 90 days nor more than
19 one year's imprisonment and fined not less than \$1,250 nor more than
20 \$1,750. The person convicted shall serve at least five consecutive days'
21 imprisonment before the person is granted probation, suspension or
22 reduction of sentence or parole or is otherwise released. The five days'
23 imprisonment mandated by this subsection may be served in a work
24 release program only after such person has served 48 consecutive hours'
25 imprisonment, provided such work release program requires such person
26 to return to confinement at the end of each day in the work release
27 program. The person convicted, if placed into a work release program,
28 shall serve a minimum of 120 hours of confinement. Such 120 hours of
29 confinement shall be a period of at least 48 consecutive hours of
30 imprisonment followed by confinement hours at the end of and continuing
31 to the beginning of the offender's work day. The court may place the
32 person convicted under a house arrest program pursuant to K.S.A. 2017
33 Supp. 21-6609, and amendments thereto, to serve the five days'
34 imprisonment mandated by this subsection only after such person has
35 served 48 consecutive hours' imprisonment. The person convicted, if
36 placed under house arrest, shall be monitored by an electronic monitoring
37 device, which verifies the offender's location. The offender shall serve a
38 minimum of 120 hours of confinement within the boundaries of the
39 offender's residence. Any exceptions to remaining within the boundaries of
40 the offender's residence provided for in the house arrest agreement shall
41 not be counted as part of the 120 hours; and

42 (C) on a third or subsequent conviction a nonperson felony. The
43 person convicted shall be sentenced to not less than 90 days nor more than

1 one year's imprisonment and fined not less than \$1,750 nor more than
2 \$2,500. The person convicted shall not be eligible for release on probation,
3 suspension or reduction of sentence or parole until the person has served at
4 least 90 days' imprisonment. The 90 days' imprisonment mandated by this
5 subsection may be served in a work release program only after such person
6 has served 48 consecutive hours' imprisonment, provided such work
7 release program requires such person to return to confinement at the end of
8 each day in the work release program. The person convicted, if placed into
9 a work release program, shall serve a minimum of 2,160 hours of
10 confinement. Such 2,160 hours of confinement shall be a period of at least
11 48 consecutive hours of imprisonment followed by confinement hours at
12 the end of and continuing to the beginning of the offender's work day. The
13 court may place the person convicted under a house arrest program
14 pursuant to K.S.A. 2017 Supp. 21-6609, and amendments thereto, to serve
15 the 90 days' imprisonment mandated by this subsection only after such
16 person has served 48 consecutive hours' imprisonment. The person
17 convicted, if placed under house arrest, shall be monitored by an electronic
18 monitoring device, which verifies the offender's location. The offender
19 shall serve a minimum of 2,160 hours of confinement within the
20 boundaries of the offender's residence. Any exceptions to remaining within
21 the boundaries of the offender's residence provided for in the house arrest
22 agreement shall not be counted as part of the 2,160 hours.

23 (2) In addition, for any conviction pursuant to subsection (b)(1)(C), at
24 the time of the filing of the judgment form or journal entry as required by
25 K.S.A. 22-3426 or K.S.A. 2017 Supp. 21-6711, and amendments thereto,
26 the court shall cause a certified copy to be sent to the officer having the
27 offender in charge. The court shall determine whether the offender, upon
28 release from imprisonment, shall be supervised by community correctional
29 services or court services based upon the risk and needs of the offender.
30 The risk and needs of the offender shall be determined by use of a risk
31 assessment tool specified by the Kansas sentencing commission. The law
32 enforcement agency maintaining custody and control of a defendant for
33 imprisonment shall cause a certified copy of the judgment form or journal
34 entry to be sent to the supervision office designated by the court and upon
35 expiration of the term of imprisonment shall deliver the defendant to a
36 location designated by the supervision office designated by the court. After
37 the term of imprisonment imposed by the court, the person shall be placed
38 on supervision to community correctional services or court services, as
39 determined by the court, for a mandatory one-year period of supervision,
40 which such period of supervision shall not be reduced. During such
41 supervision, the person shall be required to participate in a
42 multidisciplinary model of services for substance use disorders facilitated
43 by a Kansas department for aging and disability services designated care

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

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

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

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

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

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

1 zero the portion of the fine required to be paid by the person, the
2 remaining balance of the fine shall become due on that date.

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

9 (h) The court shall electronically report every conviction of a
10 violation of this section and every diversion agreement entered into in lieu
11 of further criminal proceedings on a complaint alleging a violation of this
12 section to the division. Prior to sentencing under the provisions of this
13 section, the court shall request and shall receive from the: (1) Division a
14 record of all prior convictions obtained against such person for any
15 violation of any of the motor vehicle laws of this state; and (2) Kansas
16 bureau of investigation central repository all criminal history record
17 information concerning such person.

18 (i) 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: (1) Disqualify the person from driving a commercial
22 motor vehicle under K.S.A. 8-2,142, and amendments thereto; and (2)
23 suspend, restrict or suspend and restrict the person's driving privileges as
24 provided by K.S.A. 8-1014, and amendments thereto.

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

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

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

38 (k) (1) Upon the filing of a complaint, citation or notice to appear
39 alleging a person has violated a city ordinance prohibiting the acts
40 prohibited by this section, and prior to conviction thereof, a city attorney
41 shall request and shall receive from the: (A) Division of vehicles a record
42 of all prior convictions obtained against such person for any violations of
43 any of the motor vehicle laws of this state; and (B) Kansas bureau of

1 investigation central repository all criminal history record information
2 concerning such person.

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

9 (l) No plea bargaining agreement shall be entered into nor shall any
10 judge approve a plea bargaining agreement entered into for the purpose of
11 permitting a person charged with a violation of this section, or a violation
12 of any ordinance of a city or resolution of any county in this state which
13 prohibits the acts prohibited by this section, to avoid the mandatory
14 penalties established by this section or by the ordinance or resolution.

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

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

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

31 (2) any convictions for a violation of the following sections occurring
32 during a person's lifetime shall be taken into account: (A) This section; (B)
33 refusing to submit to a test to determine the presence of alcohol or drugs,
34 K.S.A. 2017 Supp. 8-1025, and amendments thereto; (C) operating a
35 vessel under the influence of alcohol or drugs, K.S.A. 32-1131, and
36 amendments thereto; (D) involuntary manslaughter while driving under
37 the influence of alcohol or drugs, K.S.A. 21-3442, prior to its repeal, or
38 K.S.A. 2017 Supp. 21-5405(a)(3) *or* (a)(5), and amendments thereto; (E)
39 aggravated battery as described in K.S.A. 2017 Supp. 21-5413(b)(3) **or** (b)
40 **(4)**, and amendments thereto; and (F) aggravated vehicular homicide,
41 K.S.A. 21-3405a, prior to its repeal, or vehicular battery, K.S.A. 21-3405b,
42 prior to its repeal, if the crime was committed while committing a
43 violation of K.S.A. 8-1567, and amendments thereto;

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

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

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

16 (o) For the purpose of this section:

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

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

23 (3) "drug" includes toxic vapors as such term is defined in K.S.A.
24 2017 Supp. 21-5712, and amendments thereto.

