

SUBSTITUTE FOR SENATE BILL No. 7

By Committee on Judiciary

3-18

1 AN ACT concerning driving under the influence; creating the Kansas
2 bureau of investigation central repository fund; relating to testing;
3 administrative penalties; crimes, punishment and criminal procedure;
4 amending K.S.A. 8-285, 8-1008, 8-1009, 8-1016, 8-1017, 12-4414, 12-
5 4415, 12-4416, 22-2908, 22-3610, 22-4704, 22-4705 and 79-4101 and
6 K.S.A. 2009 Supp. 8-1567, as amended by section 3 of chapter 153 of
7 the 2010 Session Laws of Kansas, and K.S.A. 2010 Supp. 8-235, 8-
8 262, 8-2,142, 8-2,144, 8-1001, 8-1012, 8-1013, 8-1014, 8-1015, 8-
9 1020, 8-1022, 12-4104, 12-4106, 12-4516, 12-4517, 22-2802, 22-2909,
10 22-3717, 28-176, 60-427, 74-2012, 74-7301, 75-5291 and 79-4108 and
11 sections 14, 254, 285, 292 and 299 of chapter 136 of the 2010 Session
12 Laws of Kansas and repealing the existing sections; also repealing
13 K.S.A. 2009 Supp. 21-4704, as amended by section 6 of chapter 147 of
14 the 2010 Session Laws of Kansas, 22-2908, as amended by section 9 of
15 chapter 101 of the 2010 Session Laws of Kansas, and 22-2909, as
16 amended by section 10 of chapter 101 of the 2010 Session Laws of
17 Kansas, and K.S.A. 2010 Supp. 8-1020a, 8-1567, 21-4704 and 22-
18 3717c.

19

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

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

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

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

34 (b) The licensing body may, after providing the licensee notice and an
35 opportunity to be heard in accordance with the Kansas administrative
36 procedure act, determine how the violation described in subsection (a) will

1 affect the licensee's professional license and may take any action
2 authorized by law, including, but not limited to, alternative corrective
3 measures in lieu of suspension, denial, termination or failure to renew the
4 professional license of the licensee.

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

8 (d) As used in this section:

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

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

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

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

28 (3) The secretary shall agree that when the inmate satisfactorily
29 completes the programs required by the agreement, or any revision
30 thereof, the secretary shall report that fact in writing to the Kansas parole
31 board.

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

34 New Sec. 3. On or before July 1, 2012, the director of the Kansas
35 bureau of investigation shall adopt rules and regulations establishing: (a)
36 Criteria for preliminary screening devices for testing of saliva for law
37 enforcement purposes, based on health and performance considerations;
38 and (b) a list of preliminary screening devices which are approved for
39 testing of saliva for law enforcement purposes and which law enforcement
40 agencies may purchase and train officers to use as aids in determining
41 probable cause to arrest and grounds for requiring testing pursuant to
42 K.S.A. 8-1001, and amendments thereto.

43 New Sec. 4. There is hereby created in the state treasury the Kansas

1 bureau of investigation central repository fund. All moneys credited to the
2 Kansas bureau of investigation central repository fund shall be used for
3 upgrades to and the administration of the Kansas bureau of investigation
4 central repository, established by K.S.A. 22-4705, and amendments
5 thereto. All expenditures from the Kansas bureau of investigation central
6 repository fund shall be made in accordance with appropriation acts, upon
7 warrants of the director of accounts and reports issued pursuant to
8 vouchers approved by the director of the Kansas bureau of investigation or
9 the director's designee.

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

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

38 (c) Any person operating in this state a motor vehicle, except a
39 motorcycle, which is registered in this state other than under a temporary
40 thirty-day permit shall be the holder of a driver's license which is classified
41 for the operation of such motor vehicle, and any person operating in this
42 state a motorcycle which is registered in this state shall be the holder of a
43 class M driver's license, except that any person operating in this state a

1 motorcycle which is registered under a temporary thirty-day permit shall
2 be the holder of a driver's license for any class of motor vehicles.

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

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

18 Sec. 6. K.S.A. 2010 Supp. 8-262 is hereby amended to read as
19 follows: 8-262. (a) (1) Any person who drives a motor vehicle on any
20 highway of this state at a time when such person's privilege so to do is
21 canceled, suspended or revoked or while such person's privilege to obtain
22 a driver's license is suspended or revoked pursuant to K.S.A. 8-252a, and
23 amendments thereto, shall be guilty of a class B nonperson misdemeanor
24 on the first conviction and a class A nonperson misdemeanor on the second
25 or subsequent conviction.

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

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

33 (4) Except as otherwise provided by subsection (c), if a person: (A) Is
34 convicted of a violation of this section, committed while the person's
35 privilege to drive or privilege to obtain a driver's license was suspended or
36 revoked for a violation of K.S.A. 8-2,144 or 8-1567, and amendments
37 thereto, or any ordinance of any city or resolution of any county or a law
38 of another state, which ordinance *or resolution* or law prohibits the acts
39 prohibited by ~~that statute~~ *those statutes*; and (B) is or has been also
40 convicted of a violation of K.S.A. 8-2,144 or 8-1567, and amendments
41 thereto, or ~~of a municipal~~ *any ordinance of any city or resolution of any*
42 *county* or law of another state, which ordinance *or resolution* or law
43 prohibits the acts prohibited by ~~that statute~~ *those statutes*, committed while

1 the person's privilege to drive or privilege to obtain a driver's license was
2 so suspended or revoked, the person shall not be eligible for suspension of
3 sentence, probation or parole until the person has served at least 90 days'
4 imprisonment, and any fine imposed on such person shall be in addition to
5 such a term of imprisonment.

6 (b) The division, upon receiving a record of the conviction of any
7 person under this section, or any ordinance of any city or resolution of any
8 county or a law of another state which is in substantial conformity with
9 this section, upon a charge of driving a vehicle while the license of such
10 person is revoked or suspended, shall extend the period of such suspension
11 or revocation for an additional period of 90 days.

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

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

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

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

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

31 (2) The person convicted shall not be eligible for release on
32 probation, suspension or reduction of sentence or parole until the person
33 has served at least 90 days' imprisonment. The 90 days' imprisonment
34 mandated by this subsection may be served in a work release program only
35 after such person has served 48 consecutive hours' imprisonment, provided
36 such work release program requires such person to return to confinement
37 at the end of each day in the work release program. The court may place
38 the person convicted under a house arrest program pursuant to ~~K.S.A. 21-~~
39 ~~4603b~~ *section 249 of chapter 136 of the 2010 Session Laws of Kansas*, and
40 amendments thereto, or any municipal ordinance to serve the remainder of
41 the minimum sentence only after such person has served 48 consecutive
42 hours' imprisonment.

43 (d) For the purposes of determining whether a conviction is a first,

1 second, third or subsequent conviction in sentencing under this section,
2 "conviction" includes a conviction of a violation of any ordinance of any
3 city or resolution of any county or a law of another state which is in
4 substantial conformity with this section.

5 Sec. 7. K.S.A. 8-285 is hereby amended to read as follows: 8-285.
6 Except as otherwise provided in this section, as used in this act, the words
7 and phrases defined in K.S.A. 8-234a, and amendments thereto, shall have
8 the meanings ascribed to them therein. The term "habitual violator" means
9 any resident or nonresident person who, within the immediately preceding
10 five years, has been convicted in this or any other state:

11 (a) Three or more times of:

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

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

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

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

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

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

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

43 (8) violating the provisions of K.S.A. 40-3104, and amendments

1 thereto, relating to motor vehicle liability insurance coverage, or an
2 ordinance of any city in this state; *or a resolution of any county in this*
3 *state* which is in substantial conformity with such statute.

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

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

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

18 (1) While operating a commercial motor vehicle:

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

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

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

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

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

29 (2) while operating a noncommercial motor vehicle:

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

35 (B) the person's test refusal or test failure, as defined in K.S.A. 8-
36 1013, and amendments thereto; or

37 (3) while operating any motor vehicle:

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

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

41 (b) If any offenses, test refusal or test failure specified in subsection
42 (a) occurred in a commercial motor vehicle while transporting a hazardous
43 material required to be placarded, the person is disqualified for a period of

1 not less than three years.

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

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

10 (e) A person is disqualified from driving a commercial motor vehicle
11 for life who uses a commercial motor vehicle or noncommercial motor
12 vehicle in the commission of any felony involving the manufacture,
13 distribution or dispensing of a controlled substance, or possession with
14 intent to manufacture, distribute or dispense a controlled substance.

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

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

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

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

36 (B) one year nor more than five years if the person has one prior
37 conviction for violating an out-of-service order in a separate incident and
38 such prior offense was committed within the 10 years immediately
39 preceding the date of the present violation; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (C) one year if, during any three-year period, the driver is convicted
38 of a third or subsequent railroad-highway grade crossing violation in
39 separate incidents.

40 (j) After suspending, revoking or canceling a commercial driver's
41 license, the division shall update its records to reflect that action within 10
42 days. After suspending, revoking or canceling a nonresident commercial
43 driver's privileges, the division shall notify the licensing authority of the

1 state which issued the commercial driver's license or nonresident
2 commercial driver's license within 10 days. The notification shall include
3 both the disqualification and the violation that resulted in the
4 disqualification, suspension, revocation or cancellation.

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

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

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

24 Sec. 9. K.S.A. 2010 Supp. 8-2,144 is hereby amended to read as
25 follows: 8-2,144. (a) ~~No person shall drive~~ *Driving a commercial motor*
26 *vehicle under the influence is operating or attempting to operate* any
27 commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments
28 thereto, within this state while:

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

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

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

39 ~~(b) Upon a first conviction of a violation of this section, a person~~
40 ~~shall be guilty of a class B, nonperson misdemeanor and sentenced to not~~
41 ~~less than 48 consecutive hours nor more than six months' imprisonment, or~~
42 ~~in the court's discretion, 100 hours of public service, and fined not less~~
43 ~~than \$500 nor more than \$1,000. The person convicted must serve at least~~

1 48 consecutive hours' imprisonment or 100 hours of public service either
2 before or as a condition of any grant of probation or suspension, reduction
3 of sentence or parole. In addition, the court shall enter an order which
4 requires that the person enroll in and successfully complete an alcohol and
5 drug safety action education program or treatment program as provided in
6 K.S.A. 8-1008, and amendments thereto, or both the education and
7 treatment programs.

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

26 (d) On the third conviction of a violation of this section, a person
27 shall be guilty of a nonperson felony and sentenced to not less than 90
28 days nor more than one year's imprisonment and fined not less than \$1,500
29 nor more than \$2,500. The person convicted shall not be eligible for
30 release on probation, suspension or reduction of sentence or parole until
31 the person has served at least 90 days' imprisonment. The court also
32 requires as a condition of parole that such person enter into and complete a
33 treatment program for alcohol and drug abuse as provided by K.S.A. 8-
34 1008, and amendments thereto. The 90 days' imprisonment mandated by
35 this subsection may be served in a work release program only after such
36 person has served 48 consecutive hours' imprisonment provided such work
37 release program requires such person to return to confinement at the end of
38 each day in the work release program. The court may place the person
39 convicted under a house arrest program pursuant to K.S.A. 21-4603b, and
40 amendments thereto, to serve the remainder of the minimum sentence only
41 after such person has served 48 consecutive hours' imprisonment.

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

43 (A) *On a first conviction a class A, nonperson misdemeanor. The*

1 person convicted shall be sentenced to not less than 90 days nor more than
2 one year's imprisonment and fined not less than \$1,000 nor more than
3 \$1,500. The person convicted shall serve at least five consecutive days'
4 imprisonment before the person is granted probation, suspension or
5 reduction of sentence or parole or is otherwise released. The five
6 consecutive days' imprisonment mandated by this subsection may be
7 served by completing: (i) Six days in a work release program only after
8 such person has served 48 consecutive hours' imprisonment, provided
9 such work release program requires such person to return to confinement
10 at the end of each day in the work release program; or (ii) ten days under
11 a house arrest program pursuant to section 249 of chapter 136 of the 2010
12 Session Laws of Kansas, and amendments thereto, only after such person
13 has served 48 consecutive hours' imprisonment;

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

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

30 (2) In addition, prior to sentencing, the court shall order the person
31 to participate in an alcohol and drug evaluation conducted by a licensed
32 provider pursuant to K.S.A. 8-1008, and amendments thereto. The person
33 shall be required to follow any recommendation made by the provider
34 after such evaluation, unless otherwise ordered by the court. The
35 provisions of this paragraph shall not apply to any person sentenced to
36 imprisonment for a third or subsequent conviction pursuant to subsection
37 (b)(1)(C).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 *(l) On and after July 1, 2011, any city ordinance declaring the acts*
34 *prohibited by this section as unlawful or prohibited in such city and*
35 *prescribing penalties for violation thereof is hereby declared null and*
36 *void, regardless of when such ordinance was enacted, unless such city*
37 *meets the requirements specified in subsection (k).*

38 *(m) (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*
8 *such violation, and shall not refer any such violation back to the city*
9 *attorney.*

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

16 (o) *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 may, but*
18 *shall not be required to, elect one or two of the three prior to submission*
19 *of the case to the fact finder.*

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

22 (1) *Any test refusal, as defined in K.S.A. 8-1013, and amendments*
23 *thereto, occurring during a person's lifetime shall be taken into account,*
24 *unless such refusal occurred when the offender was under 18 years of age;*

25 (2) *convictions for a violation of K.S.A. 8-1567, and amendments*
26 *thereto, or a violation of an ordinance of any city or resolution of any*
27 *county which prohibits the acts that such section prohibits, or entering*
28 *into a diversion agreement in lieu of further criminal proceedings on a*
29 *complaint alleging any such violations, shall be taken into account, but*
30 *only convictions or diversions occurring on or after July 1, 2001;*

31 (3) *any convictions for a violation of the following sections occurring*
32 *during a person's lifetime shall be taken into account: (A) This section;*
33 *(B) K.S.A. 32-1131, and amendments thereto; (C) subsection (a)(3) of*
34 *section 40 of chapter 136 of the 2010 Session Laws of Kansas, and*
35 *amendments thereto; and (D) aggravated vehicular homicide, K.S.A. 21-*
36 *3405a, prior to its repeal, or vehicular battery, K.S.A. 21-3405b, prior to*
37 *its repeal, if the crime was committed while committing a violation of*
38 *K.S.A. 8-1567, and amendments thereto;*

39 (4) *"conviction" includes: (A) Entering into a diversion agreement in*
40 *lieu of further criminal proceedings on a complaint alleging a violation of*
41 *a crime described in subsection (p)(3); (B) conviction of a violation of an*
42 *ordinance of a city in this state, a resolution of a county in this state or*
43 *any law of another state which would constitute a crime described in*

1 subsection (p)(2) or (p)(3); and (C) receiving punishment under the
2 uniform code of military justice or Kansas code of military justice for an
3 act which was committed on a military reservation and which would
4 constitute a crime described in subsection (p)(2) or (p)(3) if committed off
5 a military reservation in this state;

6 (5) "conviction" does not include: (A) Any conviction, including any
7 conviction as defined in subsection (p)(4), for a crime described in
8 subsection (p)(2) or (p)(3) committed when the offender was under 18
9 years of age; and (B) any adjudications as a juvenile offender because of
10 an act which if committed by an adult would constitute a crime described
11 in subsection (p)(2) or (p)(3);

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

14 (7) multiple convictions of any crime described in subsection (p)(2)
15 or (p)(3) arising from the same arrest shall only be counted as one
16 conviction.

17 ~~(g)~~ (q) For the purpose of this section;

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

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

24 (3) "drug" includes toxic vapors as such term is defined in K.S.A.
25 2010 Supp. 21-36a12, and amendments thereto.

26 Sec. 10. K.S.A. 2010 Supp. 8-1001 is hereby amended to read as
27 follows: 8-1001. (a) Any person who operates or attempts to operate a
28 vehicle within this state is deemed to have given consent, subject to the
29 provisions of this act, to submit to one or more tests of the person's blood,
30 breath, urine or other bodily substance to determine the presence of
31 alcohol or drugs. The testing deemed consented to herein shall include all
32 quantitative and qualitative tests for alcohol and drugs. A person who is
33 dead or unconscious shall be deemed not to have withdrawn the person's
34 consent to such test or tests, which shall be administered in the manner
35 provided by this section.

36 (b) A law enforcement officer shall request a person to submit to a
37 test or tests deemed consented to under subsection (a): (1) If the officer has
38 reasonable grounds to believe the person was operating or attempting to
39 operate a vehicle while under the influence of alcohol or drugs, or both, or
40 to believe that the person was driving a commercial motor vehicle, as
41 defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol
42 or other drugs in such person's system, or was under the age of 21 years
43 while having alcohol or other drugs in such person's system; and one of the

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

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

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

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

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

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

41 (e) When so directed by a law enforcement officer through a written
42 statement, the medical professional shall withdraw the sample as soon as
43 practical and shall deliver the sample to the law enforcement officer or

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

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

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

25 (h) A law enforcement officer may request a urine sample upon
26 meeting the requirements of paragraph (1) of subsection (b) and shall
27 request a urine sample upon meeting the requirements of paragraph (2) of
28 subsection (b).

29 (i) If a law enforcement officer requests a person to submit to a test of
30 urine under this section, the collection of the urine sample shall be
31 supervised by ~~persons of the same sex as the person being tested and:~~ (1)
32 *A person licensed to practice medicine and surgery, licensed as a*
33 *physician's assistant, or a person acting under the direction of any such*
34 *licensed person;* (2) *a registered nurse or a licensed practical nurse;* or
35 (3) *a law enforcement officer of the same sex as the person being tested.*
36 *The collection of the urine sample shall be conducted out of the view of*
37 *any person other than the persons supervising the collection of the sample*
38 *and the person being tested, unless the right to privacy is waived by the*
39 *person being tested. When possible, the supervising person shall be a law*
40 *enforcement officer. The results of qualitative testing for drug presence*
41 *shall be admissible in evidence and questions of accuracy or reliability*
42 *shall go to the weight rather than the admissibility of the evidence. If the*
43 *person is medically unable to provide a urine sample in such manner due*

1 to the injuries or treatment of the injuries, the same authorization and
2 procedure as used for the collection of blood in subsections (d) and (e)
3 shall apply to the collection of a urine sample.