25 (p) On and after July 1, 2011, the amount of \$250 from each fine
26 imposed pursuant to this section shall be remitted by the clerk of the
27 district court to the state treasurer in accordance with the provisions of
28 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
29 remittance, the state treasurer shall credit the entire amount to the
30 community corrections supervision fund established by K.S.A. 2017 Supp.
31 75-52,113, and amendments thereto.

32 **Sec. 5. K.S.A. 2017 Supp. 8-1013 is hereby amended to read as**
33 **follows: 8-1013. As used in K.S.A. 8-1001 through 8-1010, 8-1011, 8-**
34 **1012, 8-1014, 8-1015, 8-1016, 8-1017 and 8-1018, and amendments**
35 **thereto, and this section:**

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

38 (b) (1) "Alcohol or drug-related conviction" means any of the
39 following: (A) Conviction of vehicular battery or aggravated vehicular
40 homicide, *prior to their repeal*, if the crime is committed while
41 committing a violation of K.S.A. 8-1567, and amendments thereto, or
42 the ordinance of a city or resolution of a county in this state which
43 prohibits any acts prohibited by that statute, or conviction of a

1 violation of K.S.A. 8-2,144 or 8-1567 or K.S.A. 2017 Supp. 8-1025, and
2 amendments thereto, ~~or conviction of a violation of aggravated battery~~
3 ~~as described in subsection (b)(3) of K.S.A. 2017 Supp. 21-5413(b)(3) or~~
4 ~~(b)(4), and amendments thereto, or conviction of a violation of~~
5 ~~involuntary manslaughter as described in K.S.A. 2017 Supp. 21-5405(a)~~
6 ~~(3) or (a)(5), and amendments thereto;~~ (B) conviction of a violation of a
7 law of another state which would constitute a crime described in
8 subsection (b)(1)(A) if committed in this state; (C) conviction of a
9 violation of an ordinance of a city in this state or a resolution of a
10 county in this state which would constitute a crime described in
11 subsection (b)(1)(A), whether or not such conviction is in a court of
12 record; or (D) conviction of an act which was committed on a military
13 reservation and which would constitute a violation of K.S.A. 8-2,144
14 or 8-1567 or K.S.A. 2017 Supp. 8-1025, and amendments thereto, or
15 would constitute a crime described in subsection (b)(1)(A) if
16 committed off a military reservation in this state.

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

25 (c) "Division" means the division of vehicles of the department of
26 revenue.

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

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

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

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

41 (h) "Test failure" or "fails a test" refers to a person's having
42 results of a test administered pursuant to this act, other than a
43 preliminary screening test, which show an alcohol concentration of .08

1 or greater in the person's blood or breath, and includes failure of any
2 such test on a military reservation.

3 (i) "Test refusal" or "refuses a test" refers to a person's failure to
4 submit to or complete any test of the person's blood, breath, urine or
5 other bodily substance, other than a preliminary screening test, in
6 accordance with this act, and includes refusal of any such test on a
7 military reservation.

8 (j) "Law enforcement officer" has the meaning provided by
9 K.S.A. 2017 Supp. 21-5111, and amendments thereto, and includes any
10 person authorized by law to make an arrest on a military reservation
11 for an act which would constitute a violation of K.S.A. 8-1567 or
12 K.S.A. 2017 Supp. 8-1025, and amendments thereto, if committed off a
13 military reservation in this state.

14 Sec. 4. 6. K.S.A. 2017 Supp. 8-1025 is hereby amended to read as
15 follows: 8-1025. (a) Refusing to submit to a test to determine the presence
16 of alcohol or drugs is refusing to submit to or complete a test or tests
17 deemed consented to under K.S.A. 8-1001(a), and amendments thereto, if
18 such person has:

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

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

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

31 (A) On a first 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'
37 imprisonment mandated by this subsection may be served in a work
38 release program only after such person has served 48 consecutive hours'
39 imprisonment, provided such work release program requires such person
40 to return to confinement at the end of each day in the work release
41 program. The person convicted, if placed into a work release program,
42 shall serve a minimum of 120 hours of confinement. Such 120 hours of
43 confinement shall be a period of at least 48 consecutive hours of

1 imprisonment followed by confinement hours at the end of and continuing
2 to the beginning of the offender's work day. The court may place the
3 person convicted under a house arrest program pursuant to K.S.A. 2017
4 Supp. 21-6609, and amendments thereto, to serve the five days'
5 imprisonment mandated by this subsection only after such person has
6 served 48 consecutive hours' imprisonment. The person convicted, if
7 placed under house arrest, shall be monitored by an electronic monitoring
8 device, which verifies the offender's location. The offender shall serve a
9 minimum of 120 hours of confinement within the boundaries of the
10 offender's residence. Any exceptions to remaining within the boundaries of
11 the offender's residence provided for in the house arrest agreement shall
12 not be counted as part of the 120 hours;

13 (B) on a second conviction a class A, nonperson misdemeanor, except
14 as provided in subsection (b)(1)(C). The person convicted shall be
15 sentenced to not less than 90 days nor more than one year's imprisonment
16 and fined not less than \$1,750 nor more than \$2,500. The person convicted
17 shall not be eligible for release on probation, suspension or reduction of
18 sentence or parole until the person has served at least 90 days'
19 imprisonment. The 90 days' imprisonment mandated by this subsection
20 may be served in a work release program only after such person has served
21 48 consecutive hours' imprisonment, provided such work release program
22 requires such person to return to confinement at the end of each day in the
23 work release program. The person convicted, if placed into a work release
24 program, shall serve a minimum of 2,160 hours of confinement. Such
25 2,160 hours of confinement shall be a period of at least 48 consecutive
26 hours of imprisonment followed by confinement hours at the end of and
27 continuing to the beginning of the offender's work day. The court may
28 place the person convicted under a house arrest program pursuant to
29 K.S.A. 2017 Supp. 21-6609, and amendments thereto, to serve the 90 days'
30 imprisonment mandated by this subsection only after such person has
31 served 48 consecutive hours' imprisonment. The person convicted, if
32 placed under house arrest, shall be monitored by an electronic monitoring
33 device, which verifies the offender's location. The offender shall serve a
34 minimum of 2,160 hours of confinement within the boundaries of the
35 offender's residence. Any exceptions to remaining within the boundaries of
36 the offender's residence provided for in the house arrest agreement shall
37 not be counted as part of the 2,160 hours;

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

1 sentence or parole until the person has served at least 90 days'
2 imprisonment. The 90 days' imprisonment mandated by this subsection
3 may be served in a work release program only after such person has served
4 48 consecutive hours' imprisonment, provided such work release program
5 requires such person to return to confinement at the end of each day in the
6 work release program. The person convicted, if placed into a work release
7 program, shall serve a minimum of 2,160 hours of confinement. Such
8 2,160 hours of confinement shall be a period of at least 48 consecutive
9 hours of imprisonment followed by confinement hours at the end of and
10 continuing to the beginning of the offender's work day. The court may
11 place the person convicted under a house arrest program pursuant to
12 K.S.A. 2017 Supp. 21-6609, and amendments thereto, to serve the 90 days'
13 imprisonment mandated by this subsection only after such person has
14 served 48 consecutive hours' imprisonment. The person convicted, if
15 placed under house arrest, shall be monitored by an electronic monitoring
16 device, which verifies the offender's location. The offender shall serve a
17 minimum of 2,160 hours of confinement within the boundaries of the
18 offender's residence. Any exceptions to remaining within the boundaries of
19 the offender's residence provided for in the house arrest agreement shall
20 not be counted as part of the 2,160 hours; and

21 (D) on a third or subsequent conviction a nonperson felony. The
22 person convicted shall be sentenced to not less than 90 days nor more than
23 one year's imprisonment and fined \$2,500. The person convicted shall not
24 be eligible for release on probation, suspension or reduction of sentence or
25 parole until the person has served at least 90 days' imprisonment. The 90
26 days' imprisonment mandated by this subsection may be served in a work
27 release program only after such person has served 72 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. The person convicted, if placed into a work release program,
31 shall serve a minimum of 2,160 hours of confinement. Such 2,160 hours of
32 confinement shall be a period of at least 72 consecutive hours of
33 imprisonment followed by confinement hours at the end of and continuing
34 to the beginning of the offender's work day. The court may place the
35 person convicted under a house arrest program pursuant to K.S.A. 2017
36 Supp. 21-6609, and amendments thereto, to serve the 90 days'
37 imprisonment mandated by this subsection only after such person has
38 served 72 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 (2) The court may order that the term of imprisonment imposed
3 pursuant to subsection (b)(1)(C) or (b)(1)(D) be served in a state facility in
4 the custody of the secretary of corrections in a facility designated by the
5 secretary for the provision of substance abuse treatment pursuant to the
6 provisions of K.S.A. 2017 Supp. 21-6804, and amendments thereto. The
7 person shall remain imprisoned at the state facility only while participating
8 in the substance abuse treatment program designated by the secretary and
9 shall be returned to the custody of the sheriff for execution of the balance
10 of the term of imprisonment upon completion of or the person's discharge
11 from the substance abuse treatment program. Custody of the person shall
12 be returned to the sheriff for execution of the sentence imposed in the
13 event the secretary of corrections determines: (A) That substance abuse
14 treatment resources or the capacity of the facility designated by the
15 secretary for the incarceration and treatment of the person is not available;
16 (B) the person fails to meaningfully participate in the treatment program of
17 the designated facility; (C) the person is disruptive to the security or
18 operation of the designated facility; or (D) the medical or mental health
19 condition of the person renders the person unsuitable for confinement at
20 the designated facility. The determination by the secretary that the person
21 either is not to be admitted into the designated facility or is to be
22 transferred from the designated facility is not subject to review. The sheriff
23 shall be responsible for all transportation expenses to and from the state
24 correctional facility.

25 (3) In addition, for any conviction pursuant to subsection (b)(1)(B),
26 (b)(1)(C) or (b)(1)(D), at the time of the filing of the judgment form or
27 journal entry as required by K.S.A. 22-3426 or K.S.A. 2017 Supp. 21-
28 6711, and amendments thereto, the court shall cause a certified copy to be
29 sent to the officer having the offender in charge. The court shall determine
30 whether the offender, upon release from imprisonment, shall be supervised
31 by community correctional services or court services based upon the risk
32 and needs of the offender. The risk and needs of the offender shall be
33 determined by use of a risk assessment tool specified by the Kansas
34 sentencing commission. The law enforcement agency maintaining custody
35 and control of a defendant for imprisonment shall cause a certified copy of
36 the judgment form or journal entry to be sent to the supervision office
37 designated by the court and upon expiration of the term of imprisonment
38 shall deliver the defendant to a location designated by the supervision
39 office designated by the court. After the term of imprisonment imposed by
40 the court, the person shall be placed on supervision to community
41 correctional services or court services, as determined by the court, for a
42 mandatory one-year period of supervision, which such period of
43 supervision shall not be reduced. During such supervision, the person shall

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

13 (4) In addition, prior to sentencing for any conviction pursuant to
14 subsection (b)(1)(A), the court shall order the person to participate in an
15 alcohol and drug evaluation conducted by a provider in accordance with
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.

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

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

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

1 remaining balance of the fine shall become due on that date.

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

4 (1) 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 (2) Kansas bureau of investigation central repository all criminal
7 history record information concerning such person.

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

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

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

29 (2) any convictions for a violation of the following sections which
30 occurred during a person's lifetime shall be taken into account, but only
31 convictions occurring when such person was 18 years of age or older: (A)
32 This section; (B) driving a commercial motor vehicle under the influence,
33 K.S.A. 8-2,144, and amendments thereto; (C) operating a vessel under the
34 influence of alcohol or drugs, K.S.A. 32-1131, and amendments thereto;
35 (D) involuntary manslaughter while driving under the influence of alcohol
36 or drugs, K.S.A. 21-3442, prior to its repeal, or K.S.A. 2017 Supp. 21-
37 5405(a)(3) *or* (a)(5), and amendments thereto; (E) aggravated battery as
38 described in K.S.A. 2017 Supp. 21-5413(b)(3) **or** (b)(4), and amendments
39 thereto; and (F) 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 (h)(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 (h)(1) or (h)(2); and (C) receiving punishment under the
6 uniform code of military justice or Kansas code of military justice for an
7 act which was committed on a military reservation and which would
8 constitute a crime described in subsection (h)(1) or (h)(2) if committed off
9 a military reservation in this state;

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

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

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

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

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

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

34 (2) The minimum penalty prescribed by any such ordinance or
35 resolution shall not be less than the minimum penalty prescribed by this
36 section for the same violation, and the maximum penalty in any such
37 ordinance or resolution shall not exceed the maximum penalty prescribed
38 for the same violation.

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

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

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

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

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

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

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

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

30 (n) On and after July 1, 2012, the amount of \$250 from each fine
31 imposed pursuant to this section shall be remitted by the clerk of the
32 district court to the state treasurer in accordance with the provisions of
33 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
34 remittance, the state treasurer shall credit the entire amount to the
35 community corrections supervision fund established by K.S.A. 2017 Supp.
36 75-52,113, and amendments thereto.