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

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

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

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

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

22 (5) if the person submits to and completes the test or tests and the test
23 results show for the first occurrence:

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

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

28 (6) if the person submits to and completes the test or tests and the test
29 results show an alcohol concentration of .08 or greater, the person's driving
30 privileges will be suspended for one year for the second, third or fourth
31 occurrence and permanently revoked for a fifth or subsequent occurrence;

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

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

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

43 (10) after the completion of the testing, the person has the right to

1 consult with an attorney and may secure additional testing, which, if
2 desired, should be done as soon as possible and is customarily available
3 from medical care facilities willing to conduct such testing.

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

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

25 (n) The person's refusal shall be admissible in evidence against the
26 person at any trial on a charge arising out of the alleged operation or
27 attempted operation of a vehicle while under the influence of alcohol or
28 drugs, or both.

29 (o) If a law enforcement officer had reasonable grounds to believe the
30 person had been driving a commercial motor vehicle, as defined in K.S.A.
31 8-2,128, and amendments thereto, and the test results show a blood or
32 breath alcohol concentration of .04 or greater, the person shall be
33 disqualified from driving a commercial motor vehicle, pursuant to K.S.A.
34 8-2,142, and amendments thereto. If a law enforcement officer had
35 reasonable grounds to believe the person had been driving a commercial
36 motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, and
37 the test results show a blood or breath alcohol concentration of .08 or
38 greater, or the person refuses a test, the person's driving privileges shall be
39 subject to suspension, or suspension and restriction, pursuant to this
40 section, in addition to being disqualified from driving a commercial motor
41 vehicle pursuant to K.S.A. 8-2,142, and amendments thereto.

42 (p) An officer shall have probable cause to believe that the person
43 operated a vehicle while under the influence of alcohol or drugs, or both, if

1 the vehicle was operated by such person in such a manner as to have
2 caused the death of or serious injury to a person. In such event, such test or
3 tests may be made pursuant to a search warrant issued under the authority
4 of K.S.A. 22-2502, and amendments thereto, or without a search warrant
5 under the authority of K.S.A. 22-2501, and amendments thereto.

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

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

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

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

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

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

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

25 (1) Disabling a person from the physical capacity to remove
26 themselves from the scene;

27 (2) renders a person unconscious;

28 (3) the immediate loss of or absence of the normal use of at least one
29 limb;

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

31 (5) otherwise indicates the person may die or be permanently disabled
32 by the injury.

33 Sec. 11. K.S.A. 8-1008 is hereby amended to read as follows: 8-1008.

34 *(a) As used in this section, "licensed provider" means a professional*
35 *licensed by the behavioral sciences regulatory board to diagnose and treat*
36 *mental disorders at the independent level, or a professional licensed by the*
37 *behavioral sciences regulatory board under the supervision of a*
38 *professional licensed to diagnose and treat mental disorders at the*
39 *independent level, who can demonstrate an expertise in the field of*
40 *addictions through addictions licensure, professional credential or*
41 *continuing education.*

42 ~~(a) (b) Community-based alcohol and drug safety action programs~~
43 ~~certified in accordance with subsection (b) A licensed provider shall~~

1 provide:

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

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

13 (3) (2) alcohol and drug evaluations of persons whom the prosecutor
14 considers for eligibility or finds eligible to enter a diversion agreement in
15 lieu of further criminal proceedings on a complaint alleging a violation of
16 K.S.A. 8-1567, and amendments thereto, or the ordinance of a city *or*
17 *resolution of a county* in this state which prohibits the acts prohibited by
18 that statute;

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

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

27 (b) (c) ~~The presentence alcohol and drug evaluation shall be~~
28 ~~conducted by a community-based alcohol and drug safety action program~~
29 ~~certified in accordance with the provisions of this subsection to provide~~
30 ~~evaluation and supervision services as described in subsections (c) and (d).~~
31 ~~A community-based alcohol and drug safety action program shall be~~
32 ~~certified either by the chief judge of the judicial district to be served by the~~
33 ~~program or by the secretary of social and rehabilitation services for~~
34 ~~judicial districts in which the chief judge declines to certify a program. In~~
35 ~~addition to any qualifications established by the secretary, the chief judge~~
36 ~~may establish qualifications for the certification of programs, which~~
37 ~~qualifications may include requirements for training, education and~~
38 ~~certification of personnel; supervision and monitoring of clients; fee-~~
39 ~~reimbursement procedures; handling of conflicts of interest; delivery of~~
40 ~~services to clients unable to pay; and other matters relating to quality and~~
41 ~~delivery of services by the program. In establishing the qualifications for~~
42 ~~programs, the chief judge or the secretary shall give preference to those~~
43 ~~programs which have had practical experience prior to July 1, 1982, in~~

1 diagnosis and referral in alcohol and drug abuse. Certification of a
 2 program by the chief judge shall be done with consultation and approval of
 3 a majority of the judges of the district court of the district and municipal
 4 judges of cities lying in whole or in part within the district. If within 60
 5 days after the effective date of this act the chief judge declines to certify
 6 any program for the judicial district, the judge shall notify the secretary of
 7 social and rehabilitation services, and the secretary of social and
 8 rehabilitation services shall certify a community-based alcohol and drug
 9 safety action program for that judicial district. The certification shall be for
 10 a four-year period. Recertification of a program or certification of a
 11 different program shall be by the chief judge, with consultation and
 12 approval of a majority of the judges of the district court of the district and
 13 municipal judges of cities lying in whole or in part within the district. If
 14 upon expiration of certification of a program there will be no certified
 15 program for the district and the chief judge declines to recertify or certify
 16 any program in the district, the judge shall notify the secretary of social
 17 and rehabilitation services, at least six months prior to the expiration of
 18 certification, that the judge declines to recertify or certify a program under
 19 this subsection. Upon receipt of the notice and prior to the expiration of
 20 certification, the secretary shall recertify or certify a community-based
 21 alcohol and drug safety action program for the judicial district for the next
 22 four-year period. To be eligible for certification under this subsection, the
 23 chief judge or the secretary of social and rehabilitation services shall
 24 determine that a community-based alcohol and drug safety action program
 25 meets the qualifications established by the judge or secretary and is *A*
 26 *licensed provider shall be* capable of providing, within the judicial district:
 27 (1) The evaluations, supervision and monitoring required under subsection
 28 ~~(a)~~ (b); (2) the alcohol and drug evaluation report required under
 29 subsection ~~(c)~~ or (d) or (e); (3) the follow-up duties specified under
 30 subsection ~~(c)~~ or (d) or (e) for persons who prepare the alcohol and drug
 31 evaluation report; and (4) any other functions and duties specified by law.
 32 ~~Community-based alcohol and drug safety action programs~~ *Each judicial*
 33 *district shall be provided with a list of licensed providers, and such list*
 34 *shall be used when selecting a licensed provider to be used as described in*
 35 *subsections (d) and (e). Any provider performing services in any judicial*
 36 *district under this section prior to the effective date of this act July 1, 2011,*
 37 *may continue to perform those services until a community-based alcohol*
 38 *and drug safety action program is certified for that judicial district January*
 39 *1, 2012.*

40 ~~(e)~~ (d) ~~A presentence~~ (1) *Except as provided further, prior to*
 41 *sentencing, an alcohol and drug evaluation shall be conducted on any*
 42 *person who is convicted of a violation of K.S.A. 8-2,144 or 8-1567, and*
 43 *amendments thereto, or the ordinance of a city or resolution of a county in*

1 this state which prohibits the acts prohibited by ~~that statute~~ *those statutes*.
2 The ~~presentence~~ alcohol and drug evaluation report shall be made
3 available to and shall be considered by the court prior to sentencing. ~~The~~
4 ~~presentence alcohol and drug evaluation report shall contain a history of~~
5 ~~the defendant's prior traffic record, characteristics and alcohol or drug~~
6 ~~problems, or both, and a recommendation concerning the amenability of~~
7 ~~the defendant to education and rehabilitation. The presentence alcohol and~~
8 ~~drug evaluation report shall include a recommendation concerning the~~
9 ~~alcohol and drug driving safety education and treatment for the defendant.~~
10 ~~The presentence alcohol and drug evaluation report shall be prepared by a~~
11 ~~program which has demonstrated practical experience in the diagnosis of~~
12 ~~alcohol and drug abuse. The duties of persons who prepare the presentence~~
13 ~~alcohol and drug evaluation report may also include appearing at~~
14 ~~sentencing and probation hearings in accordance with the orders of the~~
15 ~~court, monitoring defendants in the treatment programs, notifying the~~
16 ~~probation department and the court of any defendant failing to meet the~~
17 ~~conditions of probation or referrals to treatment, appearing at revocation~~
18 ~~hearings as may be required and providing assistance and data reporting~~
19 ~~and program evaluation. The court shall order that cost of any alcohol and~~
20 ~~drug education, rehabilitation and treatment programs~~ *evaluation* for any
21 person shall be paid by such person, and such costs shall include, but not
22 be limited to, the assessments required by subsection (e). If financial
23 obligations are not met or cannot be met, the sentencing court shall be
24 notified for the purpose of collection or review and further action on the
25 defendant's sentence *to the provider at the time of service, and shall not*
26 *exceed \$150.*

27 (2) *The provisions of this subsection shall not apply to any person*
28 *being sentenced for a violation of subsection (b)(1)(C) of K.S.A. 8-2,144,*
29 *and amendments thereto, or a violation of subsection (b)(1)(C), (b)(1)(D),*
30 *(b)(1)(E) or (b)(1)(F) of K.S.A. 8-1567, and amendments thereto.*

31 (d) (e) An alcohol and drug evaluation shall be conducted on any
32 person whom the prosecutor considers for eligibility or finds eligible to
33 enter a diversion agreement in lieu of further criminal proceedings on a
34 complaint alleging a violation of K.S.A. 8-1567, and amendments thereto,
35 or the ordinance of a city *or resolution of a county* in this state which
36 prohibits the acts prohibited by that statute. The alcohol and drug
37 evaluation report shall be made available to the prosecuting attorney and
38 shall be considered by the prosecuting attorney. ~~The alcohol and drug~~
39 ~~evaluation report shall contain a history of the person's prior traffic record,~~
40 ~~characteristics and alcohol or drug problems, or both, and a~~
41 ~~recommendation concerning the amenability of the person to education~~
42 ~~and rehabilitation. The alcohol and drug evaluation report shall include a~~
43 ~~recommendation concerning the alcohol and drug driving safety education~~

1 and treatment for the person. The alcohol and drug evaluation report shall
2 be prepared by a program which has demonstrated practical experience in
3 the diagnosis of alcohol and drug abuse. The duties of persons who
4 prepare the alcohol and drug evaluation report may also include
5 monitoring persons in the treatment programs, notifying the prosecutor
6 and the court of any person failing to meet the conditions of diversion or
7 referrals to treatment, and providing assistance and data reporting and
8 program evaluation. The cost of any alcohol and drug education,
9 rehabilitation and treatment programs *evaluation* for any person shall be
10 paid by such person, and such costs shall include, but not be limited to, the
11 assessments required by subsection (e) *to the provider at the time of*
12 *service, and shall not exceed \$150.*

13 (e) In addition to any fines, fees, penalties or costs levied against a
14 person who is convicted of a violation of K.S.A. 8-1567, and amendments
15 thereto, or the ordinance of a city in this state which prohibits the acts
16 prohibited by that statute, or who enters a diversion agreement in lieu of
17 further criminal proceedings on a complaint alleging a violation of that
18 statute or such an ordinance, \$150 shall be assessed against the person by
19 the sentencing court or under the diversion agreement. The \$150
20 assessment may be waived by the court, in whole or in part, or, in the case
21 of diversion of criminal proceedings, by the prosecuting attorney, if the
22 court or prosecuting attorney finds that the defendant is an indigent person.
23 Except as otherwise provided in this subsection, the clerk of the court shall
24 deposit all assessments received under this section in the alcohol and drug
25 safety action fund of the court, which fund shall be subject to the
26 administration of the judge having administrative authority over that court.
27 If the secretary of social and rehabilitation services certifies the
28 community-based alcohol and drug safety action program for the judicial
29 district in which the court is located, the clerk of the court shall remit,
30 during the four-year period for which the program is certified, 15% of all
31 assessments received under this section to the secretary of social and
32 rehabilitation services. Moneys credited to the alcohol and drug safety
33 action fund shall be expended by the court, pursuant to vouchers signed by
34 the judge having administrative authority over that court, only for costs of
35 the services specified by subsection (a) or otherwise required or authorized
36 by law and provided by community-based alcohol and drug safety action
37 programs, except that not more than 10% of the money credited to the
38 fund may be expended to cover the expenses of the court involved in
39 administering the provisions of this section. In the provision of these
40 services the court shall contract as may be necessary to carry out the
41 provisions of this section. The district or municipal judge having
42 administrative authority over that court shall compile a report and send
43 such report to the office of the state judicial administrator on or before

1 January 20 of each year, beginning January 20, 1991. Such report shall
2 include, but not be limited to:

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

5 (2) ~~the assessments deposited into the fund during the 12-month~~
6 ~~period ending the preceding December 31; and~~

7 (3) ~~the dollar amounts expended from the fund during the 12-month~~
8 ~~period ending the preceding December 31.~~

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

12 (f) ~~The secretary of social and rehabilitation services shall remit all~~
13 ~~moneys received by the secretary under this section to the state treasurer in~~
14 ~~accordance with the provisions of K.S.A. 75-4215, and amendments~~
15 ~~thereto. Upon receipt of each such remittance, the state treasurer shall~~
16 ~~deposit the entire amount in the state treasury to the credit of the~~
17 ~~certification of community-based alcohol and drug safety action programs~~
18 ~~fee fund, which is hereby created. All expenditures from such fund shall be~~
19 ~~made in accordance with appropriation acts upon warrants issued pursuant~~
20 ~~to vouchers approved by the secretary of social and rehabilitation services~~
21 ~~or a person designated by the secretary.~~

22 *(f) All alcohol and drug evaluations conducted pursuant to this section*
23 *shall utilize a standardized substance abuse evaluation approved by the*
24 *secretary of social and rehabilitation services and be submitted in a*
25 *format approved by the secretary of social and rehabilitation services. On*
26 *or before July 1, 2012, the secretary of social and rehabilitation services*
27 *shall promulgate rules and regulations to implement this section.*

28 Sec. 12. K.S.A. 8-1009 is hereby amended to read as follows: 8-1009.

29 (a) Upon the filing of a first complaint, indictment or information alleging
30 a person has violated K.S.A. 8-1567, and amendments thereto, ~~when the~~
31 ~~acts prohibited by K.S.A. 8-1567, and amendments thereto, occur~~
32 ~~concurrently with any such alleged violation, or a county resolution which~~
33 ~~prohibits the acts prohibited by that statute, and prior to conviction~~
34 ~~thereof, the district attorney or county attorney shall determine whether the~~
35 ~~defendant shall be allowed to enter into a diversion agreement in~~
36 ~~accordance with this act.~~

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

43 Sec. 13. K.S.A. 2010 Supp. 8-1012 is hereby amended to read as

1 follows: 8-1012. (a) Any person who operates or attempts to operate a
2 vehicle within this state is deemed to have given consent to submit to a
3 preliminary screening test of the person's breath *or saliva, or both*, subject
4 to the provisions set out in subsection (b).

5 (b) A law enforcement officer may request a person who is operating
6 or attempting to operate a vehicle within this state to submit to a
7 preliminary screening test of the person's breath ~~to determine the alcohol~~
8 ~~concentration of the person's breath~~ *or saliva, or both*, if the officer has
9 reasonable suspicion to believe the person has been operating or
10 attempting to operate a vehicle while under the influence of alcohol or
11 drugs or both alcohol and drugs.

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

19 (d) Refusal to take and complete the test as requested is a traffic
20 infraction. If the person submits to the test, the results shall be used for the
21 purpose of assisting law enforcement officers in determining whether an
22 arrest should be made and whether to request the tests authorized by
23 K.S.A. 8-1001, and amendments thereto. A law enforcement officer may
24 arrest a person based in whole or in part upon the results of a preliminary
25 screening test. Such results shall not be admissible in any civil or criminal
26 action concerning the operation of or attempted operation of a vehicle
27 except to aid the court or hearing officer in determining a challenge to the
28 validity of the arrest or the validity of the request to submit to a test
29 pursuant to K.S.A. 8-1001, and amendments thereto. Following the
30 preliminary screening test, additional tests may be requested pursuant to
31 K.S.A. 8-1001, and amendments thereto.

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

36 Sec. 14. K.S.A. 2010 Supp. 8-1013 is hereby amended to read as
37 follows: 8-1013. As used in K.S.A. 8-1001 through 8-1010, 8-1011, 8-
38 1012, 8-1014, 8-1015, 8-1016, 8-1017 and 8-1018, and amendments
39 thereto, and this section:

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

42 (b) (1) "Alcohol or drug-related conviction" means any of the
43 following: ~~(A) Conviction of vehicular battery or aggravated vehicular~~

1 homicide, if the crime is committed while committing a violation of
2 K.S.A. 8-1567 and amendments thereto or the ordinance of a city or
3 resolution of a county in this state which prohibits any acts prohibited by
4 that statute, or conviction of a violation of K.S.A. 8-1567 and amendments
5 thereto; (B) conviction of a violation of a law of another state which would
6 constitute a crime described in subsection (b)(1)(A) if committed in this
7 state; (C) conviction of a violation of an ordinance of a city in this state or
8 a resolution of a county in this state which would constitute a crime
9 described in subsection (b)(1)(A), whether or not such conviction is in a
10 court of record; or (D) conviction of an act which was committed on a
11 military reservation and which would constitute a violation of K.S.A. 8-
12 1567, and amendments thereto, or would constitute a crime described in
13 subsection (b)(1)(A) if committed off a military reservation in this state.

14 (2) For the purpose of determining whether an occurrence is a first,
15 second or subsequent occurrence: (A) "Alcohol or drug-related conviction"
16 also includes entering into a diversion agreement in lieu of further criminal
17 proceedings on a complaint alleging commission of a crime described in
18 subsection (b)(1), including a diversion agreement entered into prior to the
19 effective date of this act; and (B) it is irrelevant whether an offense
20 occurred before or after conviction or diversion for a previous offense. (A)
21 K.S.A. 8-2,144, and amendments thereto; (B) K.S.A. 8-1567, and
22 amendments thereto; (C) K.S.A. 32-1131, and amendments thereto; (D)
23 subsection (a)(3) of section 40 of chapter 136 of the 2010 Session Laws of
24 Kansas, and amendments thereto; and (E) aggravated vehicular homicide,
25 K.S.A. 21-3405a, prior to its repeal, or vehicular battery, K.S.A. 21-3405b,
26 prior to its repeal, if the crime was committed while committing a
27 violation of K.S.A. 8-1567, and amendments thereto.