37 ~~Sec. 7.~~ K.S.A. 2017 Supp. 8-1567 is hereby amended to read as
38 follows: 8-1567. (a) Driving under the influence is operating or attempting
39 to operate any vehicle within this state while:

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

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

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

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

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

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

12 (A) On a first conviction a class B, nonperson misdemeanor. The
13 person convicted shall be sentenced to not less than 48 consecutive hours
14 nor more than six months' imprisonment, or in the court's discretion 100
15 hours of public service, and fined not less than \$750 nor more than \$1,000.
16 The person convicted shall serve at least 48 consecutive hours'
17 imprisonment or 100 hours of public service either before or as a condition
18 of any grant of probation or suspension, reduction of sentence or parole.
19 The court may place the person convicted under a house arrest program
20 pursuant to K.S.A. 2017 Supp. 21-6609, and amendments thereto, to serve
21 the remainder of the sentence only after such person has served 48
22 consecutive hours' imprisonment;

23 (B) on a second conviction a class A, nonperson misdemeanor. The
24 person convicted shall be sentenced to not less than 90 days nor more than
25 one year's imprisonment and fined not less than \$1,250 nor more than
26 \$1,750. The person convicted shall serve at least five consecutive days'
27 imprisonment before the person is granted probation, suspension or
28 reduction of sentence or parole or is otherwise released. The five days'
29 imprisonment mandated by this subsection may be served in a work
30 release program only after such person has served 48 consecutive hours'
31 imprisonment, provided such work release program requires such person
32 to return to confinement at the end of each day in the work release
33 program. The person convicted, if placed into a work release program,
34 shall serve a minimum of 120 hours of confinement. Such 120 hours of
35 confinement shall be a period of at least 48 consecutive hours of
36 imprisonment followed by confinement hours at the end of and continuing
37 to the beginning of the offender's work day. The court may place the
38 person convicted under a house arrest program pursuant to K.S.A. 2017
39 Supp. 21-6609, and amendments thereto, to serve the five days'
40 imprisonment mandated by this subsection only after such person has
41 served 48 consecutive hours' imprisonment. The person convicted, if
42 placed under house arrest, shall be monitored by an electronic monitoring
43 device, which verifies the offender's location. The offender shall serve a

1 minimum of 120 hours of confinement within the boundaries of the
2 offender's residence. Any exceptions to remaining within the boundaries of
3 the offender's residence provided for in the house arrest agreement shall
4 not be counted as part of the 120 hours;

5 (C) on a third conviction a class A, nonperson misdemeanor, except
6 as provided in subsection (b)(1)(D). The person convicted shall be
7 sentenced to not less than 90 days nor more than one year's imprisonment
8 and fined not less than \$1,750 nor more than \$2,500. The person convicted
9 shall not be eligible for release on probation, suspension or reduction of
10 sentence or parole until the person has served at least 90 days'
11 imprisonment. The 90 days' imprisonment mandated by this subsection
12 may be served in a work release program only after such person has served
13 48 consecutive hours' imprisonment, provided such work release program
14 requires such person to return to confinement at the end of each day in the
15 work release program. The person convicted, if placed into a work release
16 program, shall serve a minimum of 2,160 hours of confinement. Such
17 2,160 hours of confinement shall be a period of at least 48 consecutive
18 hours of imprisonment followed by confinement hours at the end of and
19 continuing to the beginning of the offender's work day. The court may
20 place the person convicted under a house arrest program pursuant to
21 K.S.A. 2017 Supp. 21-6609, and amendments thereto, to serve the 90 days'
22 imprisonment mandated by this subsection only after such person has
23 served 48 consecutive hours' imprisonment. The person convicted, if
24 placed under house arrest, shall be monitored by an electronic monitoring
25 device, which verifies the offender's location. The offender shall serve a
26 minimum of 2,160 hours of confinement within the boundaries of the
27 offender's residence. Any exceptions to remaining within the boundaries of
28 the offender's residence provided for in the house arrest agreement shall
29 not be counted as part of the 2,160 hours;

30 (D) on a third conviction a nonperson felony if the person has a prior
31 conviction which occurred within the preceding 10 years, not including
32 any period of incarceration. The person convicted shall be sentenced to not
33 less than 90 days nor more than one year's imprisonment and fined not less
34 than \$1,750 nor more than \$2,500. The person convicted shall not be
35 eligible for release on probation, suspension or reduction of sentence or
36 parole until the person has served at least 90 days' imprisonment. The 90
37 days' imprisonment mandated by this subsection may be served in a work
38 release program only after such person has served 48 consecutive hours'
39 imprisonment, provided such work release program requires such person
40 to return to confinement at the end of each day in the work release
41 program. The person convicted, if placed into a work release program,
42 shall serve a minimum of 2,160 hours of confinement. Such 2,160 hours of
43 confinement shall be a period of at least 48 consecutive hours of

1 imprisonment followed by confinement hours at the end of and continuing
2 to the beginning of the offender's work day. The court may place the
3 person convicted under a house arrest program pursuant to K.S.A. 2017
4 Supp. 21-6609, and amendments thereto, to serve the 90 days'
5 imprisonment mandated by this subsection only after such person has
6 served 48 consecutive hours' imprisonment. The person convicted, if
7 placed under house arrest, shall be monitored by an electronic monitoring
8 device, which verifies the offender's location. The offender shall serve a
9 minimum of 2,160 hours of confinement within the boundaries of the
10 offender's residence. Any exceptions to remaining within the boundaries of
11 the offender's residence provided for in the house arrest agreement shall
12 not be counted as part of the 2,160 hours; and

13 (E) on a fourth or subsequent conviction a nonperson felony. The
14 person convicted shall be sentenced to not less than 90 days nor more than
15 one year's imprisonment and fined \$2,500. The person convicted shall not
16 be eligible for release on probation, suspension or reduction of sentence or
17 parole until the person has served at least 90 days' imprisonment. The 90
18 days' imprisonment mandated by this subsection may be served in a work
19 release program only after such person has served 72 consecutive hours'
20 imprisonment, provided such work release program requires such person
21 to return to confinement at the end of each day in the work release
22 program. The person convicted, if placed into a work release program,
23 shall serve a minimum of 2,160 hours of confinement. Such 2,160 hours of
24 confinement shall be a period of at least 72 consecutive hours of
25 imprisonment followed by confinement hours at the end of and continuing
26 to the beginning of the offender's work day. The court may place the
27 person convicted under a house arrest program pursuant to K.S.A. 2017
28 Supp. 21-6609, and amendments thereto, to serve the 90 days'
29 imprisonment mandated by this subsection only after such person has
30 served 72 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 (2) The court may order that the term of imprisonment imposed
38 pursuant to subsection (b)(1)(D) or (b)(1)(E) be served in a state facility in
39 the custody of the secretary of corrections in a facility designated by the
40 secretary for the provision of substance abuse treatment pursuant to the
41 provisions of K.S.A. 2017 Supp. 21-6804, and amendments thereto. The
42 person shall remain imprisoned at the state facility only while participating
43 in the substance abuse treatment program designated by the secretary and