28 (2) "Alcohol or drug-related conviction" also means: (A) Entering
29 into a diversion agreement in lieu of further criminal proceedings on a
30 complaint alleging a violation of a crime described in subsection (b)(1);
31 (B) conviction of a violation of a law of another state, or an ordinance of a
32 city in this state or of another state, or a resolution of a county in this state
33 or of another state, which would constitute a crime described in
34 subsection (b)(1); and (C) receiving punishment under the uniform code of
35 military justice or Kansas code of military justice for an act which was
36 committed on a military reservation and which would constitute a crime
37 described in subsection (b)(1) if committed off a military reservation in
38 this state.

39 (3) It is irrelevant whether an offense occurred before or after
40 conviction for a previous offense.

41 (c) "Division" means the division of vehicles of the department of
42 revenue.

43 (d) "Ignition interlock device" means a device which uses a breath

1 analysis mechanism to prevent a person from operating a motor vehicle if
2 such person has consumed an alcoholic beverage.

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

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

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

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

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

22 (j) "Law enforcement officer" has the meaning provided by ~~K.S.A.~~
23 ~~21-3110~~ *section 11 of chapter 136 of the 2010 Session Laws of Kansas*,
24 and amendments thereto, and includes any person authorized by law to
25 make an arrest on a military reservation for an act which would constitute
26 a violation of K.S.A. 8-1567, and amendments thereto, if committed off a
27 military reservation in this state.

28 Sec. 15. K.S.A. 2010 Supp. 8-1014 is hereby amended to read as
29 follows: 8-1014. (a) Except as provided by subsection (e) and K.S.A. 8-
30 2,142, and amendments thereto, if a person refuses a test, the division,
31 pursuant to K.S.A. 8-1002, and amendments thereto, shall:

32 (1) On the person's first occurrence, suspend the person's driving
33 privileges for one year and at the end of the suspension, restrict the
34 person's driving privileges for one year to driving only a motor vehicle
35 equipped with an ignition interlock device;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 ~~(4) Whenever a person's driving privileges have been suspended for~~
13 ~~one year on the second occurrence of an alcohol or drug-related conviction~~
14 ~~in this state as provided in subsection (b)(1), after 45 days of such~~
15 ~~suspension, such person may apply to the division for such person's~~
16 ~~driving privileges to be restricted for the remainder of the one-year period~~
17 ~~to driving only a motor vehicle equipped with an ignition interlock and~~
18 ~~only for the purposes of getting to and from work, school, or an alcohol~~
19 ~~treatment program or to go to and from the ignition interlock provider for~~
20 ~~maintenance and downloading of data from the device. If such person~~
21 ~~violates the restrictions, such person's driving privileges shall be~~
22 ~~suspended for an additional year, in addition to any term of restriction as~~
23 ~~provided in subsection (b)(1).~~

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

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

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

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

40 ~~(e) (d) (1)~~ Except as provided in K.S.A. 8-2,142, and amendments
41 thereto, if a person's driving privileges are subject to suspension pursuant
42 to this section for a test refusal, test failure or alcohol or drug-related
43 conviction arising from the same arrest, the period of such suspension

1 shall not exceed the longest applicable period authorized by subsection (a),
2 (b) or (c), and such suspension periods shall not be added together or
3 otherwise imposed consecutively. In addition, in determining the period of
4 such suspension as authorized by subsection (a), (b) or (c), such person
5 shall receive credit for any period of time for which such person's driving
6 privileges were suspended while awaiting any hearing or final order
7 authorized by this act.

8 (2) If a person's driving privileges are subject to restriction pursuant
9 to this section for a *test refusal*, test failure or alcohol or drug-related
10 conviction arising from the same arrest, the restriction periods shall not be
11 added together or otherwise imposed consecutively. In addition, in
12 determining the period of restriction, the person shall receive credit for any
13 period of suspension imposed for a test refusal arising from the same
14 arrest.

15 (f) (e) If the division has taken action under subsection (a) for a test
16 refusal or under subsection (b) or (c) for a test failure and such action is
17 stayed pursuant to K.S.A. 8-259, and amendments thereto, or if temporary
18 driving privileges are issued pursuant to K.S.A. 8-1020, and amendments
19 thereto, the stay or temporary driving privileges shall not prevent the
20 division from taking the action required by subsection (b) or (c) for an
21 alcohol or drug-related conviction.

22 (g) ~~Upon restricting a person's driving privileges pursuant to this~~
23 ~~section, the division shall issue a copy of the order imposing the~~
24 ~~restrictions which is required to be carried by the person at any time the~~
25 ~~person is operating a motor vehicle on the highways of this state.~~

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

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

41 (g) (1) *If a person's driving privileges are suspended or restricted*
42 *pursuant to this section and such person is incarcerated with the*
43 *department of corrections for an alcohol or drug-related conviction, any*

1 *period of incarceration shall not count toward the person's suspension or*
2 *restriction period. Any period of time the person's driving privileges are*
3 *suspended or restricted before incarceration begins shall be counted. For*
4 *the purpose of this section, the date of release from incarceration shall be*
5 *deemed the date the suspension or restriction period resumes.*

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

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

13 Sec. 16. K.S.A. 2010 Supp. 8-1015 is hereby amended to read as
14 follows: 8-1015. ~~(a) When subsection (b)(1) of K.S.A. 8-1014, and~~
15 ~~amendments thereto, requires or authorizes the division to place~~
16 ~~restrictions on a person's driving privileges, the division shall restrict the~~
17 ~~person's driving privileges to driving only under the circumstances~~
18 ~~provided by subsections (a)(1), (2), (3) and (4) of K.S.A. 8-292 and~~
19 ~~amendments thereto.~~

20 ~~(b) In lieu of the restrictions set out in subsection (a), the division,~~
21 ~~upon request of the person whose driving privileges are to be restricted,~~
22 ~~may restrict the person's driving privileges to driving only a motor vehicle~~
23 ~~equipped with an ignition interlock device, approved by the division and~~
24 ~~obtained, installed and maintained at the person's expense. Prior to issuing~~
25 ~~such restricted license, the division shall receive proof of the installation of~~
26 ~~such device.~~

27 (a) (1) *Whenever a person's driving privileges have been suspended*
28 *for one year as provided in subsection (a), (b) or (c) of K.S.A. 8-1014, and*
29 *amendments thereto, after 45 days of such suspension, such person may*
30 *apply to the division for such person's driving privileges to be restricted*
31 *for the remainder of the one-year suspension period to driving only a*
32 *motor vehicle equipped with an ignition interlock and only for the*
33 *purposes of getting to and from: Work, school or an alcohol treatment*
34 *program; and the ignition interlock provider for maintenance and*
35 *downloading of data from the device.*

36 (2) *The division shall approve the request for such restricted license*
37 *unless such person's driving privileges have been restricted, suspended,*
38 *revoked or disqualified pursuant to another action by the division or a*
39 *court. If the request is approved, upon receipt of proof of the installation of*
40 *such device, the division shall issue a copy of the order imposing such*
41 *restrictions on the person's driving privileges and such order shall be*
42 *carried by the person at any time the person is operating a motor vehicle*
43 *on the highways of this state. Except as provided in K.S.A. 8-1017, and*

1 *amendments thereto, if such person is convicted of a violation of the*
2 *restrictions, such person's driving privileges shall be suspended for an*
3 *additional year, in addition to any term of suspension or restriction as*
4 *provided in subsection (a), (b) or (c) of K.S.A. 8-1014, and amendments*
5 *thereto.*

6 *(b) (1) When a person has completed the suspension pursuant to*
7 *subsection (b)(1)(A) of K.S.A. 8-1014, and amendments thereto, the*
8 *division shall restrict the person's driving privileges pursuant to*
9 *subsection (b)(1)(A) of K.S.A. 8-1014, and amendments thereto, to driving*
10 *only under the circumstances provided by subsections (a)(1), (2), (3) and*
11 *(4) of K.S.A. 8-292, and amendments thereto. The division shall issue a*
12 *copy of the order imposing such restrictions on the person's driving*
13 *privileges and such order shall be carried by the person at any time the*
14 *person is operating a motor vehicle on the highways of this state.*

15 *(2) In lieu of the restrictions set out in subsection (b)(1), the division,*
16 *upon request of the person whose driving privileges are to be restricted,*
17 *may restrict the person's driving privileges pursuant to subsection (b)(1)*
18 *(A) of K.S.A. 8-1014, and amendments thereto, to driving only a motor*
19 *vehicle equipped with an ignition interlock. If the request is approved,*
20 *upon receipt of proof of the installation of such device, the division shall*
21 *issue a copy of the order imposing such restrictions on the person's*
22 *driving privileges and such order shall be carried by the person at any*
23 *time the person is operating a motor vehicle on the highways of this state.*

24 *(3) Except as provided in K.S.A. 8-1017, and amendments thereto, if*
25 *such person is convicted of a violation of the restrictions, such person's*
26 *driving privileges shall be suspended for an additional year, in addition to*
27 *any term of suspension or restriction as provided in subsection (b)(1)(A)*
28 *of K.S.A. 8-1014, and amendments thereto.*

29 *(c) (1) Any person whose driving privileges have been restricted as*
30 *provided in subsection (a) or (b) shall carry documentation, as provided in*
31 *rules and regulations promulgated by the division, of scheduled events the*
32 *person is allowed to drive to and from under such restrictions at any time*
33 *the person is operating a motor vehicle on the highways of this state. The*
34 *division shall promulgate such rules and regulations on or before July 1,*
35 *2012.*

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

42 *(e) (d) Except as provided in subsection (b), when a person has*
43 *completed the suspension pursuant to subsection (a), (b) or (c) of K.S.A.*

1 8-1014, and amendments thereto, the division shall restrict the person's
2 driving privileges pursuant to subsection (a), (b) or (c) of K.S.A. 8-1014,
3 and amendments thereto, to driving only a motor vehicle equipped with an
4 ignition interlock device, ~~approved by the division and maintained at the~~
5 ~~person's expense. Proof of the installation of such device, for the entire~~
6 ~~restriction period, shall be provided to the division before the person's~~
7 ~~driving privileges are fully reinstated. Upon restricting a person's driving~~
8 ~~privileges pursuant to this subsection, the division shall issue a copy of the~~
9 ~~order imposing the restrictions which is required to be carried by the~~
10 ~~person at any time the person is operating a motor vehicle on the~~
11 ~~highways of this state.~~

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

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

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

33 (h) *Any person who has had the person's driving privileges suspended*
34 *or restricted pursuant to subsection (a), (b) or (c) of K.S.A. 8-1014 prior*
35 *to the amendments by this act, may apply to the division to have the*
36 *suspension and restriction penalties modified in conformity with the*
37 *provisions of subsection (a), (b) or (c) of K.S.A. 8-1014, and amendments*
38 *thereto. The division shall assess an application fee of \$59 for a person to*
39 *apply to modify the suspension and restriction penalties previously issued.*
40 *The division shall remit all application fees to the state treasurer in*
41 *accordance with the provisions of K.S.A. 75-4215, and amendments*
42 *thereto. Upon receipt of such remittance, the state treasurer shall deposit*
43 *the entire amount in the state treasury and shall credit such moneys to the*

1 *division of vehicles operating fund. The application fee established in this*
2 *section shall be the only fee collected or moneys in the nature of a fee*
3 *collected for such application. Such fee shall only be established by an act*
4 *of the legislature and no other authority is established by law or otherwise*
5 *to collect a fee. The division shall modify the suspension and restriction*
6 *penalties, unless such person's driving privileges have been restricted,*
7 *suspended, revoked or disqualified pursuant to another action by the*
8 *division or a court.*

9 Sec. 17. K.S.A. 8-1016 is hereby amended to read as follows: 8-1016.

10 (a) *On or before July 1, 2012, the secretary of revenue may shall adopt*
11 *rules and regulations for:*

12 (1) *The approval by the division of models and classes of ignition*
13 *interlock devices suitable for use by persons whose driving privileges have*
14 *been restricted to driving a vehicle equipped with such a device. Such*
15 *rules and regulations shall require that any ignition interlock device*
16 *approved by the division shall be capable of capturing a photographic*
17 *image of the person using the device;*

18 (2) *the calibration and maintenance of such devices, which shall be*
19 *the responsibility of the manufacturer. Such rules and regulations shall*
20 *require that the manufacturer or the manufacturer's representatives*
21 *calibrate and maintain the devices at intervals not to exceed 60 days.*
22 *Calibration and maintenance shall include, but not be limited to, physical*
23 *inspection of the device, the vehicle and wiring of the device to the vehicle*
24 *for signs of tampering, calibration of the device and downloading of all*
25 *data contained within the device's memory and reporting of any violation*
26 *or noncompliance to the division; and*

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

31 (4) *requiring that each manufacturer provide a credit of at least 2%*
32 *of the gross program revenues in the state as a credit for those persons*
33 *who have otherwise qualified to obtain an ignition interlock restricted*
34 *license under this act who are indigent as evidenced by qualification and*
35 *eligibility for the federal supplemental assistance nutrition program. Such*
36 *rules and regulations shall require that the manufacturer or the*
37 *manufacturer's representatives inform persons of this credit and how to*
38 *qualify for assistance in obtaining an ignition interlock device.*

39 ~~In adopting rules and regulations for approval of ignition interlock~~
40 ~~devices under this section, the secretary of revenue shall require that the~~
41 ~~manufacturer or the manufacturer's representatives calibrate and maintain~~
42 ~~the devices at intervals not to exceed 60 days. Calibration and maintenance~~
43 ~~shall include but not be limited to physical inspection of the device, the~~

1 ~~vehicle and wiring of the device to the vehicle for signs of tampering,~~
 2 ~~calibration of the device and downloading of all data contained within the~~
 3 ~~device's memory and reporting of any violation or noncompliance to the~~
 4 ~~division.~~

5 ~~(4)~~ *(b)* On or before July 1, 2012, the division shall adopt by rules
 6 and regulations:

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

11 *(2)* the reporting requirements of the approved manufacturer to the
 12 division relating to the person's proper use and maintenance of a certified
 13 ignition interlock device; *and*

14 *(3)* *the requirements for notices to be sent by ignition interlock*
 15 *providers to the division when a person is required to have an ignition*
 16 *interlock device installed, which shall include, but not be limited to, a*
 17 *requirement that the notice be signed by the person required to have the*
 18 *ignition interlock device acknowledging that: (A) Operation of any vehicle*
 19 *that is not equipped with an ignition interlock device may subject the*
 20 *person to criminal and civil penalties; (B) tampering or interfering with*
 21 *the proper and intended operation of an ignition interlock device may*
 22 *subject the person to further civil penalties; and (C) the ignition interlock*
 23 *device shall be maintained at the person's expense, up-to-date records*
 24 *shall be kept in the vehicle showing required service and calibration and*
 25 *such records shall be provided upon request.*

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

31 ~~(b)~~ *(c)* If the division approves an ignition interlock device in
 32 accordance with rules and regulations adopted under this section, the
 33 division shall give written notice of the approval to the manufacturer of the
 34 device. Such notice shall be admissible in any civil or criminal proceeding
 35 in this state.

36 ~~(e)~~ *(d)* The manufacturer of an ignition interlock device shall
 37 reimburse the division for any cost incurred in approving or disapproving
 38 such device under this section.

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

42 Sec. 18. K.S.A. 8-1017 is hereby amended to read as follows: 8-1017.

43 (a) no person shall:

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

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

8 (3) blow into *an ignition interlock device*, or start a motor vehicle
9 equipped with ~~an ignition interlock device for the purpose of such device~~,
10 providing an operable motor vehicle to a person whose driving privileges
11 have been restricted to driving a motor vehicle equipped with such device;
12 or

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

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

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

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

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

25 (2) *on a conviction of a violation of subsection (a)(3), the division*
26 *shall restrict the person's driving privileges for two years to driving only a*
27 *motor vehicle equipped with an ignition interlock and only in the course of*
28 *the person's employment and for the purposes of getting to and from:*
29 *Work, school or an alcohol treatment program; the ignition interlock*
30 *provider for maintenance and downloading of data from the device; and*
31 *court or court-ordered supervision; and*

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

35 Sec. 19. K.S.A. 2010 Supp. 8-1020 is hereby amended to read as
36 follows: 8-1020. (a) Any licensee served with an officer's certification and
37 notice of suspension pursuant to K.S.A. 8-1002, and amendments thereto,
38 may request an administrative hearing. Such request may be made either
39 by:

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

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

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

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

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

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

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

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

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

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

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

42 (f) At or prior to the time the notice of hearing is sent, the division
43 shall issue an order allowing the licensee or the licensee's attorney to

1 review any video or audio tape record made of the events upon which the
2 administrative action is based. Such review shall take place at a reasonable
3 time designated by the law enforcement agency and shall be made at the
4 location where the video or audio tape is kept. The licensee may obtain a
5 copy of any such video or audio tape upon request and upon payment of a
6 reasonable fee to the law enforcement agency, not to exceed \$25 per tape.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (D) the testing equipment used was reliable;

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

22 (F) the testing procedures used were reliable;

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

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

26 (i) At a hearing pursuant to this section, or upon court review of an
27 order entered at such a hearing, an affidavit of the custodian of records at
28 the Kansas department of health and environment stating that the breath
29 testing device was certified and the operator of such device was certified
30 on the date of the test shall be admissible into evidence in the same
31 manner and with the same force and effect as if the certifying officer or
32 employee of the Kansas department of health and environment had
33 testified in person. A certified operator of a breath testing device shall be
34 competent to testify regarding the proper procedures to be used in
35 conducting the test.

36 (j) At a hearing pursuant to this section, or upon court review of an
37 order entered at such a hearing, in which the report of blood test results
38 have been prepared by the Kansas bureau of investigation or other forensic
39 laboratory of a state or local law enforcement agency are to be introduced
40 as evidence, the report, or a copy of the report, of the findings of the
41 forensic examiner shall be admissible into evidence in the same manner
42 and with the same force and effect as if the forensic examiner who
43 performed such examination, analysis, comparison or identification and

1 prepared the report thereon had testified in person.

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

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

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

9 (2) the testimony of the licensee;

10 (3) the testimony of any certifying officer;

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

13 (5) any affidavits submitted from other witnesses;

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

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

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

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

43 (o) The licensee may file a petition for review of the hearing order

1 pursuant to K.S.A. 8-259, and amendments thereto. Upon filing a petition
2 for review, the licensee shall serve the secretary of revenue with a copy of
3 the petition and summons. Upon receipt of a copy of the petition for
4 review by the secretary, the temporary license issued pursuant to
5 subsection (b) shall be extended until the decision on the petition for
6 review is final.

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

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

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

30 (s) Upon motion by a party, or on the court's own motion, the court
31 may enter an order restricting the driving privileges allowed by the
32 temporary license provided for in K.S.A. 8-1002, and amendments thereto,
33 and in this section. The temporary license also shall be subject to
34 restriction, suspension, revocation or cancellation, as set out in K.S.A. 8-
35 1014, and amendments thereto, or for other cause.

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

42 (u) All notices affirming or canceling a suspension under this section,
43 all notices of a hearing held under this section and all issuances of

1 temporary driving privileges pursuant to this section shall be sent by first-
2 class mail and a United States post office certificate of mailing shall be
3 obtained therefor. All notices so mailed shall be deemed received three
4 days after mailing, except that this provision shall not apply to any
5 licensee where such application would result in a manifest injustice.

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

11 Sec. 20. K.S.A. 2010 Supp. 8-1022 is hereby amended to read as
12 follows: 8-1022. (a) It shall be unlawful for the owner of a motor vehicle
13 to allow a person to drive such vehicle when such owner knows or
14 reasonably should have known such person was driving in violation of
15 K.S.A. 8-1014, and amendments thereto.

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

28 Sec. 21. K.S.A. 2009 Supp. 8-1567, as amended by section 3 of
29 chapter 153 of the 2010 Session Laws of Kansas, is hereby amended to
30 read as follows: 8-1567. (a) ~~No person shall operate or attempt~~ *Driving*
31 *under the influence is operating or attempting to operate any vehicle*
32 *within this state while:*

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

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

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

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

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

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

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

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

11 ~~(d) Upon a first conviction of a violation of this section, a person
12 shall be guilty of a class B, nonperson misdemeanor and sentenced to not
13 less than 48 consecutive hours nor more than six months' imprisonment, or
14 in the court's discretion 100 hours of public service, and fined not less than
15 \$500 nor more than \$1,000. The person convicted must serve at least 48
16 consecutive hours' imprisonment or 100 hours of public service either
17 before or as a condition of any grant of probation or suspension, reduction
18 of sentence or parole.~~

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

23 ~~(e) On a second conviction of a violation of this section, a person
24 shall be guilty of a class A, nonperson misdemeanor and sentenced to not
25 less than 90 days nor more than one year's imprisonment and fined not less
26 than \$1,000 nor more than \$1,500. The person convicted must serve at
27 least five consecutive days' imprisonment before the person is granted
28 probation, suspension or reduction of sentence or parole or is otherwise
29 released. The five days' imprisonment mandated by this subsection may be
30 served in a work release program only after such person has served 48
31 consecutive hours' imprisonment, provided such work release program
32 requires such person to return to confinement at the end of each day in the
33 work release program. The court may place the person convicted under a
34 house arrest program pursuant to K.S.A. 21-4603b, and amendments
35 thereto, to serve the remainder of the minimum sentence only after such
36 person has served 48 consecutive hours' imprisonment.~~

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

41 ~~(f) (1) On the third conviction of a violation of this section, a person
42 shall be guilty of a nonperson felony and sentenced to not less than 90
43 days nor more than one year's imprisonment and fined \$2,500. The person~~

1 ~~convicted shall not be eligible for release on probation, suspension or~~
2 ~~reduction of sentence or parole until the person has served at least 90 days'~~
3 ~~imprisonment. The 90 days' imprisonment mandated by this paragraph~~
4 ~~may be served in a work release program only after such person has served~~
5 ~~72 consecutive hours' imprisonment, provided such work release program~~
6 ~~requires such person to return to confinement at the end of each day in the~~
7 ~~work release program.~~

8 ~~(2)~~

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

10 *(A) On a first conviction a class A, nonperson misdemeanor. The*
11 *person convicted shall be sentenced to not less than 30 days nor more than*
12 *one year's imprisonment and fined not less than \$500 nor more than*
13 *\$2,500. The person convicted shall serve at least 48 consecutive hours'*
14 *imprisonment or 100 hours of public service either before or as a*
15 *condition of any grant of probation or suspension, reduction of sentence*
16 *or parole;*

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 \$1,000 nor more than*
20 *\$2,500. 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*
23 *consecutive days' imprisonment mandated by this subsection may be*
24 *served by completing: (i) Six days in a work release program only after*
25 *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; or (ii) ten days under*
28 *a house arrest program pursuant to section 249 of chapter 136 of the 2010*
29 *Session Laws of Kansas, and amendments thereto, only after such person*
30 *has served 48 consecutive hours' imprisonment;*

31 *(C) on a third conviction a class A, nonperson misdemeanor, except*
32 *as provided in subsection (b)(1)(D). The person convicted shall be*
33 *sentenced to not less than 90 days nor more than one year's imprisonment*
34 *and fined \$2,500. The person convicted shall serve at least 10 consecutive*
35 *days' imprisonment before the person is granted probation, suspension or*
36 *reduction of sentence or parole or is otherwise released. The 10*
37 *consecutive days' imprisonment mandated by this subsection may be*
38 *served by completing: (i) Twelve days in a work release program only*
39 *after such person has served 96 consecutive hours' imprisonment,*
40 *provided such work release program requires such person to return to*
41 *confinement at the end of each day in the work release program; or (ii)*
42 *twenty days under a house arrest program pursuant to section 249 of*
43 *chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto,*

1 *only after such person has served 96 consecutive hours' imprisonment;*

2 *(D) on a third conviction a nonperson felony, if the person has a*
3 *prior conviction which occurred within the preceding 10 years, not*
4 *including any period of incarceration. The person convicted shall be*
5 *sentenced to not less than 90 days nor more than one year's imprisonment*
6 *and fined \$2,500. The person convicted shall serve at least 10 consecutive*
7 *days' imprisonment before the person is granted probation, suspension or*
8 *reduction of sentence or parole or is otherwise released. The 10*
9 *consecutive days' imprisonment mandated by this subsection may be*
10 *served by completing: (i) Twelve days in a work release program only*
11 *after such person has served 96 consecutive hours' imprisonment,*
12 *provided such work release program requires such person to return to*
13 *confinement at the end of each day in the work release program; or (ii)*
14 *twenty days under a house arrest program pursuant to section 249 of*
15 *chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto,*
16 *only after such person has served 96 consecutive hours' imprisonment;*

17 *(E) on a fourth or subsequent conviction a nonperson felony, except*
18 *as provided in subsection (b)(1)(F). The person convicted shall be*
19 *sentenced to not less than 180 days nor more than one year's*
20 *imprisonment and fined \$2,500. The person convicted shall serve at least*
21 *20 consecutive days' imprisonment before the person is granted probation,*
22 *suspension or reduction of sentence or parole or is otherwise released.*
23 *The 20 consecutive days' imprisonment mandated by this subsection may*
24 *be served by completing: (i) Twenty-four days in a work release program*
25 *only after such person has served 192 consecutive hours' imprisonment,*
26 *provided such work release program requires such person to return to*
27 *confinement at the end of each day in the work release program; or (ii)*
28 *forty days under a house arrest program pursuant to section 249 of*
29 *chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto,*
30 *only after such person has served 192 consecutive hours' imprisonment;*

31 *(F) on a fourth or subsequent conviction a severity level 7, nonperson*
32 *felony, if the person has previously participated in the assessment and*
33 *treatment described in subsection (b)(3); and*

34 *(G) the court may order that the term of imprisonment imposed*
35 *pursuant to ~~paragraph (H)~~ subsection (b)(1)(C), (b)(1)(D) or (b)(1)(E) be*
36 *served in a state facility in the custody of the secretary of corrections in a*
37 *facility designated by the secretary for the provision of substance abuse*
38 *treatment pursuant to the provisions of ~~K.S.A. 21-4704~~ section 285 of*
39 *chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.*
40 *The person shall remain imprisoned at the state facility only while*
41 *participating in the substance abuse treatment program designated by the*
42 *secretary and shall be returned to the custody of the sheriff for execution*
43 *of the balance of the term of imprisonment upon completion of or the*

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

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

24 (3) At the time of the filing of the judgment form or journal entry as
25 required by K.S.A. ~~21-4620 or 22-3426 or section 280 of chapter 136 of~~
26 *the 2010 Session Laws of Kansas*, and amendments thereto, the court shall
27 cause a certified copy to be sent to the officer having the offender in
28 charge. The law enforcement agency maintaining custody and control of a
29 defendant for imprisonment shall cause a certified copy of the judgment
30 form or journal entry to be sent to the ~~secretary of corrections within three~~
31 ~~business days of receipt of the judgment form or journal entry from the~~
32 ~~court and notify the secretary of corrections when the term of~~
33 ~~imprisonment expires and upon expiration of the term of imprisonment~~
34 ~~shall deliver the defendant to a location designated by the secretary~~
35 ~~director of the community corrections program for the county of~~
36 ~~conviction when the term of imprisonment expires and upon expiration of~~
37 ~~the term of imprisonment shall deliver the defendant to a location~~
38 ~~designated by the director of the community corrections program. After the~~
39 ~~term of imprisonment imposed by the court, the person shall be placed in~~
40 ~~the custody of the secretary of corrections community correctional~~
41 ~~services program for a mandatory one-year period of postrelease~~
42 ~~community corrections supervision, which such period of postrelease~~
43 ~~community corrections supervision shall not be reduced. During such~~

1 ~~postrelease supervision, the person shall be required to participate in an~~
2 ~~inpatient or outpatient program for alcohol and drug abuse, including, but~~
3 ~~not limited to, an approved aftercare plan or mental health counseling, as~~
4 ~~determined by the secretary and satisfy conditions imposed by the Kansas~~
5 ~~parole board as provided by K.S.A. 22-3717, and amendments thereto.~~
6 *During such community corrections supervision, the person shall be*
7 *required to participate in a multidisciplinary model of services for*
8 *substance use disorders facilitated by a department of social and*
9 *rehabilitation services designated care coordination agency to include*
10 *assessment and, if appropriate, referral to a community-based substance*
11 *use disorder treatment including recovery management and mental health*
12 *counseling as needed. The multidisciplinary team shall include the*
13 *designated care coordination agency, the community corrections officer,*
14 *the social and rehabilitation services department designated treatment*
15 *provider and the offender. Any violation of the conditions of such*
16 ~~postrelease community corrections supervision may subject such person to~~
17 ~~revocation of postrelease community corrections supervision pursuant to~~
18 ~~K.S.A. 75-5217 et seq., and amendments thereto and as otherwise~~
19 ~~provided by law and imprisonment in jail for the remainder of the period~~
20 ~~of imprisonment, the remainder of the community corrections supervision~~
21 ~~period, or any combination or portion thereof.~~

22 (g) (1) ~~On the fourth or subsequent conviction of a violation of this~~
23 ~~section, a person shall be guilty of a nonperson felony and sentenced to not~~
24 ~~less than 180 days nor more than one year's imprisonment and fined~~
25 ~~\$2,500. The person convicted shall not be eligible for release on probation,~~
26 ~~suspension or reduction of sentence or parole until the person has served at~~
27 ~~least 180 days' imprisonment. The 180 days' imprisonment mandated by~~
28 ~~this paragraph may be served in a work release program only after such~~
29 ~~person has served 144 consecutive hours' imprisonment, provided such~~
30 ~~work release program requires such person to return to confinement at the~~
31 ~~end of each day in the work release program.~~

32 (2) ~~The court may order that the term of imprisonment imposed~~
33 ~~pursuant to paragraph (1) be served in a state facility in the custody of the~~
34 ~~secretary of corrections in a facility designated by the secretary for the~~
35 ~~provision of substance abuse treatment pursuant to the provisions of~~
36 ~~K.S.A. 21-4704, and amendments thereto. The person shall remain~~
37 ~~imprisoned at the state facility only while participating in the substance~~
38 ~~abuse treatment program designated by the secretary and shall be returned~~
39 ~~to the custody of the sheriff for execution of the balance of the term of~~
40 ~~imprisonment upon completion of or the person's discharge from the~~
41 ~~substance abuse treatment program. Custody of the person shall be~~
42 ~~returned to the sheriff for execution of the sentence imposed in the event~~
43 ~~the secretary of corrections determines: (A) That substance abuse~~

1 treatment resources or the capacity of the facility designated by the
2 secretary for the incarceration and treatment of the person is not available;
3 (B) the person fails to meaningfully participate in the treatment program of
4 the designated facility; (C) the person is disruptive to the security or
5 operation of the designated facility; or (D) the medical or mental health
6 condition of the person renders the person unsuitable for confinement at
7 the designated facility. The determination by the secretary that the person
8 either is not to be admitted into the designated facility or is to be
9 transferred from the designated facility is not subject to review. The sheriff
10 shall be responsible for all transportation expenses to and from the state
11 correctional facility.

12 At the time of the filing of the judgment form or journal entry as
13 required by K.S.A. 21-4620 or 22-3426, and amendments thereto, the
14 court shall cause a certified copy to be sent to the officer having the
15 offender in charge. The law enforcement agency maintaining custody and
16 control of a defendant for imprisonment shall cause a certified copy of the
17 judgment form or journal entry to be sent to the secretary of corrections
18 within three business days of receipt of the judgment form or journal entry
19 from the court and notify the secretary of corrections when the term of
20 imprisonment expires and upon expiration of the term of imprisonment
21 shall deliver the defendant to a location designated by the secretary.

22 (h) ~~Any person convicted of violating this section or an ordinance~~
23 ~~which prohibits the acts that this section prohibits~~

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

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

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

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

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

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

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

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

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

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

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

40 ~~(1)~~ (1) ~~Except as provided in paragraph (3), in addition to any other~~
41 ~~penalty which may be imposed upon a second or subsequent conviction of~~
42 ~~a violation of this section, the court shall order that each motor vehicle~~
43 ~~owned or leased by the convicted person shall either be equipped with an~~

1 ignition interlock device or be impounded or immobilized for a period of
2 two years. The convicted person shall pay all costs associated with the
3 installation, maintenance and removal of the ignition interlock device and
4 all towing, impoundment and storage fees or other immobilization costs.

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

8 ~~(3) As used in this subsection, the convicted person's motor vehicle or~~
9 ~~vehicles shall include any vehicle leased by such person. If the lease on the~~
10 ~~convicted person's motor vehicle subject to impoundment or~~
11 ~~immobilization expires in less than two years from the date of the~~
12 ~~impoundment or immobilization, the time of impoundment or~~
13 ~~immobilization of such vehicle shall be the amount of time remaining on~~
14 ~~the lease.~~

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

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

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

30 ~~(o) For the purpose of determining whether a conviction is a first,~~
31 ~~second, third, fourth or subsequent conviction in sentencing under this~~
32 ~~section:~~

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

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

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

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

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

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

12 ~~(q) (1) (A) (k) (l)~~ *Except as provided in subsections (l) and*
 13 *(m),* nothing contained in this section shall be construed as preventing
 14 any city from enacting ordinances, or any county from adopting
 15 resolutions, declaring acts prohibited or made unlawful by this act as
 16 unlawful or prohibited in such city or county and prescribing penalties for
 17 violation thereof. ~~Except as specifically provided by this subsection,~~

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

23 ~~(B) On and after July 1, 2007, and retroactive for ordinance violations~~
 24 ~~committed on or after July 1, 2006, an ordinance may grant to a municipal~~
 25 ~~court jurisdiction over a violation of such ordinance which is concurrent~~
 26 ~~with the jurisdiction of the district court over a violation of this section,~~
 27 ~~notwithstanding that the elements of such ordinance violation are the same~~
 28 ~~as the elements of a violation of this section that would constitute, and be~~
 29 ~~punished as, a felony.~~

30 ~~(C) (3)~~ (3) Any such ordinance or resolution shall authorize the court to
 31 order that the convicted person pay restitution to any victim who suffered
 32 loss due to the violation for which the person was convicted. ~~Except as~~
 33 ~~provided in paragraph (5),~~

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

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

43 ~~(3) Prior to ordering the impoundment or immobilization of a motor~~

1 ~~vehicle or vehicles owned by a person convicted of a violation of this~~
2 ~~section, the court shall consider, but not be limited to, the following:~~

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

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

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

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

18 *(l) Notwithstanding any other law to the contrary, no city shall enact*
19 *an ordinance declaring the acts prohibited by this section as unlawful or*
20 *prohibited in such city and prescribing penalties for violation thereof*
21 *unless:*

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

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

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

35 *(m) On and after July 1, 2011, any city ordinance declaring the acts*
36 *prohibited by this section as unlawful or prohibited in such city and*
37 *prescribing penalties for violation thereof is hereby declared null and*
38 *void, regardless of when such ordinance was enacted, unless such city*
39 *meets the requirements specified in subsection (l).*

40 *(n) Notwithstanding any other law to the contrary, the district court*
41 *shall have exclusive jurisdiction over violations of subsections (b)(1)(C)*
42 *and (b)(1)(D) committed on or after July 1, 2011. No city shall enact an*
43 *ordinance granting a municipal court jurisdiction over violations of*

1 *subsections (b)(1)(C) and (b)(1)(D) which is concurrent with the*
2 *jurisdiction of the district court over violations of subsections (b)(1)(C)*
3 *and (b)(1)(D). On and after July 1, 2011, any part of any city ordinance in*
4 *conflict with this subsection is hereby declared null and void, regardless of*
5 *when such ordinance was enacted.*

6 ~~(+)~~ (o) (1) Upon the filing of a complaint, citation or notice to
7 appear alleging a person has violated a city ordinance prohibiting the acts
8 prohibited by this section, and prior to conviction thereof, a city attorney
9 shall request and shall receive from the: (A) Division a record of all prior
10 convictions obtained against such person for any violations of any of the
11 motor vehicle laws of this state:

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

18 ~~(3)~~ (2) If the elements of such ordinance violation are the same as the
19 elements of a violation of this section that would constitute, and be
20 punished as, a ~~felony~~ *third or subsequent conviction*, the city attorney shall
21 refer the violation to the appropriate county or district attorney for
22 prosecution. *The county or district attorney shall accept such referral and*
23 *pursue a disposition of such violation, and shall not refer any such*
24 *violation back to the city attorney.*

25 ~~(s)~~ (p) (1) No plea bargaining agreement shall be entered into nor
26 shall any judge approve a plea bargaining agreement entered into for the
27 purpose of permitting a person charged with a violation of this section, or a
28 violation of any ordinance of a city or resolution of any county in this state
29 which prohibits the acts prohibited by this section, to avoid the mandatory
30 penalties established by this section or by the ordinance.