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

17 (3) In addition, for any conviction pursuant to subsection (b)(1)(C),
18 (b)(1)(D) or (b)(1)(E), at the time of the filing of the judgment form or
19 journal entry as required by K.S.A. 22-3426 or K.S.A. 2017 Supp. 21-
20 6711, and amendments thereto, the court shall cause a certified copy to be
21 sent to the officer having the offender in charge. The court shall determine
22 whether the offender, upon release from imprisonment, shall be supervised
23 by community correctional services or court services based upon the risk
24 and needs of the offender. The risk and needs of the offender shall be
25 determined by use of a risk assessment tool specified by the Kansas
26 sentencing commission. The law enforcement agency maintaining custody
27 and control of a defendant for imprisonment shall cause a certified copy of
28 the judgment form or journal entry to be sent to the supervision office
29 designated by the court and upon expiration of the term of imprisonment
30 shall deliver the defendant to a location designated by the supervision
31 office designated by the court. After the term of imprisonment imposed by
32 the court, the person shall be placed on supervision to community
33 correctional services or court services, as determined by the court, for a
34 mandatory one-year period of supervision, which such period of
35 supervision shall not be reduced. During such supervision, the person shall
36 be required to participate in a multidisciplinary model of services for
37 substance use disorders facilitated by a Kansas department for aging and
38 disability services designated care coordination agency to include
39 assessment and, if appropriate, referral to a community based substance
40 use disorder treatment including recovery management and mental health
41 counseling as needed. The multidisciplinary team shall include the
42 designated care coordination agency, the supervision officer, the Kansas
43 department for aging and disability services designated treatment provider

1 and the offender. Any violation of the conditions of such supervision may
2 subject such person to revocation of supervision and imprisonment in jail
3 for the remainder of the period of imprisonment, the remainder of the
4 supervision period, or any combination or portion thereof.

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

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

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

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

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

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

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

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

3 (h) The court shall electronically report every conviction of a
4 violation of this section and every diversion agreement entered into in lieu
5 of further criminal proceedings on a complaint alleging a violation of this
6 section to the division. Prior to sentencing under the provisions of this
7 section, the court shall request and shall receive from the division a record
8 of all prior convictions obtained against such person for any violations of
9 any of the motor vehicle laws of this state.

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

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

23 (2) any convictions for a violation of the following sections occurring
24 during a person's lifetime shall be taken into account: (A) Refusing to
25 submit to a test to determine the presence of alcohol or drugs, K.S.A. 2017
26 Supp. 8-1025, and amendments thereto; (B) driving a commercial motor
27 vehicle under the influence, K.S.A. 8-2,144, and amendments thereto; (C)
28 operating a vessel under the influence of alcohol or drugs, K.S.A. 32-1131,
29 and amendments thereto; (D) involuntary manslaughter while driving
30 under the influence of alcohol or drugs, K.S.A. 21-3442, prior to its repeal,
31 or ~~subsection (a)(3) of~~ K.S.A. 2017 Supp. 21-5405(a)(3) or (a)(5), and
32 amendments thereto; (E) aggravated battery as described in ~~subsection (b)~~
33 ~~(3) of~~ K.S.A. 2017 Supp. 21-5413(b)(3) **or (b)(4)**, and amendments
34 thereto; and (F) aggravated vehicular homicide, K.S.A. 21-3405a, prior to
35 its repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the
36 crime was committed while committing a violation of K.S.A. 8-1567, and
37 amendments thereto;

38 (3) "conviction" includes: (A) Entering into a diversion agreement in
39 lieu of further criminal proceedings on a complaint alleging a violation of
40 a crime described in subsection (i)(2); (B) conviction of a violation of an
41 ordinance of a city in this state, a resolution of a county in this state or any
42 law of another state which would constitute a crime described in
43 subsection (i)(1) or (i)(2); and (C) receiving punishment under the uniform

1 code of military justice or Kansas code of military justice for an act which
2 was committed on a military reservation and which would constitute a
3 crime described in subsection (i)(1) or (i)(2) if committed off a military
4 reservation in this state;

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

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

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

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

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

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

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

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

38 (l) (1) Upon the filing of a complaint, citation or notice to appear
39 alleging a person has violated a city ordinance prohibiting the acts
40 prohibited by this section, and prior to conviction thereof, a city attorney
41 shall request and shall receive from the:

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

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

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

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

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

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

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

27 (3) "drug" includes toxic vapors as such term is defined in K.S.A.
28 2017 Supp. 21-5712, and amendments thereto.

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

38 (2) On and after July 1, 2011, the amount of \$250 from each fine
39 imposed pursuant to this section shall be remitted by the clerk of the
40 district court to the state treasurer in accordance with the provisions of
41 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
42 remittance, the state treasurer shall credit the entire amount to the
43 community corrections supervision fund established by K.S.A. 2017 Supp.

1 75-52,113, and amendments thereto.

2 Sec. ~~6~~ **8**. K.S.A. 2017 Supp. 21-6811 is hereby amended to read as
3 follows: 21-6811. In addition to the provisions of K.S.A. 2017 Supp. 21-
4 6810, and amendments thereto, the following shall apply in determining an
5 offender's criminal history classification as contained in the presumptive
6 sentencing guidelines grids:

7 (a) Every three prior adult convictions or juvenile adjudications of
8 class A and class B person misdemeanors in the offender's criminal history,
9 or any combination thereof, shall be rated as one adult conviction or one
10 juvenile adjudication of a person felony for criminal history purposes.
11 Every three prior adult convictions or juvenile adjudications of assault as
12 defined in K.S.A. 21-3408, prior to its repeal, or K.S.A. 2017 Supp. 21-
13 5412(a), and amendments thereto, occurring within a period commencing
14 three years prior to the date of conviction for the current crime of
15 conviction shall be rated as one adult conviction or one juvenile
16 adjudication of a person felony for criminal history purposes.

17 (b) A conviction of criminal possession of a firearm as defined in
18 K.S.A. 21-4204(a)(1) or (a)(5), prior to its repeal, criminal use of weapons
19 as defined in K.S.A. 2017 Supp. 21-6301(a)(10) or (a)(11), and
20 amendments thereto, or unlawful possession of a firearm as in effect on
21 June 30, 2005, and as defined in K.S.A. 21-4218, prior to its repeal, will be
22 scored as a select class B nonperson misdemeanor conviction or
23 adjudication and shall not be scored as a person misdemeanor for criminal
24 history purposes.