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

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

40 (2) *Any person whom the prosecutor considers for eligibility or finds*
41 *eligible to enter a diversion agreement in lieu of further criminal*
42 *proceedings for a violation of this section, or a violation of an ordinance*
43 *of any city or resolution of any county which prohibits the acts that this*

1 *section prohibits, shall participate in an alcohol and drug evaluation*
 2 *conducted by a licensed provider pursuant to K.S.A. 8-1008, and*
 3 *amendments thereto. Any diversion agreement entered shall require such*
 4 *person to follow any recommendation made by the provider after such*
 5 *evaluation, unless otherwise ordered by the court.*

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

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

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

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

24 ~~(3) "Drug" includes toxic vapors as such term is defined in K.S.A.~~
 25 ~~2009 Supp. 21-36a12, and amendments thereto.~~

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

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

40 *(u)* *When determining whether a conviction is a first, second, third,*
 41 *fourth or subsequent conviction of a violation of this section:*

42 *(1) Any test refusal, as defined in K.S.A. 8-1013, and amendments*
 43 *thereto, occurring during a person's lifetime shall be taken into account,*

1 unless such refusal occurred when the offender was under 18 years of age;
2 (2) convictions for a violation of this section, or a violation of an
3 ordinance of any city or resolution of any county which prohibits the acts
4 that this section prohibits, or entering into a diversion agreement in lieu of
5 further criminal proceedings on a complaint alleging any such violations,
6 shall be taken into account, but only convictions or diversions occurring
7 on or after July 1, 2001;

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

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

26 (5) "conviction" does not include: (A) Any conviction, including any
27 conviction as defined in subsection (u)(4), for a crime described in
28 subsection (u)(2) or (u)(3) committed when the offender was under 18
29 years of age; and (B) any adjudications as a juvenile offender because of
30 an act which if committed by an adult would constitute a crime described
31 in subsection (u)(2) or (u)(3);

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

34 (7) multiple convictions of any crime described in subsection (u)(2)
35 or (u)(3) arising from the same arrest shall only be counted as one
36 conviction.

37 (v) As used in this section:

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

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

1 (3) "drug" includes toxic vapors as such term is defined in K.S.A.
2 2010 Supp. 21-36a12, and amendments thereto.

3 Sec. 22. K.S.A. 2010 Supp. 12-4104 is hereby amended to read as
4 follows: 12-4104. (a) The municipal court of each city shall have
5 jurisdiction to hear and determine cases involving violations of the
6 ordinances of the city, including concurrent jurisdiction to hear and
7 determine a violation of an ordinance when the elements of such ordinance
8 violation are the same as the elements of a violation of one of the
9 following state statutes and would constitute, and be punished as, a felony
10 if charged in district court:

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

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

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

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

20 ~~(5) (4) subsection (b)(3) of K.S.A. 2010 Supp. 21-36a06, and~~
21 ~~amendments thereto, possession of marijuana.~~

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

23 Sec. 23. K.S.A. 2010 Supp. 12-4106 is hereby amended to read as
24 follows: 12-4106. (a) The municipal judge shall have the power to
25 administer the oaths and enforce all orders, rules and judgments made by
26 such municipal judge, and may fine or imprison for contempt in the same
27 manner and to the same extent as a judge of the district court.

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

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

43 (d) The municipal judge shall promptly make such reports and

1 furnish the information requested by any departmental justice or the
2 judicial administrator, in the manner and form prescribed by the supreme
3 court.

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

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

16 (1) *Utilizes a standardized risk assessment instrument approved by*
17 *the Kansas sentencing commission; utilizes a standardized substance*
18 *abuse evaluation approved by the secretary of social and rehabilitation*
19 *services; utilizes the results of such assessment and such evaluation in*
20 *determining disposition of the case; has the capability to supervise the*
21 *offender accordingly; and reports the disposition of such case to the*
22 *Kansas bureau of investigation central repository;*

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

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

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

29 Sec. 24. K.S.A. 12-4414 is hereby amended to read as follows: 12-
30 4414. (a) *Except as provided in K.S.A. 8-1567, and amendments thereto,*
31 *after a complaint has been filed charging a defendant with violation of an*
32 *alcohol or drug related offense and prior to conviction thereof, and after*
33 *the city attorney has considered the factors listed in K.S.A. 12-4415, and*
34 *amendments thereto, if it appears to the city attorney that diversion of the*
35 *defendant would be in the interests of justice and of benefit to the*
36 *defendant and the community, the city attorney may propose a diversion*
37 *agreement to the defendant. The terms of each diversion agreement shall*
38 *be established by the city attorney in accordance with K.S.A. 12-4416,*
39 *and amendments thereto.*

40 (b) Each city attorney shall adopt written policies and guidelines for
41 the implementation of a diversion program in accordance with K.S.A. 8-
42 1009; and 12-4412 to 12-4417 ~~and 22-3609~~, inclusive, *and amendments*
43 *thereto.* Such policies and guidelines shall provide for a diversion

1 conference and other procedures in those cases where the city attorney
2 elects to offer diversion in lieu of further criminal proceedings on the
3 complaint.

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

13 Sec. 25. K.S.A. 12-4415 is hereby amended to read as follows: 12-
14 4415. (a) In determining whether diversion of a defendant is in the
15 interests of justice and of benefit to the defendant and the community, the
16 city attorney shall consider at least the following factors among all factors
17 considered:

18 (1) The nature of the crime charged and the circumstances
19 surrounding it;

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

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

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

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

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

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

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

33 (9) provisions for restitution; and

34 (10) any mitigating circumstances.

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

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

40 ~~(2) has previously been convicted of or pleaded *nolo contendere* to an~~
41 ~~alcohol related offense in this state or has previously been convicted of or~~
42 ~~pleaded *nolo contendere* to a violation of K.S.A. 8-1567 and amendments~~
43 ~~thereto or of a law of another state, or of a political subdivision thereof;~~

1 ~~which prohibits the acts prohibited by that statute; or~~

2 ~~(3)(1) During the time of the alleged alcohol related offense was~~
3 ~~involved in a motor vehicle accident or collision resulting in personal~~
4 ~~injury or death; or~~

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

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

24 Sec. 26. K.S.A. 12-4416 is hereby amended to read as follows: 12-
25 4416. (a) A diversion agreement shall provide that if the defendant fulfills
26 the obligations of the program described therein, as determined by the city
27 attorney, the city attorney shall act to have the criminal charges against the
28 defendant dismissed with prejudice. The diversion agreement shall include
29 specifically the waiver of all rights under the law or the constitution of
30 Kansas or of the United States to counsel, a speedy arraignment, a speedy
31 trial, and the right to trial by jury. The diversion agreement may include,
32 but is not limited to, provisions concerning payment of restitution,
33 including court costs and diversion costs, residence in a specified facility,
34 maintenance of gainful employment, and participation in programs
35 offering medical, educational, vocational, social and psychological
36 services, corrective and preventive guidance and other rehabilitative
37 services. The diversion agreement shall state:

- 38 (1) The defendant's full name;
39 (2) the defendant's full name at the time the complaint was filed, if
40 different from the defendant's current name;
41 (3) the defendant's sex, race and date of birth;
42 (4) the crime with which the defendant is charged;
43 (5) the date the complaint was filed; and

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

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

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

17 ~~(2) enroll in and successfully complete an alcohol and drug safety~~
18 ~~action program or a treatment program, or both, as provided in K.S.A. 8-~~
19 ~~1008, and amendments thereto, and specified by the agreement, and pay~~
20 ~~the assessment required by K.S.A. 8-1008, and amendments thereto.~~
21 *participate in an alcohol and drug evaluation conducted by a licensed*
22 *provider pursuant to K.S.A. 8-1008, and amendments thereto, and follow*
23 *any recommendation made by the provider after such evaluation.*

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

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

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

40 Sec. 27. K.S.A. 2010 Supp. 12-4516 is hereby amended to read as
41 follows: 12-4516. (a) (1) Except as provided in subsection (b) ~~or~~, (c) *and*
42 *(d)*, any person who has been convicted of a violation of a city ordinance
43 of this state may petition the convicting court for the expungement of such

1 conviction and related arrest records if three or more years have elapsed
2 since the person:

3 (A) Satisfied the sentence imposed; or

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

5 (2) Except as provided in subsection (b) ~~or~~, (c) and (d), any person
6 who has fulfilled the terms of a diversion agreement based on a violation
7 of a city ordinance of this state may petition the court for the expungement
8 of such diversion agreement and related arrest records if three or more
9 years have elapsed since the terms of the diversion agreement were
10 fulfilled.

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

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

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

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

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

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

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

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

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

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

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

42 ~~(d)~~ (e) When a petition for expungement is filed, the court shall set a
43 date for a hearing of such petition and shall cause notice of such hearing to

1 be given to the prosecuting attorney and the arresting law enforcement
2 agency. The petition shall state: (1) The defendant's full name;

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

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

6 (4) the crime for which the defendant was arrested, convicted or
7 diverted;

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

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

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

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

23 (2) the circumstances and behavior of the petitioner warrant the
24 expungement; and

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

26 ~~(f)~~ (g) When the court has ordered an arrest record, conviction or
27 diversion expunged, the order of expungement shall state the information
28 required to be contained in the petition. The clerk of the court shall send a
29 certified copy of the order of expungement to the Kansas bureau of
30 investigation which shall notify the federal bureau of investigation, the
31 secretary of corrections and any other criminal justice agency which may
32 have a record of the arrest, conviction or diversion. After the order of
33 expungement is entered, the petitioner shall be treated as not having been
34 arrested, convicted or diverted of the crime, except that:

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

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

40 (A) In any application for employment as a detective with a private
41 detective agency, as defined by K.S.A. 75-7b01, and amendments thereto;
42 as security personnel with a private patrol operator, as defined by K.S.A.
43 75-7b01, and amendments thereto; or with an institution, as defined in

1 K.S.A. 76-12a01, and amendments thereto, of the department of social and
2 rehabilitation services;

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

5 (C) to aid in determining the petitioner's qualifications for
6 employment with the Kansas lottery or for work in sensitive areas within
7 the Kansas lottery as deemed appropriate by the executive director of the
8 Kansas lottery;

9 (D) to aid in determining the petitioner's qualifications for executive
10 director of the Kansas racing and gaming commission, for employment
11 with the commission or for work in sensitive areas in parimutuel racing as
12 deemed appropriate by the executive director of the commission, or to aid
13 in determining qualifications for licensure or renewal of licensure by the
14 commission;

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

20 (F) upon application for a commercial driver's license under K.S.A.
21 8-2,125 through 8-2,142, and amendments thereto;

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

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

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

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

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

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

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

42 ~~(g)~~ (h) Whenever a person is convicted of an ordinance violation,
43 pleads guilty and pays a fine for such a violation, is placed on parole or

1 probation or is granted a suspended sentence for such a violation, the
2 person shall be informed of the ability to expunge the arrest records or
3 conviction. Whenever a person enters into a diversion agreement, the
4 person shall be informed of the ability to expunge the diversion.

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

11 ~~(h)~~ (j) Whenever the record of any arrest, conviction or diversion has
12 been expunged under the provisions of this section or under the provisions
13 of any other existing or former statute, the custodian of the records of
14 arrest, conviction, diversion and incarceration relating to that crime shall
15 not disclose the existence of such records, except when requested by:

16 (1) The person whose record was expunged;

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

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

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

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

30 (6) a prosecuting attorney, and such request is accompanied by a
31 statement that the request is being made in conjunction with a prosecution
32 of an offense that requires a prior conviction as one of the elements of such
33 offense;

34 (7) the supreme court, the clerk or disciplinary administrator thereof,
35 the state board for admission of attorneys or the state board for discipline
36 of attorneys, and the request is accompanied by a statement that the
37 request is being made in conjunction with an application for admission, or
38 for an order of reinstatement, to the practice of law in this state by the
39 person whose record has been expunged;

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

1 Kansas lottery;

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

9 (10) the Kansas racing and gaming commission, or a designee of the
10 commission, and the request is accompanied by a statement that the
11 request is being made to aid in determining qualifications of the following
12 under the Kansas expanded lottery act: (A) Lottery gaming facility
13 managers and prospective managers, racetrack gaming facility managers
14 and prospective managers, licensees and certificate holders; and (B) their
15 officers, directors, employees, owners, agents and contractors;

16 (11) the state gaming agency, and the request is accompanied by a
17 statement that the request is being made to aid in determining
18 qualifications: (A) To be an employee of the state gaming agency; or (B)
19 to be an employee of a tribal gaming commission or to hold a license
20 issued pursuant to a tribal-state gaming compact;

21 (12) the Kansas securities commissioner, or a designee of the
22 commissioner, and the request is accompanied by a statement that the
23 request is being made in conjunction with an application for registration as
24 a broker-dealer, agent, investment adviser or investment adviser
25 representative by such agency and the application was submitted by the
26 person whose record has been expunged;

27 (13) the attorney general, and the request is accompanied by a
28 statement that the request is being made to aid in determining
29 qualifications for a license to carry a concealed weapon pursuant to the
30 personal and family protection act;

31 (14) the Kansas sentencing commission;

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

36 (16) a law enforcement agency and the request is accompanied by a
37 statement that the request is being made to aid in determining eligibility
38 for employment as a law enforcement officer as defined by K.S.A. 22-
39 2202, and amendments thereto.

40 Sec. 28. K.S.A. 2010 Supp. 12-4517 is hereby amended to read as
41 follows: 12-4517. (a) (1) The municipal court judge shall ensure that all
42 persons convicted of violating municipal ordinance provisions that
43 prohibit conduct comparable to a class A or B misdemeanor or assault as

1 defined in ~~K.S.A. 21-3408~~ *section 47 of chapter 136 of the 2010 Session*
2 *Laws of Kansas*, and amendments thereto, under a Kansas criminal statute
3 are fingerprinted and processed.

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

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

16 Sec. 29. K.S.A. 2010 Supp. 22-2802 is hereby amended to read as
17 follows: 22-2802. (1) Any person charged with a crime shall, at the
18 person's first appearance before a magistrate, be ordered released pending
19 preliminary examination or trial upon the execution of an appearance bond
20 in an amount specified by the magistrate and sufficient to assure the
21 appearance of such person before the magistrate when ordered and to
22 assure the public safety. If the person is being bound over for a felony, the
23 bond shall also be conditioned on the person's appearance in the district
24 court or by way of a two-way electronic audio-video communication as
25 provided in subsection (14) at the time required by the court to answer the
26 charge against such person and at any time thereafter that the court
27 requires. Unless the magistrate makes a specific finding otherwise, if the
28 person is being bonded out for a person felony or a person misdemeanor,
29 the bond shall be conditioned on the person being prohibited from having
30 any contact with the alleged victim of such offense for a period of at least
31 72 hours. The magistrate may impose such of the following additional
32 conditions of release as will reasonably assure the appearance of the
33 person for preliminary examination or trial:

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

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

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

41 (d) place the person under a house arrest program pursuant to ~~K.S.A.~~
42 ~~21-4603b~~ *section 249 of chapter 136 of the 2010 Session Laws of Kansas*,
43 and amendments thereto; or

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

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

11 (b) *In addition to any conditions of release provided in subsection (1)*
12 *and (2)(a), for any person charged with a violation of K.S.A. 8-2,144 or 8-*
13 *1567, and amendments thereto, the magistrate may order such person to:*
14 *Not operate or attempt to operate a vehicle without a valid driver's license*
15 *and insurance; not operate or attempt to operate a vehicle without first*
16 *providing the court proof of installation of an ignition interlock device,*
17 *with reports sent to the court for monitoring use of the device; abstain*
18 *from using alcohol and illegal drugs; agree to submit to alcohol or drug*
19 *testing when directed by the court; or use an alcohol monitoring device.*

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

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

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

- 1 (A) Is a resident of the state of Kansas;
- 2 (B) has a criminal history score category of G, H or I;
- 3 (C) has no prior history of failure to appear for any court
4 appearances;
- 5 (D) has no detainer or hold from any other jurisdiction;
- 6 (E) has not been extradited from, and is not awaiting extradition to,
7 another state; and
- 8 (F) has not been detained for an alleged violation of probation.
- 9 (6) In the discretion of the court, a person charged with a crime may
10 be released upon the person's own recognizance by guaranteeing payment
11 of the amount of the bond for the person's failure to comply with all
12 requirements to appear in court. The release of a person charged with a
13 crime upon the person's own recognizance shall not require the deposit of
14 any cash by the person.
- 15 (7) The court shall not impose any administrative fee.
- 16 (8) In determining which conditions of release will reasonably assure
17 appearance and the public safety, the magistrate shall, on the basis of
18 available information, take into account the nature and circumstances of
19 the crime charged; the weight of the evidence against the defendant; the
20 defendant's family ties, employment, financial resources, character, mental
21 condition, length of residence in the community, record of convictions,
22 record of appearance or failure to appear at court proceedings or of flight
23 to avoid prosecution; the likelihood or propensity of the defendant to
24 commit crimes while on release, including whether the defendant will be
25 likely to threaten, harass or cause injury to the victim of the crime or any
26 witnesses thereto; and whether the defendant is on probation or parole
27 from a previous offense at the time of the alleged commission of the
28 subsequent offense.
- 29 (9) The appearance bond shall set forth all of the conditions of
30 release.
- 31 (10) A person for whom conditions of release are imposed and who
32 continues to be detained as a result of the person's inability to meet the
33 conditions of release shall be entitled, upon application, to have the
34 conditions reviewed without unnecessary delay by the magistrate who
35 imposed them. If the magistrate who imposed conditions of release is not
36 available, any other magistrate in the county may review such conditions.
- 37 (11) A magistrate ordering the release of a person on any conditions
38 specified in this section may at any time amend the order to impose
39 additional or different conditions of release. If the imposition of additional
40 or different conditions results in the detention of the person, the provisions
41 of subsection (10) shall apply.
- 42 (12) Statements or information offered in determining the conditions
43 of release need not conform to the rules of evidence. No statement or

1 admission of the defendant made at such a proceeding shall be received as
2 evidence in any subsequent proceeding against the defendant.

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

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

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

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

29 (1) The nature of the crime charged and the circumstances
30 surrounding it;

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

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

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

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

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

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

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

- 1 (9) provisions for restitution; and
2 (10) any mitigating circumstances.