25 (c) (1) If the current crime of conviction was committed before July
26 1, 1996, and is for K.S.A. 21-3404(b), as in effect on June 30, 1996,
27 involuntary manslaughter in the commission of driving under the
28 influence, then, each prior adult conviction or juvenile adjudication for
29 K.S.A. 8-1567, and amendments thereto, shall count as one person felony
30 for criminal history purposes.

31 (2) If the current crime of conviction was committed on or after July
32 1, 1996, and is for a violation of K.S.A. 2017 Supp. 21-5405(a)(3) *or* (a)
33 (5), and amendments thereto, each prior adult conviction, diversion in lieu
34 of criminal prosecution or juvenile adjudication for: (A) Any act described
35 in K.S.A. 8-2,144 or 8-1567 or K.S.A. 2017 Supp. 8-1025, and
36 amendments thereto; or (B) a violation of a law of another state or an
37 ordinance of any city, or resolution of any county, which prohibits any act
38 described in K.S.A. 8-2,144 or 8-1567 or K.S.A. 2017 Supp. 8-1025, and
39 amendments thereto, shall count as one person felony for criminal history
40 purposes.

41 (3) If the current crime of conviction is for a violation of K.S.A. 2017
42 Supp. 21-5413(b)(3) **or** (b)(4), and amendments thereto:

43 (A) The first prior adult conviction, diversion in lieu of criminal

1 prosecution or juvenile adjudication for the following shall count as one
2 nonperson felony for criminal history purposes: (i) Any act described in
3 K.S.A. 8-2,144 or 8-1567 or K.S.A. 2017 Supp. 8-1025, and amendments
4 thereto; or (ii) a violation of a law of another state or an ordinance of any
5 city, or resolution of any county, which prohibits any act described in
6 K.S.A. 8-2,144 or 8-1567 or K.S.A. 2017 Supp. 8-1025, and amendments
7 thereto; and

8 (B) each second or subsequent prior adult conviction, diversion in
9 lieu of criminal prosecution or juvenile adjudication for the following shall
10 count as one person felony for criminal history purposes: (i) Any act
11 described in K.S.A. 8-2,144 or 8-1567 or K.S.A. 2017 Supp. 8-1025, and
12 amendments thereto; or (ii) a violation of a law of another state or an
13 ordinance of any city, or resolution of any county, which prohibits any act
14 described in K.S.A. 8-2,144 or 8-1567 or K.S.A. 2017 Supp. 8-1025, and
15 amendments thereto.

16 (d) Prior burglary adult convictions and juvenile adjudications will be
17 scored for criminal history purposes as follows:

18 (1) As a prior person felony if the prior conviction or adjudication
19 was classified as a burglary as defined in K.S.A. 21-3715(a), prior to its
20 repeal, or K.S.A. 2017 Supp. 21-5807(a)(1), and amendments thereto.

21 (2) As a prior nonperson felony if the prior conviction or adjudication
22 was classified as a burglary as defined in K.S.A. 21-3715(b) or (c), prior to
23 its repeal, or K.S.A. 2017 Supp. 21-5807(a)(2) or (a)(3), and amendments
24 thereto.

25 The facts required to classify prior burglary adult convictions and
26 juvenile adjudications shall be established by the state by a preponderance
27 of the evidence.

28 (e) (1) Out-of-state convictions and juvenile adjudications shall be
29 used in classifying the offender's criminal history.

30 (2) An out-of-state crime will be classified as either a felony or a
31 misdemeanor according to the convicting jurisdiction:

32 (A) If a crime is a felony in another state, it will be counted as a
33 felony in Kansas.

34 (B) If a crime is a misdemeanor in another state, the state of Kansas
35 shall refer to the comparable offense in order to classify the out-of-state
36 crime as a class A, B or C misdemeanor. If the comparable misdemeanor
37 crime in the state of Kansas is a felony, the out-of-state crime shall be
38 classified as a class A misdemeanor. If the state of Kansas does not have a
39 comparable crime, the out-of-state crime shall not be used in classifying
40 the offender's criminal history.

41 (3) The state of Kansas shall classify the crime as person or
42 nonperson. In designating a crime as person or nonperson, comparable
43 offenses under the Kansas criminal code in effect on the date the current

1 crime of conviction was committed shall be referred to. If the state of
2 Kansas does not have a comparable offense in effect on the date the
3 current crime of conviction was committed, the out-of-state conviction
4 shall be classified as a nonperson crime.

5 (4) Convictions or adjudications occurring within the federal system,
6 other state systems, the District of Columbia, foreign, tribal or military
7 courts are considered out-of-state convictions or adjudications.

8 (5) The facts required to classify out-of-state adult convictions and
9 juvenile adjudications shall be established by the state by a preponderance
10 of the evidence.

11 (f) Except as provided in K.S.A. 21-4710(d)(4), (d)(5) and (d)(6),
12 prior to its repeal, or K.S.A. 2017 Supp. 21-6810(d)(3)(B), (d)(3)(C), (d)
13 (3)(D), (d)(4) and (d)(5), and amendments thereto, juvenile adjudications
14 will be applied in the same manner as adult convictions. Out-of-state
15 juvenile adjudications will be treated as juvenile adjudications in Kansas.

16 (g) A prior felony conviction of an attempt, a conspiracy or a
17 solicitation as provided in K.S.A. 21-3301, 21-3302 or 21-3303, prior to
18 their repeal, or K.S.A. 2017 Supp. 21-5301, 21-5302 or 21-5303, and
19 amendments thereto, to commit a crime shall be treated as a person or
20 nonperson crime in accordance with the designation assigned to the
21 underlying crime.

22 (h) Drug crimes are designated as nonperson crimes for criminal
23 history scoring.

24 (i) If the current crime of conviction is for a violation of K.S.A. 8-
25 1602(b)(3) through (b)(5), and amendments thereto, each of the following
26 prior convictions for offenses committed on or after July 1, 2011, shall
27 count as a person felony for criminal history purposes: K.S.A. 8-235, 8-
28 262, 8-287, 8-291, 8-1566, 8-1567, 8-1568, 8-1602, 8-1605 and 40-3104,
29 and amendments thereto, and K.S.A. 2017 Supp. 21-5405(a)(3) *or* (a)(5)
30 and 21-5406, and amendments thereto, or a violation of a city ordinance or
31 law of another state which would also constitute a violation of such
32 sections.

33 (j) The amendments made to this section by chapter 5 of the 2015
34 Session Laws of Kansas are procedural in nature and shall be construed
35 and applied retroactively.