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

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

15 ~~(2) (1) The complaint alleges that the defendant committed a class A~~
16 ~~or B felony or for crimes committed on or after July 1, 1993, an off-grid~~
17 ~~crime, a severity level 1, 2 or 3 felony for nondrug crimes or drug severity~~
18 ~~level 1 or 2 felony for drug crimes;~~

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

24 ~~(3) the complaint alleges a violation of K.S.A. 8-1567, and~~
25 ~~amendments thereto, and the defendant has a prior conviction of a~~
26 ~~violation of: (A) K.S.A. 8-2,144, and amendments thereto; (B) K.S.A. 8-~~
27 ~~1567, and amendments thereto; (C) K.S.A. 32-1131, and amendments~~
28 ~~thereto; (D) subsection (a)(3) of section 40 of chapter 136 of the 2010~~
29 ~~Session Laws of Kansas, and amendments thereto; and (E) aggravated~~
30 ~~vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular~~
31 ~~battery, K.S.A. 21-3405b, prior to its repeal, if the crime was committed~~
32 ~~while committing a violation of K.S.A. 8-1567, and amendments thereto.~~

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

1 (e) (d) A county or district attorney may enter into a diversion
2 agreement in lieu of further criminal proceedings on a complaint for
3 violations of article 10 of chapter 32 of the Kansas Statutes Annotated, and
4 amendments thereto, if such diversion carries the same penalties as the
5 conviction for the corresponding violations. If the defendant has
6 previously participated in one or more diversions for violations of article
7 10 of chapter 32 of the Kansas Statutes Annotated, and amendments
8 thereto, then each subsequent diversion shall carry the same penalties as
9 the conviction for the corresponding violations.

10 Sec. 31. K.S.A. 2010 Supp. 22-2909 is hereby amended to read as
11 follows: 22-2909. (a) A diversion agreement shall provide that if the
12 defendant fulfills the obligations of the program described therein, as
13 determined by the attorney general or county or district attorney, such
14 attorney shall act to have the criminal charges against the defendant
15 dismissed with prejudice. The diversion agreement shall include
16 specifically the waiver of all rights under the law or the constitution of
17 Kansas or of the United States to a speedy arraignment, preliminary
18 examinations and hearings, and a speedy trial, and in the case of diversion
19 under subsection (c) waiver of the rights to counsel and trial by jury. The
20 diversion agreement may include, but is not limited to, provisions
21 concerning payment of restitution, including court costs and diversion
22 costs, residence in a specified facility, maintenance of gainful employment,
23 and participation in programs offering medical, educational, vocational,
24 social and psychological services, corrective and preventive guidance and
25 other rehabilitative services. If a county creates a local fund under the
26 property crime restitution and compensation act, a county or district
27 attorney may require in all diversion agreements as a condition of
28 diversion the payment of a diversion fee in an amount not to exceed \$100.
29 Such fees shall be deposited into the local fund and disbursed pursuant to
30 recommendations of the local board under the property crime restitution
31 and victims compensation act.

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

38 (c) If a diversion agreement is entered into in lieu of further criminal
39 proceedings on a complaint alleging a violation of K.S.A. 8-1567, and
40 amendments thereto, the diversion agreement shall include a stipulation,
41 agreed to by the defendant, the defendant's attorney if the defendant is
42 represented by an attorney and the attorney general or county or district
43 attorney, of the facts upon which the charge is based and a provision that if

1 the defendant fails to fulfill the terms of the specific diversion agreement
2 and the criminal proceedings on the complaint are resumed, the
3 proceedings, including any proceedings on appeal, shall be conducted on
4 the record of the stipulation of facts relating to the complaint. In addition,
5 the agreement shall include a requirement that the defendant:

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

11 ~~(2) enroll in and successfully complete an alcohol and drug safety~~
12 ~~action program or a treatment program, or both, as provided in K.S.A. 8-~~
13 ~~1008, and amendments thereto, and specified by the agreement, and pay~~
14 ~~the assessment required by K.S.A. 8-1008, and amendments thereto.~~
15 *participate in an alcohol and drug evaluation conducted by a licensed*
16 *provider pursuant to K.S.A. 8-1008, and amendments thereto, and follow*
17 *any recommendation made by the provider after such evaluation.*

18 (d) *If a diversion agreement is entered into in lieu of further criminal*
19 *proceedings on a complaint alleging a domestic violence offense, as*
20 *defined in K.S.A. 21-3110, as amended by section 5 of chapter 101 of the*
21 *2010 Session Laws of Kansas, and amendments thereto, the diversion*
22 *agreement shall include a requirement that the defendant undergo a*
23 *domestic violence offender assessment and follow all recommendations*
24 *unless otherwise agreed to with the prosecutor in the diversion agreement.*
25 *The defendant shall be required to pay for such assessment and, unless*
26 *otherwise agreed to with the prosecutor in the diversion agreement, for*
27 *completion of all recommendations.*

28 ~~(d)(e)~~ (e) If a diversion agreement is entered into in lieu of further
29 criminal proceedings on a complaint alleging a violation other than K.S.A.
30 8-1567, and amendments thereto, the diversion agreement may include a
31 stipulation, agreed to by the defendant, the defendant's attorney if the
32 defendant is represented by an attorney and the attorney general or county
33 or district attorney, of the facts upon which the charge is based and a
34 provision that if the defendant fails to fulfill the terms of the specific
35 diversion agreement and the criminal proceedings on the complaint are
36 resumed, the proceedings, including any proceedings on appeal, shall be
37 conducted on the record of the stipulation of facts relating to the
38 complaint.

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

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

8 ~~(g)~~(h) Except as provided in subsection (h), if a diversion agreement
9 is entered into in lieu of further criminal proceedings alleging commission
10 of a misdemeanor by the defendant, while under 21 years of age, under
11 K.S.A. 2010 Supp. 21-36a01 through 21-36a17, and amendments thereto,
12 or K.S.A. 41-719, 41-727, 41-804, 41-2719 or 41-2720, and amendments
13 thereto, the agreement shall require the defendant to ~~submit to and~~
14 ~~complete an alcohol and drug evaluation by a community-based alcohol~~
15 ~~and drug safety action program certified pursuant to K.S.A. 8-1008, and~~
16 ~~amendments thereto, and to pay a fee not to exceed the fee established by~~
17 ~~that statute for such evaluation. If the attorney general or county or district~~
18 ~~attorney finds that the defendant is indigent, the fee may be waived~~
19 *participate in an alcohol and drug evaluation conducted by a licensed*
20 *provider pursuant to K.S.A. 8-1008, and amendments thereto, and follow*
21 *any recommendation made by the provider after such evaluation.*

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

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

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

39 Sec. 32. K.S.A. 22-3610 is hereby amended to read as follows: 22-
40 3610. (a) When a case is appealed to the district court, such court shall
41 hear and determine the cause on the original complaint, unless the
42 complaint shall be found defective, in which case the court may order a
43 new complaint to be filed and the case shall proceed as if the original

1 complaint had not been set aside. The case shall be tried *de novo* in the
2 district court.

3 (b) Notwithstanding subsection (a), appeal from a conviction
4 rendered pursuant to subsection (b) of K.S.A. 12-4416, *and amendments*
5 *thereto*, shall be conducted only on the record of the stipulation of facts
6 relating to the complaint.

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

14 Sec. 33. K.S.A. 2010 Supp. 22-3717 is hereby amended to read as
15 follows: 22-3717. (a) Except as otherwise provided by this section; K.S.A.
16 1993 Supp. 21-4628, prior to its repeal; K.S.A. 21-4635 through 21-4638,
17 *prior to their repeal; K.S.A. 21-4624, prior to its repeal; K.S.A. 21-4642,*
18 *prior to its repeal; sections 260, 263, 264 and 265 of chapter 136 of the*
19 *2010 Session Laws of Kansas, and amendments thereto; K.S.A. 8-1567,*
20 *and amendments thereto; ~~K.S.A. 21-4642~~ section 266 of chapter 136 of*
21 *the 2010 Session Laws of Kansas, and amendments thereto; and ~~K.S.A. 21-~~*
22 *4624 section 257 of chapter 136 of the 2010 Session Laws of Kansas, and*
23 *amendments thereto, including an inmate sentenced pursuant to*
24 *K.S.A. 21-4618, prior to its repeal, or section 276 of chapter 136 of the*
25 *2010 Session Laws of Kansas, and amendments thereto, shall be eligible*
26 *for parole after serving the entire minimum sentence imposed by the court,*
27 *less good time credits.*

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

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

1 committed on or after July 1, 1999, shall be eligible for parole after
2 serving 20 years of confinement without deduction of any good time
3 credits.

4 (3) Except as provided by K.S.A. 1993 Supp. 21-4628 prior to its
5 repeal, an inmate sentenced for a class A felony committed before July 1,
6 1993, including an inmate sentenced pursuant to K.S.A. 21-4618, *prior to*
7 *its repeal, or section 276 of chapter 136 of the 2010 Session Laws of*
8 *Kansas*, and amendments thereto, shall be eligible for parole after serving
9 15 years of confinement, without deduction of any good time credits.

10 (4) An inmate sentenced to imprisonment for a violation of
11 subsection (a) of K.S.A. 21-3402, *prior to its repeal, or subsection (a) of*
12 *section 38 of chapter 136 of the 2010 Session Laws of Kansas*, and
13 amendments thereto, committed on or after July 1, 1996, but prior to July
14 1, 1999, shall be eligible for parole after serving 10 years of confinement
15 without deduction of any good time credits.

16 (5) An inmate sentenced to imprisonment pursuant to K.S.A. 21-
17 4643, *prior to its repeal, or section 267 of chapter 136 of the 2010 Session*
18 *Laws of Kansas*, and amendments thereto, committed on or after July 1,
19 2006, shall be eligible for parole after serving the mandatory term of
20 imprisonment without deduction of any good time credits.

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

25 (A) The aggregate minimum sentences, as determined pursuant to
26 K.S.A. 21-4608, *prior to its repeal, or section 246 of chapter 136 of the*
27 *2010 Session Laws of Kansas*, and amendments thereto, less good time
28 credits for those crimes which are not class A felonies; and

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

31 (2) (A) If an inmate is sentenced to imprisonment pursuant to K.S.A.
32 21-4643, ~~and amendments thereto~~ *prior to its repeal*, for crimes committed
33 on or after July 1, 2006, *but prior to July 1, 2011*, the inmate shall be
34 eligible for parole after serving the mandatory term of imprisonment.

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

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

1 (A) Except as provided in subparagraphs (D) and (E), persons
2 sentenced for nondrug severity level 1 through 4 crimes and drug severity
3 levels 1 and 2 crimes must serve 36 months, plus the amount of good time
4 and program credit earned and retained pursuant to K.S.A. 21-4722, *prior*
5 *to its repeal, or section 302 of chapter 136 of the 2010 Session Laws of*
6 *Kansas*, and amendments thereto, on postrelease supervision.

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

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

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

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

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

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

35 (b) any evidence received during the proceeding;

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

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

42 (iv) The sentencing judge may order that a psychological evaluation
43 be prepared and the recommended programming be completed by the

1 offender. The department of corrections or the parole board shall ensure
2 that court ordered sex offender treatment be carried out.

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

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

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

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

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

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

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

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

1 2010 Session Laws of Kansas, and amendments thereto, on postrelease
2 supervision.

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

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

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

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

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

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

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

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

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

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

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

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

37 "Sexually motivated" means that one of the purposes for which the
38 defendant committed the crime was for the purpose of the defendant's
39 sexual gratification.

40 (e) If an inmate is sentenced to imprisonment for a crime committed
41 while on parole or conditional release, the inmate shall be eligible for
42 parole as provided by subsection (c), except that the Kansas parole board
43 may postpone the inmate's parole eligibility date by assessing a penalty not

1 exceeding the period of time which could have been assessed if the
2 inmate's parole or conditional release had been violated for reasons other
3 than conviction of a crime.

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

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

40 (h) The Kansas parole board shall hold a parole hearing at least the
41 month prior to the month an inmate will be eligible for parole under
42 subsections (a), (b) and (c). At least the month preceding the parole
43 hearing, the county or district attorney of the county where the inmate was

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

40 (i) In those cases involving inmates sentenced for a crime committed
41 after July 1, 1993, the parole board will review the inmates proposed
42 release plan. The board may schedule a hearing if they desire. The board
43 may impose any condition they deem necessary to insure public safety, aid

1 in the reintegration of the inmate into the community, or items not
2 completed under the agreement entered into under K.S.A. 75-5210a, and
3 amendments thereto. The board may not advance or delay an inmate's
4 release date. Every inmate while on postrelease supervision shall remain in
5 the legal custody of the secretary of corrections and is subject to the orders
6 of the secretary.

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

1 the next 10 years or during the interim period of a deferral. In such case,
2 the parole board may defer subsequent parole hearings for up to 10 years
3 but any such deferral shall require the board to state the basis for its
4 findings.

5 (2) Inmates sentenced for a class A or class B felony who have not
6 had a parole board hearing in the five years prior to July 1, 2010, shall
7 have such inmates' cases reviewed by the parole board on or before July 1,
8 2012. Such review shall begin with the inmates with the oldest deferral
9 date and progress to the most recent. Such review shall be done utilizing
10 existing resources unless the parole board determines that such resources
11 are insufficient. If the parole board determines that such resources are
12 insufficient, then the provisions of this paragraph are subject to
13 appropriations therefor.

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

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

25 (m) Whenever the Kansas parole board orders the parole of an inmate
26 or establishes conditions for an inmate placed on postrelease supervision,
27 the board:

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

36 (2) to the extent practicable, shall order as a condition of parole or
37 postrelease supervision that the parolee or the person on postrelease
38 supervision make progress towards or successfully complete the
39 equivalent of a secondary education if the inmate has not previously
40 completed such educational equivalent and is capable of doing so;

41 (3) may order that the parolee or person on postrelease supervision
42 perform community or public service work for local governmental
43 agencies, private corporations organized not-for-profit or charitable or

1 social service organizations performing services for the community;

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

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

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

26 (o) Whenever the Kansas parole board grants the parole of an inmate,
27 the board, within ~~10~~ 14 days of the date of the decision to grant parole,
28 shall give written notice of the decision to the county or district attorney of
29 the county where the inmate was sentenced.

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

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

37 (r) An inmate who is allocated regular good time credits as provided
38 in K.S.A. 22-3725, and amendments thereto, may receive meritorious
39 good time credits in increments of not more than 90 days per meritorious
40 act. These credits may be awarded by the secretary of corrections when an
41 inmate has acted in a heroic or outstanding manner in coming to the
42 assistance of another person in a life threatening situation, preventing
43 injury or death to a person, preventing the destruction of property or taking

1 actions which result in a financial savings to the state.

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

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

16 (u) An inmate sentenced to imprisonment pursuant to K.S.A. 21-
17 4643, *prior to its repeal, or section 267 of chapter 136 of the 2010 Session*
18 *Laws of Kansas*, and amendments thereto, for crimes committed on or
19 after July 1, 2006, shall be placed on parole for life and shall not be
20 discharged from supervision by the Kansas parole board. When the board
21 orders the parole of an inmate pursuant to this subsection, the board shall
22 order as a condition of parole that the inmate be electronically monitored
23 for the duration of the inmate's natural life.

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

30 (w) (1) *Notwithstanding any other provision of law, the Kansas*
31 *parole board may release an inmate who has entered into an agreement*
32 *pursuant to section 3, and amendments thereto, when the secretary of*
33 *corrections has reported to the board in writing that the inmate has*
34 *satisfactorily completed the programs required by any agreement entered*
35 *under section 3, and amendments thereto, or any revision of such*
36 *agreement, and the board believes that the inmate is able and willing to*
37 *fulfill the obligations of a law abiding citizen and is of the opinion that*
38 *there is reasonable probability that the inmate can be released without*
39 *detriment to the community or to the inmate. Release shall not be granted*
40 *as an award of clemency and shall not be considered a reduction of*
41 *sentence or a pardon.*

42 (2) *The board shall hold a hearing to determine whether such release*
43 *will be granted. If the board determines that other pertinent information*

1 *regarding the inmate warrants the inmate not being released, the board*
2 *shall state in writing the reasons for not granting the release. If the board*
3 *determines that release is appropriate, the inmate shall be released to a*
4 *mandatory period of postrelease supervision pursuant to subsection (d)(1)*
5 *(H).*

6 Sec. 34. K.S.A. 22-4704 is hereby amended to read as follows: 22-
7 4704. (a) In accordance with the provisions of K.S.A. 77-415 *et seq.*, and
8 amendments thereto, the director shall adopt appropriate rules and
9 regulations for agencies in the executive branch of government and for
10 criminal justice agencies other than those that are part of the judicial
11 branch of government to implement the provisions of this act.

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

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

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

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

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

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

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

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

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

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

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

43 (f) (1) *On or before July 1, 2012, the director shall adopt rules and*

1 *regulations requiring district courts to report the filing of all cases*
2 *alleging a violation of K.S.A. 8-2,144 or 8-1567, and amendments thereto,*
3 *to the central repository.*

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

8 Sec. 35. K.S.A. 22-4705 is hereby amended to read as follows: 22-
9 4705. (a) The following events are reportable events under this act:

10 (1) Issuance of an arrest warrant;

11 (2) an arrest;

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

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

14 ~~(4)~~ (5) dismissal or quashing of an indictment or criminal
15 information;

16 ~~(5)~~ (6) an acquittal, conviction or other disposition at or following
17 trial, including a finding of probation before judgment;

18 ~~(6)~~ (7) imposition of a sentence;

19 ~~(7)~~ (8) commitment to a correctional facility, whether state or locally
20 operated;

21 ~~(8)~~ (9) release from detention or confinement;

22 ~~(9)~~ (10) an escape from confinement;

23 ~~(10)~~ (11) a pardon, reprieve, commutation of sentence or other change
24 in a sentence, including a change ordered by a court;

25 ~~(11)~~ (12) judgment of an appellate court that modifies or reverses the
26 lower court decision;

27 ~~(12)~~ (13) order of a court in a collateral proceeding that affects a
28 person's conviction, sentence or confinement, including any expungement
29 or annulment of arrests or convictions pursuant to state statute; and

30 ~~(13)~~ (14) any other event arising out of or occurring during the course
31 of criminal justice proceedings declared to be reportable by rule or
32 regulation of the director.