36 ~~Sec. 7.~~ **9.** K.S.A. 2017 Supp. 38-2312 is hereby amended to read as
37 follows: 38-2312. (a) Except as provided in subsections (b) and (c), any
38 records or files specified in this code concerning a juvenile may be
39 expunged upon application to a judge of the court of the county in which
40 the records or files are maintained. The application for expungement may
41 be made by the juvenile, if 18 years of age or older or, if the juvenile is
42 less than 18 years of age, by the juvenile's parent or next friend.

43 (b) There shall be no expungement of records or files concerning acts

1 committed by a juvenile which, if committed by an adult, would constitute
2 a violation of K.S.A. 21-3401, prior to its repeal, or K.S.A. 2017 Supp. 21-
3 5402, and amendments thereto, murder in the first degree; K.S.A. 21-3402,
4 prior to its repeal, or K.S.A. 2017 Supp. 21-5403, and amendments
5 thereto, murder in the second degree; K.S.A. 21-3403, prior to its repeal,
6 or K.S.A. 2017 Supp. 21-5404, and amendments thereto, voluntary
7 manslaughter; K.S.A. 21-3404, prior to its repeal, or K.S.A. 2017 Supp.
8 21-5405, and amendments thereto, involuntary manslaughter; K.S.A. 21-
9 3439, prior to its repeal, or K.S.A. 2017 Supp. 21-5401, and amendments
10 thereto, capital murder; K.S.A. 21-3442, prior to its repeal, or K.S.A. 2017
11 Supp. 21-5405(a)(3) *or* (a)(5), and amendments thereto, involuntary
12 manslaughter while driving under the influence of alcohol or drugs; K.S.A.
13 21-3502, prior to its repeal, or K.S.A. 2017 Supp. 21-5503, and
14 amendments thereto, rape; K.S.A. 21-3503, prior to its repeal, or K.S.A.
15 2017 Supp. 21-5506(a), and amendments thereto, indecent liberties with a
16 child; K.S.A. 21-3504, prior to its repeal, or K.S.A. 2017 Supp. 21-
17 5506(b), and amendments thereto, aggravated indecent liberties with a
18 child; K.S.A. 21-3506, prior to its repeal, or K.S.A. 2017 Supp. 21-
19 5504(b), and amendments thereto, aggravated criminal sodomy; K.S.A.
20 21-3510, prior to its repeal, or K.S.A. 2017 Supp. 21-5508(a), and
21 amendments thereto, indecent solicitation of a child; K.S.A. 21-3511, prior
22 to its repeal, or K.S.A. 2017 Supp. 21-5508(b), and amendments thereto,
23 aggravated indecent solicitation of a child; K.S.A. 21-3516, prior to its
24 repeal, or K.S.A. 2017 Supp. 21-5510, and amendments thereto, sexual
25 exploitation of a child; K.S.A. 2017 Supp. 21-5514(a), and amendments
26 thereto, internet trading in child pornography; K.S.A. 2017 Supp. 21-
27 5514(b), and amendments thereto, aggravated internet trading in child
28 pornography; K.S.A. 21-3603, prior to its repeal, or K.S.A. 2017 Supp. 21-
29 5604(b), and amendments thereto, aggravated incest; K.S.A. 21-3608,
30 prior to its repeal, or K.S.A. 2017 Supp. 21-5601(a), and amendments
31 thereto, endangering a child; K.S.A. 21-3609, prior to its repeal, or K.S.A.
32 2017 Supp. 21-5602, and amendments thereto, abuse of a child; or which
33 would constitute an attempt to commit a violation of any of the offenses
34 specified in this subsection.

35 (c) Notwithstanding any other law to the contrary, for any offender
36 who is required to register as provided in the Kansas offender registration
37 act, K.S.A. 22-4901 et seq., and amendments thereto, there shall be no
38 expungement of any conviction or any part of the offender's criminal
39 record while the offender is required to register as provided in the Kansas
40 offender registration act.

41 (d) When a petition for expungement is filed, the court shall set a date
42 for a hearing on the petition and shall give notice thereof to the county or
43 district attorney. The petition shall state: (1) The juvenile's full name; (2)

1 the full name of the juvenile as reflected in the court record, if different
2 than (1); (3) the juvenile's sex and date of birth; (4) the offense for which
3 the juvenile was adjudicated; (5) the date of the trial; and (6) the identity
4 of the trial court. Except as otherwise provided by law, a petition for
5 expungement shall be accompanied by a docket fee in the amount of \$176.
6 On and after July 1, 2017, through June 30, 2019, the supreme court may
7 impose a charge, not to exceed \$19 per case, to fund the costs of non-
8 judicial personnel. All petitions for expungement shall be docketed in the
9 original action. Any person who may have relevant information about the
10 petitioner may testify at the hearing. The court may inquire into the
11 background of the petitioner.

12 (e) (1) After hearing, the court shall order the expungement of the
13 records and files if the court finds that:

14 (A) (i) The juvenile has reached 23 years of age or that two years
15 have elapsed since the final discharge;

16 (ii) one year has elapsed since the final discharge for an adjudication
17 concerning acts committed by a juvenile which, if committed by an adult,
18 would constitute a violation of K.S.A. 2017 Supp. 21-6419, and
19 amendments thereto; or

20 (iii) the juvenile is a victim of human trafficking, aggravated human
21 trafficking or commercial sexual exploitation of a child, the adjudication
22 concerned acts committed by the juvenile as a result of such victimization,
23 including, but not limited to, acts which, if committed by an adult, would
24 constitute a violation of K.S.A. 2017 Supp. 21-6203 or 21-6419, and
25 amendments thereto, and the hearing on expungement occurred on or after
26 the date of final discharge. The provisions of this clause shall not allow an
27 expungement of records or files concerning acts described in subsection
28 (b);

29 (B) since the final discharge of the juvenile, the juvenile has not been
30 convicted of a felony or of a misdemeanor other than a traffic offense or
31 adjudicated as a juvenile offender under the revised Kansas juvenile justice
32 code and no proceedings are pending seeking such a conviction or
33 adjudication; and

34 (C) the circumstances and behavior of the petitioner warrant
35 expungement.

36 (2) The court may require that all court costs, fees and restitution
37 shall be paid.

38 (f) Upon entry of an order expunging records or files, the offense
39 which the records or files concern shall be treated as if it never occurred,
40 except that upon conviction of a crime or adjudication in a subsequent
41 action under this code the offense may be considered in determining the
42 sentence to be imposed. The petitioner, the court and all law enforcement
43 officers and other public offices and agencies shall properly reply on

1 inquiry that no record or file exists with respect to the juvenile. Inspection
2 of the expunged files or records thereafter may be permitted by order of
3 the court upon petition by the person who is the subject thereof. The
4 inspection shall be limited to inspection by the person who is the subject of
5 the files or records and the person's designees.