33 (b) There is hereby established a criminal justice information system
34 central repository for the collection, storage, and dissemination of criminal
35 history record information. The central repository shall be operated by the
36 Kansas bureau of investigation under the administrative control of the
37 director.

38 (c) Except as otherwise provided by this subsection, every criminal
39 justice agency shall report criminal history record information, whether
40 collected manually or by means of an automated system, to the central
41 repository, in accordance with rules and regulations adopted pursuant to
42 this act. A criminal justice agency shall report to the central repository
43 those reportable events involving a violation of a county resolution or city

1 ordinance only when required by rules and regulations adopted by the
2 director.

3 (d) Reporting methods may include:

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

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

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

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

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

19 Sec. 36. K.S.A. 2010 Supp. 28-176 is hereby amended to read as
20 follows: 28-176. (a) The court shall order any person convicted or
21 diverted, or adjudicated or diverted under a preadjudication program
22 pursuant to K.S.A. 22-2906 et seq., K.S.A. 2010 Supp. 38-2346 et seq., or
23 12-4414, and amendments thereto, of a misdemeanor or felony contained
24 in chapters 21, 41 or 65 of the Kansas Statutes Annotated, and
25 amendments thereto, or a violation of K.S.A. 8-2,144 or 8-1567, and
26 amendments thereto, or a violation of a municipal ordinance *or county*
27 *resolution* prohibiting the acts prohibited by such statutes, unless the
28 municipality *or county* has an agreement with the laboratory providing
29 services that sets a restitution amount to be paid by the person that is
30 directly related to the cost of laboratory services, to pay a separate court
31 cost of \$400 for every individual offense if forensic science or laboratory
32 services or forensic computer examination services are provided, in
33 connection with the investigation, by:

34 (1) The Kansas bureau of investigation;

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

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

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

38 (5) the Wichita-Sedgwick county computer forensics crimes unit.

39 (b) Such fees shall be in addition to and not in substitution for any
40 and all fines and penalties otherwise provided for by law for such offense.

41 (c) The court shall not lessen or waive such fees unless the court has
42 determined such person is indigent and the basis for the court's
43 determination is reflected in the court's order.

1 (d) Such fees shall be deposited into the designated fund of the
2 laboratory or forensic science or computer center that provided such
3 services. Fees for services provided by:

4 (1) The Kansas bureau of investigation shall be deposited in the
5 Kansas bureau of investigation forensic laboratory and materials fee fund;

6 (2) the Sedgwick county regional forensic science center shall be
7 deposited in the Sedgwick county general fund;

8 (3) the Johnson county sheriff's laboratory shall be deposited in the
9 Johnson county sheriff's laboratory analysis fee fund;

10 (4) the heart of America regional computer forensics laboratory shall
11 be deposited in the general treasury account maintained by such
12 laboratory; and

13 (5) the Wichita-Sedgwick county computer forensic crimes unit shall
14 be retained by the Sedgwick county sheriff. All funds retained by the
15 sheriff pursuant to the provisions of this section shall be credited to a
16 special fund of the sheriff's office.

17 (e) Disbursements from the funds and accounts described in
18 subsection (d) shall be made for the following:

19 (1) Forensic science or laboratory services;

20 (2) forensic computer examination services;

21 (3) purchase and maintenance of laboratory equipment and supplies;

22 (4) education, training and scientific development of personnel; and

23 (5) from the Kansas bureau of investigation forensic laboratory and
24 materials fee fund, the destruction of seized property and chemicals as
25 described in K.S.A. 22-2512 and 60-4117, and amendments thereto.

26 Sec. 37. K.S.A. 2010 Supp. 60-427 is hereby amended to read as
27 follows: 60-427. (a) As used in this section:

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

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

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

39 (4) "Confidential communication between physician and patient"
40 means such information transmitted between physician and patient,
41 including information obtained by an examination of the patient, as is
42 transmitted in confidence and by a means which, so far as the patient is
43 aware, discloses the information to no third persons other than those

1 reasonably necessary for the transmission of the information or the
2 accomplishment of the purpose for which it is transmitted.

3 (b) Except as provided by subsections (c), (d), (e) and (f), a person,
4 whether or not a party, has a privilege in a civil action or in a prosecution
5 for a misdemeanor, other than a prosecution for a violation of K.S.A. 8-
6 2,144 or 8-1567, and amendments thereto ~~or an ordinance~~, or a city
7 ordinance or county resolution which prohibits the acts prohibited by ~~that~~
8 statute those statutes, to refuse to disclose, and to prevent a witness from
9 disclosing, a communication, if the person claims the privilege and the
10 judge finds that: (1) The communication was a confidential
11 communication between patient and physician; (2) the patient or the
12 physician reasonably believed the communication necessary or helpful to
13 enable the physician to make a diagnosis of the condition of the patient or
14 to prescribe or render treatment therefor; (3) the witness (i) is the holder of
15 the privilege, (ii) at the time of the communication was the physician or a
16 person to whom disclosure was made because reasonably necessary for the
17 transmission of the communication or for the accomplishment of the
18 purpose for which it was transmitted or (iii) is any other person who
19 obtained knowledge or possession of the communication as the result of an
20 intentional breach of the physician's duty of nondisclosure by the
21 physician or the physician's agent or servant; and (4) the claimant is the
22 holder of the privilege or a person authorized to claim the privilege for the
23 holder of the privilege.

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

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

39 (e) There is no privilege under this section: (1) As to blood drawn at
40 the request of a law enforcement officer pursuant to K.S.A. 8-1001, and
41 amendments thereto; and (2) as to information which the physician or the
42 patient is required to report to a public official or as to information
43 required to be recorded in a public office, unless the statute requiring the

1 report or record specifically provides that the information shall not be
2 disclosed.

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

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

14 (h) Providing false information to a physician for the purpose of
15 obtaining a prescription-only drug shall not be a confidential
16 communication between physician and patient and no person shall have a
17 privilege in any prosecution for unlawfully obtaining or distributing a
18 prescription-only drug under K.S.A. 2010 Supp. 21-36a08, and
19 amendments thereto.

20 Sec. 38. K.S.A. 2010 Supp. 74-2012 is hereby amended to read as
21 follows: 74-2012. (a) (1) All motor vehicle records shall be subject to the
22 provisions of the open records act, except as otherwise provided under the
23 provisions of this section and by K.S.A. 74-2022, and amendments thereto.

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

28 (b) All motor vehicle records which relate to the physical or mental
29 condition of any person, have been expunged or are photographs or digital
30 images maintained in connection with the issuance of drivers' licenses
31 shall be confidential and shall not be disclosed except in accordance with a
32 proper judicial order or as otherwise more specifically provided in this
33 section or by other law. Photographs or digital images maintained by the
34 division of vehicles in connection with the issuance of drivers' licenses
35 may be disclosed to any federal, state or local agency, including any court
36 or law enforcement agency, to assist such agency in carrying out the
37 functions required of such governmental agency. In January of each year
38 the division shall report to the house committee on veterans, military and
39 homeland security regarding the utilization of the provisions of this
40 subsection. Motor vehicle records relating to diversion agreements for the
41 purposes of K.S.A. 8-1567, 12-4415 and 22-2908, and amendments
42 thereto, shall be confidential and shall not be disclosed except in
43 accordance with a proper judicial order or by direct computer access to:

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

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

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

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

14 (c) Lists of persons' names and addresses contained in or derived
15 from motor vehicle records shall not be sold, given or received for the
16 purposes prohibited by K.S.A. 2010 Supp. 45-230, and amendments
17 thereto, except that:

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

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

24 (i) Have safety-related defects,

25 (ii) fail to comply with emission standards; or

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

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

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

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

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

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

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

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

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

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

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

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

36 (f) A fee in an amount fixed by the secretary of revenue pursuant to
37 K.S.A. 74-2022, and amendments thereto, of not less than \$2 for each full
38 or partial motor vehicle record shall be charged by the division, except that
39 the director may charge a lesser fee pursuant to a contract between the
40 secretary of revenue and any person to whom the director is authorized to
41 furnish information under paragraph (1) of subsection (c), and such fee
42 shall not be less than the cost of production or reproduction of any full or
43 partial motor vehicle record requested. Except for the fees charged

1 pursuant to a contract for motor vehicle records authorized by this
2 subsection pertaining to motor vehicle titles or motor vehicle registrations
3 or pursuant to subsection (c)(1)(B)(ii) or (c)(1)(D), \$1 shall be credited to
4 the highway patrol training center fund for each motor vehicle record
5 provided by the division of vehicles.

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

8 Sec. 39. K.S.A. 2010 Supp. 74-7301 is hereby amended to read as
9 follows: 74-7301. As used in this act:

10 (a) "Allowance expense" means reasonable charges incurred for
11 reasonably needed products, services and accommodations, including
12 those for medical care, rehabilitation, rehabilitative occupational training
13 and other remedial treatment and care and for the replacement of items of
14 clothing or bedding which were seized for evidence. Such term includes a
15 total charge not in excess of \$5,000 for expenses in any way related to
16 funeral, cremation or burial; but such term shall not include that portion of
17 a charge for a room in a hospital, clinic, convalescent or nursing home or
18 any other institution engaged in providing nursing care and related
19 services, in excess of a reasonable and customary charge for semi-private
20 accommodations, unless other accommodations are medically required.
21 Such term includes a total charge not in excess of \$1,000 for expenses in
22 any way related to crime scene cleanup.

23 (b) "Board" means the crime victims compensation board established
24 under K.S.A. 74-7303, and amendments thereto.

25 (c) "Claimant" means any of the following persons claiming
26 compensation under this act: A victim; a dependent of a deceased victim; a
27 third person other than a collateral source; or an authorized person acting
28 on behalf of any of them.

29 (d) "Collateral source" means a source of benefits or advantages for
30 economic loss otherwise reparable under this act which the victim or
31 claimant has received, or which is readily available to the victim or
32 claimant, from:

- 33 (1) The offender;
- 34 (2) the government of the United States or any agency thereof, a state
35 or any of its political subdivisions or an instrumentality or two or more
36 states, unless the law providing for the benefits or advantages makes them
37 excess or secondary to benefits under this act;
- 38 (3) social security, medicare and medicaid;
- 39 (4) state-required temporary nonoccupational disability insurance;
- 40 (5) workers' compensation;
- 41 (6) wage continuation programs of any employer;
- 42 (7) proceeds of a contract of insurance payable to the victim for loss
43 which the victim sustained because of the criminally injurious conduct; or

1 (8) a contract providing prepaid hospital and other health care
2 services or benefits for disability.

3 (e) "Criminally injurious conduct" means conduct that: (1) (A)
4 Occurs or is attempted in this state or occurs to a person whose domicile is
5 in Kansas who is the victim of a violent crime which occurs in another
6 state, possession, or territory of the United States of America may make an
7 application for compensation if:

8 (i) The crimes would be compensable had it occurred in the state of
9 Kansas; and

10 (ii) the places the crimes occurred are states, possessions or territories
11 of the United States of America not having eligible crime victim
12 compensation programs;

13 (B) poses a substantial threat or personal injury or death; and

14 (C) either is punishable by fine, imprisonment or death or would be
15 so punishable but for the fact that the person engaging in the conduct
16 lacked capacity to commit the crime under the laws of this state; or

17 (2) is an act of terrorism, as defined in 18 U.S.C. § 2331, or a violent
18 crime that posed a substantial threat or caused personal injury or death,
19 committed outside of the United States against a person whose domicile is
20 in Kansas, except that criminally injurious conduct does not include any
21 conduct resulting in injury or death sustained as a member of the United
22 States armed forces while serving on active duty.

23 Such term shall not include conduct arising out of the ownership,
24 maintenance or use of a motor vehicle, except for violations of K.S.A. 8-
25 2,144 or 8-1567, and amendments thereto, or violations of municipal
26 ordinances or county resolutions prohibiting the acts prohibited by ~~that~~
27 ~~statute those statutes~~, or violations of K.S.A. 8-1602, ~~21-3404, 21-3405~~
28 ~~and 21-3414~~ or section 40, 41 or subsection (b) of section 48 of chapter
29 136 of the 2010 Session Laws of Kansas, and amendments thereto, or
30 when such conduct was intended to cause personal injury or death.

31 (f) "Dependent" means a natural person wholly or partially dependent
32 upon the victim for care or support, and includes a child of the victim born
33 after the victim's death.

34 (g) "Dependent's economic loss" means loss after decedent's death of
35 contributions of things of economic value to the decedent's dependents, not
36 including services they would have received from the decedent if the
37 decedent had not suffered the fatal injury, less expenses of the dependents
38 avoided by reason of decedent's death.

39 (h) "Dependent's replacement services loss" means loss reasonably
40 incurred by dependents after decedent's death in obtaining ordinary and
41 necessary services in lieu of those the decedent would have performed for
42 their benefit if the decedent had not suffered the fatal injury, less expenses
43 of the dependents avoided by reason of decedent's death and not subtracted

1 in calculating dependent's economic loss.

2 (i) "Economic loss" means economic detriment consisting only of
3 allowable expense, work loss, replacement services loss and, if injury
4 causes death, dependent's economic loss and dependent's replacement
5 service loss. Noneconomic detriment is not loss, but economic detriment is
6 loss although caused by pain and suffering or physical impairment.

7 (j) "Noneconomic detriment" means pain, suffering, inconvenience,
8 physical impairment and nonpecuniary damage.

9 (k) "Replacement services loss" means expenses reasonably incurred
10 in obtaining ordinary and necessary services in lieu of those the injured
11 person would have performed, not for income, but for the benefit of self or
12 family, if such person had not been injured.

13 (l) "Work loss" means loss of income from work the injured person
14 would have performed if such person had not been injured, and expenses
15 reasonably incurred by such person in obtaining services in lieu of those
16 the person would have performed for income, reduced by any income from
17 substitute work actually performed by such person or by income such
18 person would have earned in available appropriate substitute work that the
19 person was capable of performing but unreasonably failed to undertake.

20 (m) "Victim" means a person who suffers personal injury or death as
21 a result of: (1) Criminally injurious conduct; (2) the good faith effort of
22 any person to prevent criminally injurious conduct; or (3) the good faith
23 effort of any person to apprehend a person suspected of engaging in
24 criminally injurious conduct.

25 (n) "Crime scene cleanup" means removal of blood, stains, odors or
26 other debris caused by the crime or the processing of the crime scene.

27 Sec. 40. K.S.A. 2010 Supp. 75-5291 is hereby amended to read as
28 follows: 75-5291. (a) (1) The secretary of corrections may make grants to
29 counties for the development, implementation, operation and improvement
30 of community correctional services that address the criminogenic needs of
31 felony offenders including, but not limited to, adult intensive supervision,
32 substance abuse and mental health services, employment and residential
33 services, and facilities for the detention or confinement, care or treatment
34 of offenders as provided in this section except that no community
35 corrections funds shall be expended by the secretary for the purpose of
36 establishing or operating a conservation camp as provided by K.S.A. 75-
37 52,127, and amendments thereto.

38 (2) Except as otherwise provided, placement of offenders in
39 community correctional services programs by the court shall be limited to
40 placement of adult offenders, convicted of a felony offense:

41 (A) Whose offense is classified in grid blocks 5-H, 5-I or 6-G of the
42 sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-
43 G, 3-H or 3-I of the sentencing guidelines grid for drug crimes. In

1 addition, the court may place in a community correctional services
2 program adult offenders, convicted of a felony offense, whose offense is
3 classified in grid blocks 6-H, 6-I, 7-C, 7-D, 7-E, 7-F, 7-G, 7-H or 7-I of the
4 sentencing guidelines grid for nondrug crimes;

5 (B) whose severity level and criminal history score designate a
6 presumptive prison sentence on either sentencing guidelines grid but
7 receive a nonprison sentence as a result of departure;

8 (C) all offenders convicted of an offense which satisfies the definition
9 of offender pursuant to K.S.A. 22-4902, and amendments thereto, and
10 which is classified as a severity level 7 or higher offense and who receive a
11 nonprison sentence, regardless of the manner in which the sentence is
12 imposed;

13 (D) any offender for whom a violation of conditions of release or
14 assignment or a nonprison sanction has been established as provided in
15 K.S.A. 22-3716, and amendments thereto, prior to revocation resulting in
16 the offender being required to serve any time for the sentence imposed or
17 which might originally have been imposed in a state facility in the custody
18 of the secretary of corrections;

19 (E) on and after January 1, 2011, for offenders who are expected to be
20 subject to supervision in Kansas, who are determined to be "high risk or
21 needs, or both" by the use of a statewide, mandatory, standardized risk
22 assessment tool or instrument which shall be specified by the Kansas
23 sentencing commission;

24 (F) placed in community correctional services programs as a
25 condition of supervision following the successful completion of a
26 conservation camp program; ~~or~~

27 (G) who has been sentenced to community corrections supervision
28 pursuant to K.S.A. 21-4729, *prior to its repeal, or section 305 of chapter*
29 *136 of the 2010 Session Laws of Kansas*, and amendments thereto; *or*

30 (H) *who has been placed in community correctional services*
31 *programs for supervision by the court pursuant to K.S.A. 8-1567, and*
32 *amendments thereto.*

33 (3) Notwithstanding any law to the contrary and subject to the
34 availability of funding therefor, adult offenders sentenced to community
35 supervision in Johnson county for felony crimes that occurred on or after
36 July 1, 2002, but before January 1, 2011, shall be placed under court
37 services or community corrections supervision based upon court rules
38 issued by the chief judge of the 10th judicial district. The provisions
39 contained in this subsection shall not apply to offenders transferred by the
40 assigned agency to an agency located outside of Johnson county. The
41 provisions of this paragraph shall expire on January 1, 2011.

42 (4) Nothing in this act shall prohibit a community correctional
43 services program from providing services to juvenile offenders upon

1 approval by the local community corrections advisory board. Grants from
2 community corrections funds administered by the secretary of corrections
3 shall not be expended for such services.

4 (5) The court may require an offender for whom a violation of
5 conditions of release or assignment or a nonprison sanction has been
6 established, as provided in K.S.A. 22-3716, and amendments thereto, to
7 serve any time for the sentence imposed or which might originally have
8 been imposed in a state facility in the custody of the secretary of
9 corrections without a prior assignment to a community correctional
10 services program if the court finds and sets forth with particularity the
11 reasons for finding that the safety of the members of the public will be
12 jeopardized or that the welfare of the inmate will not be served by such
13 assignment to a community correctional services program.

14 (b) (1) In order to establish a mechanism for community correctional
15 services to participate in the department of corrections annual budget
16 planning process, the secretary of corrections shall establish a community
17 corrections advisory committee to identify new or enhanced correctional
18 or treatment interventions designed to divert offenders from prison.