6 (g) A certified copy of any order made pursuant to subsection (a) or
7 (d) shall be sent to the Kansas bureau of investigation, which shall notify
8 every juvenile or criminal justice agency which may possess records or
9 files ordered to be expunged. If the agency fails to comply with the order
10 within a reasonable time after its receipt, such agency may be adjudged in
11 contempt of court and punished accordingly.

12 (h) The court shall inform any juvenile who has been adjudicated a
13 juvenile offender of the provisions of this section.

14 (i) Nothing in this section shall be construed to prohibit the
15 maintenance of information relating to an offense after records or files
16 concerning the offense have been expunged if the information is kept in a
17 manner that does not enable identification of the juvenile.

18 (j) Nothing in this section shall be construed to permit or require
19 expungement of files or records related to a child support order registered
20 pursuant to the revised Kansas juvenile justice code.

21 (k) Whenever the records or files of any adjudication have been
22 expunged under the provisions of this section, the custodian of the records
23 or files of adjudication relating to that offense shall not disclose the
24 existence of such records or files, except when requested by:

25 (1) The person whose record was expunged;

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

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

32 (4) the secretary for aging and disability services, or a designee of the
33 secretary, for the purpose of obtaining information relating to employment
34 in an institution, as defined in K.S.A. 76-12a01, and amendments thereto,
35 of the Kansas department for aging and disability services of any person
36 whose record has been expunged;

37 (5) a person entitled to such information pursuant to the terms of the
38 expungement order;

39 (6) the Kansas lottery, and the request is accompanied by a statement
40 that the request is being made to aid in determining qualifications for
41 employment with the Kansas lottery or for work in sensitive areas within
42 the Kansas lottery as deemed appropriate by the executive director of the
43 Kansas lottery;

1 (7) the governor or the Kansas racing commission, or a designee of
2 the commission, and the request is accompanied by a statement that the
3 request is being made to aid in determining qualifications for executive
4 director of the commission, for employment with the commission, for
5 work in sensitive areas in parimutuel racing as deemed appropriate by the
6 executive director of the commission or for licensure, renewal of licensure
7 or continued licensure by the commission;

8 (8) the Kansas sentencing commission; or

9 (9) the Kansas bureau of investigation, for the purposes of:

10 (A) Completing a person's criminal history record information within
11 the central repository in accordance with K.S.A. 22-4701 et seq., and
12 amendments thereto; or

13 (B) providing information or documentation to the federal bureau of
14 investigation, in connection with the national instant criminal background
15 check system, to determine a person's qualification to possess a firearm.

16 (l) The provisions of subsection (k)(9) shall apply to all records
17 created prior to, on and after July 1, 2011.

18 ~~Sec. 8-~~ **10.** K.S.A. 2017 Supp. 75-52,148 is hereby amended to read
19 as follows: 75-52,148. (a) The department of corrections shall be required
20 to review and report on the following serious offenses committed by sex
21 offenders, as defined by K.S.A. 22-4902, and amendments thereto, while
22 such offenders are in the custody of the secretary of corrections:

23 (1) Murder in the first degree, as defined in K.S.A. 2017 Supp. 21-
24 5402, and amendments thereto;

25 (2) murder in the second degree, as defined in K.S.A. 2017 Supp. 21-
26 5403, and amendments thereto;

27 (3) capital murder, as defined in K.S.A. 2017 Supp. 21-5401, and
28 amendments thereto;

29 (4) rape, as defined in K.S.A. 2017 Supp. 21-5503, and amendments
30 thereto;

31 (5) aggravated criminal sodomy, as defined in ~~subsection (b) of~~
32 K.S.A. 2017 Supp. 21-5504(b), and amendments thereto;

33 (6) sexual exploitation of a child, as defined in K.S.A. 2017 Supp. 21-
34 5510, and amendments thereto;

35 (7) kidnapping as defined in ~~subsection (a) of~~ K.S.A. 2017 Supp. 21-
36 5408(a), and amendments thereto;

37 (8) aggravated kidnapping, as defined in ~~subsection (b) of~~ K.S.A.
38 2017 Supp. 21-5408(b), and amendments thereto;

39 (9) criminal restraint, as defined in K.S.A. 2017 Supp. 21-5411, and
40 amendments thereto;

41 (10) indecent solicitation of a child, as defined in ~~subsection (a) of~~
42 K.S.A. 2017 Supp. 21-5508(a), and amendments thereto;

43 (11) aggravated indecent solicitation of a child, as defined in

- 1 ~~subsection (b) of K.S.A. 2017 Supp. 21-5508(b), and amendments thereto;~~
2 (12) indecent liberties with a child, as defined in ~~subsection (a) of~~
3 K.S.A. 2017 Supp. 21-5506(a), and amendments thereto;
4 (13) aggravated indecent liberties with a child, as defined in
5 ~~subsection (b) of K.S.A. 2017 Supp. 21-5506(b), and amendments thereto;~~
6 (14) criminal sodomy, as defined in ~~subsection (a) of~~ K.S.A. 2017
7 Supp. 21-5504(a), and amendments thereto;
8 (15) child abuse, as defined in K.S.A. 2017 Supp. 21-5602, and
9 amendments thereto;
10 (16) aggravated robbery, as defined in ~~subsection (b) of~~ K.S.A. 2017
11 Supp. 21-5420(b), and amendments thereto;
12 (17) burglary, as defined in ~~subsection (a) of~~ K.S.A. 2017 Supp. 21-
13 5807(a), and amendments thereto;
14 (18) aggravated burglary, as defined in ~~subsection (b) of~~ K.S.A. 2017
15 Supp. 21-5807(b), and amendments thereto;
16 (19) theft, as defined in K.S.A. 2017 Supp. 21-5801, and amendments
17 thereto;
18 (20) vehicular homicide, as defined in K.S.A. 2017 Supp. 21-5406,
19 and amendments thereto;
20 (21) involuntary manslaughter while driving under the influence, as
21 defined in ~~subsection (a)(3) of~~ K.S.A. 2017 Supp. 21-5405(a)(3) or (a)(5),
22 and amendments thereto; or
23 (22) stalking, as defined in K.S.A. 2017 Supp. 21-5427, and
24 amendments thereto.
25 (b) The secretary of corrections shall submit such report to the
26 speaker of the house of representatives and the president of the senate
27 annually, beginning January 1, 2007.
28 ~~Sec. 9.~~ **11.** K.S.A. 2017 Supp. 8-262, 8-2,144, **8-1013**, 8-1025, 8-
29 1567, 21-5405, **21-5413**, 21-6811, 38-2312 and 75-52,148 are hereby
30 repealed.
31 ~~Sec. 10.~~ **12.** This act shall take effect and be in force from and after
32 its publication in the statute book.