19 (2) The secretary shall appoint one member from the southeast
20 community corrections region, one member from the northeast community
21 corrections region, one member from the central community corrections
22 region and one member from the western community corrections region.
23 The deputy secretary of community and field services shall designate two
24 members from the state at large. The secretary shall have final
25 appointment approval of the members designated by the deputy secretary.
26 The committee shall reflect the diversity of community correctional
27 services with respect to geographical location and average daily population
28 of offenders under supervision.

29 (3) Each member shall be appointed for a term of three years and
30 such terms shall be staggered as determined by the secretary. Members
31 shall be eligible for reappointment.

32 (4) The committee, in collaboration with the deputy secretary of
33 community and field services or the deputy secretary's designee, shall
34 routinely examine and report to the secretary on the following issues:

- 35 (A) Efficiencies in the delivery of field supervision services;
- 36 (B) effectiveness and enhancement of existing interventions;
- 37 (C) identification of new interventions; and
- 38 (D) statewide performance indicators.

39 (5) The committee's report concerning enhanced or new interventions
40 shall address:

- 41 (A) Goals and measurable objectives;
- 42 (B) projected costs;
- 43 (C) the impact on public safety; and

1 (D) the evaluation process.

2 (6) The committee shall submit its report to the secretary annually on
3 or before July 15 in order for the enhanced or new interventions to be
4 considered for inclusion within the department of corrections budget
5 request for community correctional services or in the department's
6 enhanced services budget request for the subsequent fiscal year.

7 Sec. 41. K.S.A. 79-4101 is hereby amended to read as follows: 79-
8 4101. (a) For the purpose of providing revenue which may be used by the
9 state, counties and cities in the enforcement of the provisions of this act,
10 ~~from and after the effective date of this act~~, for the privilege of engaging in
11 the business of selling alcoholic liquor by retailers or farm wineries to
12 consumers in this state or selling alcoholic liquor or cereal malt beverage
13 by distributors to clubs, drinking establishments or caterers in this state,
14 there is hereby levied and there shall be collected and paid a tax at the rate
15 of 8% upon the gross receipts received from: (1) The sale of alcoholic
16 liquor by retailers, microbreweries or farm wineries to consumers within
17 this state; and (2) the sale of alcoholic liquor or cereal malt beverage by
18 distributors to clubs, drinking establishments or caterers in this state ;
19 *except that during the period commencing July 1, 2011, and ending June*
20 *30, 2014, such tax shall be at the rate of 9%.*

21 (b) The tax imposed by this section shall be in addition to the license
22 fee imposed on distributors, retailers, microbreweries and farm wineries by
23 K.S.A. 41-310 and amendments thereto.

24 Sec. 42. K.S.A. 2010 Supp. 79-4108 is hereby amended to read as
25 follows: 79-4108. All revenue collected or received by the director of
26 taxation from taxes imposed by K.S.A. 79-4101 to 79-4105, and
27 amendments thereto, shall be remitted to the state treasurer in accordance
28 with the provisions of K.S.A. 75-4215, and amendments thereto. Upon
29 receipt of each such remittance, the state treasurer shall deposit the entire
30 amount in the state treasury to the credit of the state general fund , *except*
31 *that, of the amount of each such remittance to the state treasurer during*
32 *the period commencing on July 1, 2011, and ending on June 30, 2014, the*
33 *amount equal to one-ninth of each such remittance shall be credited to the*
34 *Kansas bureau of investigation central repository fund established by*
35 *section 4, and amendments thereto, until an aggregate amount of*
36 *\$3,000,000 is credited to the Kansas bureau of investigation central*
37 *repository fund. On and after an aggregate amount of \$3,000,000 is*
38 *credited to such fund the entire amount of such remittance shall be*
39 *credited to the state general fund.* ~~The state treasurer shall transfer any~~
40 ~~moneys remaining in the county and city alcoholic liquor control~~
41 ~~enforcement fund on the effective date of this act to the state general fund.~~

42 Sec. 43. Section 14 of chapter 136 of the 2010 Session Laws of
43 Kansas, is hereby amended to read as follows: Sec. 14. A person may

1 be guilty of a crime without having a culpable mental state if
2 the crime is:

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

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

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

9 ~~or~~

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

11 ~~(d)~~ (e) a violation of K.S.A. 22-4901 et seq., and amendments thereto.

12 Sec. 44. Section 254 of chapter 136 of the 2010 Session Laws of
13 Kansas, is hereby amended to read as follows: Sec. 254. (a) (1) Except as
14 provided in subsections (b) ~~and~~, (c) *and* (d), any person convicted in this
15 state of a traffic infraction, cigarette or tobacco infraction, misdemeanor or
16 a class D or E felony, or for crimes committed on or after July 1, 1993,
17 nondrug crimes ranked in severity levels 6 through 10 or any felony
18 ranked in severity level 4 of the drug grid, may petition the convicting
19 court for the expungement of such conviction or related arrest records if
20 three or more years have elapsed since the person: (A) Satisfied the
21 sentence imposed; or (B) was discharged from probation, a community
22 correctional services program, parole, postrelease supervision, conditional
23 release or a suspended sentence.

24 (2) Except as provided in subsections (b) ~~and~~, (c) *and* (d), any person
25 who has fulfilled the terms of a diversion agreement may petition the
26 district court for the expungement of such diversion agreement and related
27 arrest records if three or more years have elapsed since the terms of the
28 diversion agreement were fulfilled.

29 (b) Except as provided in ~~subsection (e)~~ *subsections (c) and (d)*, no
30 person may petition for expungement until five or more years have elapsed
31 since the person satisfied the sentence imposed, the terms of a diversion
32 agreement or was discharged from probation, a community correctional
33 services program, parole, postrelease supervision, conditional release or a
34 suspended sentence, if such person was convicted of a class A, B or C
35 felony, or for crimes committed on or after July 1, 1993, if convicted of an
36 off-grid felony or any nondrug crime ranked in severity levels 1 through 5
37 or any felony ranked in severity levels 1 through 3 of the drug grid, or:

38 (1) Vehicular homicide, as defined by section 41 *of chapter 136 of*
39 *the 2010 Session Laws of Kansas*, and amendments thereto, or as
40 prohibited by any law of another state which is in substantial conformity
41 with that statute;

42 (2) driving while the privilege to operate a motor vehicle on the
43 public highways of this state has been canceled, suspended or revoked, as

1 prohibited by K.S.A. 8-262, and amendments thereto, or as prohibited by
2 any law of another state which is in substantial conformity with that
3 statute;

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

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

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

13 (6) failing to stop at the scene of an accident and perform the duties
14 required by K.S.A. 8-1602, 8-1603 or 8-1604, and amendments thereto, or
15 required by a law of another state which is in substantial conformity with
16 those statutes;

17 (7) violating the provisions of K.S.A. 40-3104, and amendments
18 thereto, relating to motor vehicle liability insurance coverage; or

19 (8) a violation of K.S.A. 21-3405b, prior to its repeal.

20 (c) *No person may petition for expungement until 10 or more years*
21 *have elapsed since the person satisfied the sentence imposed, the terms of*
22 *a diversion agreement or was discharged from probation, a community*
23 *correctional services program, parole, postrelease supervision,*
24 *conditional release or a suspended sentence, if such person was convicted*
25 *of a violation of K.S.A. 8-1567, and amendments thereto, including any*
26 *diversion for such violation.*

27 (⊕) (d) There shall be no expungement of convictions for the
28 following offenses or of convictions for an attempt to commit any of the
29 following offenses:

30 (1) Rape as defined in section 67 of chapter 136 of the 2010 Session
31 Laws of Kansas, and amendments thereto;

32 (2) indecent liberties with a child or aggravated indecent liberties
33 with a child as defined in section 70 of chapter 136 of the 2010 Session
34 Laws of Kansas, and amendments thereto;

35 (3) criminal sodomy as defined in subsection (a)(3) or (a)(4) of
36 section 68 of chapter 136 of the 2010 Session Laws of Kansas, and
37 amendments thereto;

38 (4) aggravated criminal sodomy as defined in section 68 of chapter
39 136 of the 2010 Session Laws of Kansas, and amendments thereto;

40 (5) indecent solicitation of a child or aggravated indecent solicitation
41 of a child as defined in section 72 of chapter 136 of the 2010 Session Laws
42 of Kansas, and amendments thereto;

43 (6) sexual exploitation of a child as defined in section 74 of chapter

- 1 *136 of the 2010 Session Laws of Kansas, and amendments thereto;*
2 (7) aggravated incest as defined in section 81 *of chapter 136 of the*
3 *2010 Session Laws of Kansas, and amendments thereto;*
4 (8) endangering a child or aggravated endangering a child as defined
5 in section 78 *of chapter 136 of the 2010 Session Laws of Kansas, and*
6 *amendments thereto;*
7 (9) abuse of a child as defined in section 79 *of chapter 136 of the*
8 *2010 Session Laws of Kansas, and amendments thereto;*
9 (10) capital murder as defined in section 36 *of chapter 136 of the*
10 *2010 Session Laws of Kansas, and amendments thereto;*
11 (11) murder in the first degree as defined in section 37 *of chapter 136*
12 *of the 2010 Session Laws of Kansas, and amendments thereto;*
13 (12) murder in the second degree as defined in section 38 *of chapter*
14 *136 of the 2010 Session Laws of Kansas, and amendments thereto;*
15 (13) voluntary manslaughter as defined in section 39 *of chapter 136*
16 *of the 2010 Session Laws of Kansas, and amendments thereto;*
17 (14) involuntary manslaughter as defined in section 40 *of chapter 136*
18 *of the 2010 Session Laws of Kansas, and amendments thereto;*
19 (15) sexual battery as defined in section 69 *of chapter 136 of the*
20 *2010 Session Laws of Kansas, and amendments thereto, when the victim*
21 *was less than 18 years of age at the time the crime was committed;*
22 (16) aggravated sexual battery as defined in section 69 *of chapter 136*
23 *of the 2010 Session Laws of Kansas, and amendments thereto;*
24 ~~(17) a violation of K.S.A. 8-1567, and amendments thereto, including~~
25 ~~any diversion for such violation;~~
26 ~~(18) (17) a violation of K.S.A. 8-2,144, and amendments thereto,~~
27 ~~including any diversion for such violation; or~~
28 ~~(19) (18) any conviction for any offense in effect at any time prior to~~
29 ~~the effective date of this act, that is comparable to any offense as provided~~
30 ~~in this subsection.~~
31 (d) (1) When a petition for expungement is filed, the court shall set a
32 date for a hearing of such petition and shall cause notice of such hearing to
33 be given to the prosecutor and the arresting law enforcement agency. The
34 petition shall state the:
35 (A) Defendant's full name;
36 (B) full name of the defendant at the time of arrest, conviction or
37 diversion, if different than the defendant's current name;
38 (C) defendant's sex, race and date of birth;
39 (D) crime for which the defendant was arrested, convicted or
40 diverted;
41 (E) date of the defendant's arrest, conviction or diversion; and
42 (F) identity of the convicting court, arresting law enforcement
43 authority or diverting authority.

1 (2) Except as provided further, there shall be no docket fee for filing a
2 petition pursuant to this section. On and after July 1, 2009 through June
3 30, 2010, the supreme court may impose a charge, not to exceed \$10 per
4 case, to fund the costs of non-judicial personnel. The charge established in
5 this section shall be the only fee collected or moneys in the nature of a fee
6 collected for the case. Such charge shall only be established by an act of
7 the legislature and no other authority is established by law or otherwise to
8 collect a fee.

9 (3) All petitions for expungement shall be docketed in the original
10 criminal action. Any person who may have relevant information about the
11 petitioner may testify at the hearing. The court may inquire into the
12 background of the petitioner and shall have access to any reports or
13 records relating to the petitioner that are on file with the secretary of
14 corrections or the Kansas parole board.

15 (e) At the hearing on the petition, the court shall order the petitioner's
16 arrest record, conviction or diversion expunged if the court finds that:

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

20 (2) the circumstances and behavior of the petitioner warrant the
21 expungement;

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

23 (f) When the court has ordered an arrest record, conviction or
24 diversion expunged, the order of expungement shall state the information
25 required to be contained in the petition. The clerk of the court shall send a
26 certified copy of the order of expungement to the Kansas bureau of
27 investigation which shall notify the federal bureau of investigation, the
28 secretary of corrections and any other criminal justice agency which may
29 have a record of the arrest, conviction or diversion. After the order of
30 expungement is entered, the petitioner shall be treated as not having been
31 arrested, convicted or diverted of the crime, except that:

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

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

37 (A) In any application for licensure as a private detective, private
38 detective agency, certification as a firearms trainer pursuant to K.S.A.
39 ~~2009~~ 2010 Supp. 75-7b21, and amendments thereto, or employment as a
40 detective with a private detective agency, as defined by K.S.A. 75-7b01,
41 and amendments thereto; as security personnel with a private patrol
42 operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with
43 an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of

1 the department of social and rehabilitation services;

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

4 (C) to aid in determining the petitioner's qualifications for
5 employment with the Kansas lottery or for work in sensitive areas within
6 the Kansas lottery as deemed appropriate by the executive director of the
7 Kansas lottery;

8 (D) to aid in determining the petitioner's qualifications for executive
9 director of the Kansas racing and gaming commission, for employment
10 with the commission or for work in sensitive areas in parimutuel racing as
11 deemed appropriate by the executive director of the commission, or to aid
12 in determining qualifications for licensure or renewal of licensure by the
13 commission;

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

19 (F) upon application for a commercial driver's license under K.S.A.
20 8-2,125 through 8-2,142, and amendments thereto;

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

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

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

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

31 (K) for applications received on and after July 1, 2006, to aid in
32 determining the petitioner's qualifications for a license to carry a concealed
33 weapon pursuant to the personal and family protection act, K.S.A. ~~2009~~
34 *2010 Supp. 75-7c01 et seq.*, and amendments thereto;

35 (3) the court, in the order of expungement, may specify other
36 circumstances under which the conviction is to be disclosed;

37 (4) the conviction may be disclosed in a subsequent prosecution for
38 an offense which requires as an element of such offense a prior conviction
39 of the type expunged; and

40 (5) upon commitment to the custody of the secretary of corrections,
41 any previously expunged record in the possession of the secretary of
42 corrections may be reinstated and the expungement disregarded, and the
43 record continued for the purpose of the new commitment.

1 (g) Whenever a person is convicted of a crime, pleads guilty and pays
2 a fine for a crime, is placed on parole, postrelease supervision or
3 probation, is assigned to a community correctional services program, is
4 granted a suspended sentence or is released on conditional release, the
5 person shall be informed of the ability to expunge the arrest records or
6 conviction. Whenever a person enters into a diversion agreement, the
7 person shall be informed of the ability to expunge the diversion.

8 (h) Subject to the disclosures required pursuant to subsection (f), in
9 any application for employment, license or other civil right or privilege, or
10 any appearance as a witness, a person whose arrest records, conviction or
11 diversion of a crime has been expunged under this statute may state that
12 such person has never been arrested, convicted or diverted of such crime,
13 but the expungement of a felony conviction does not relieve an individual
14 of complying with any state or federal law relating to the use or possession
15 of firearms by persons convicted of a felony.

16 (i) Whenever the record of any arrest, conviction or diversion has
17 been expunged under the provisions of this section or under the provisions
18 of any other existing or former statute, the custodian of the records of
19 arrest, conviction, diversion and incarceration relating to that crime shall
20 not disclose the existence of such records, except when requested by:

21 (1) The person whose record was expunged;

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

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

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

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

35 (6) a prosecutor, and such request is accompanied by a statement that
36 the request is being made in conjunction with a prosecution of an offense
37 that requires a prior conviction as one of the elements of such offense;

38 (7) the supreme court, the clerk or disciplinary administrator thereof,
39 the state board for admission of attorneys or the state board for discipline
40 of attorneys, and the request is accompanied by a statement that the
41 request is being made in conjunction with an application for admission, or
42 for an order of reinstatement, to the practice of law in this state by the
43 person whose record has been expunged;

1 (8) the Kansas lottery, and the request is accompanied by a statement
2 that the request is being made to aid in determining qualifications for
3 employment with the Kansas lottery or for work in sensitive areas within
4 the Kansas lottery as deemed appropriate by the executive director of the
5 Kansas lottery;

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

13 (10) the Kansas racing and gaming commission, or a designee of the
14 commission, and the request is accompanied by a statement that the
15 request is being made to aid in determining qualifications of the following
16 under the Kansas expanded lottery act: (A) Lottery gaming facility
17 managers and prospective managers, racetrack gaming facility managers
18 and prospective managers, licensees and certificate holders; and (B) their
19 officers, directors, employees, owners, agents and contractors;

20 (11) the Kansas sentencing commission;

21 (12) the state gaming agency, and the request is accompanied by a
22 statement that the request is being made to aid in determining
23 qualifications: (A) To be an employee of the state gaming agency; or (B)
24 to be an employee of a tribal gaming commission or to hold a license
25 issued pursuant to a tribal-gaming compact;

26 (13) the Kansas securities commissioner or a designee of the
27 commissioner, and the request is accompanied by a statement that the
28 request is being made in conjunction with an application for registration as
29 a broker-dealer, agent, investment adviser or investment adviser
30 representative by such agency and the application was submitted by the
31 person whose record has been expunged;

32 (14) the Kansas commission on peace officers' standards and training
33 and the request is accompanied by a statement that the request is being
34 made to aid in determining certification eligibility as a law enforcement
35 officer pursuant to K.S.A. 74-5601 et seq., and amendments thereto;

36 (15) a law enforcement agency and the request is accompanied by a
37 statement that the request is being made to aid in determining eligibility
38 for employment as a law enforcement officer as defined by K.S.A. 22-
39 2202, and amendments thereto; or

40 (16) the attorney general and the request is accompanied by a
41 statement that the request is being made to aid in determining
42 qualifications for a license to carry a concealed weapon pursuant to the
43 personal and family protection act.

1 Sec. 45. Section 285 of chapter 136 of the 2010 Session Laws of
2 Kansas, is hereby amended to read as follows: Sec. 285. (a) The
3 provisions of this section shall be applicable to the sentencing guidelines
4 grid for nondrug crimes. The following sentencing guidelines grid shall be
5 applicable to nondrug felony crimes:

SENTENCING RANGE - NONDRUG OFFENSES

Category	A	B	C	D	E	F	G	H	I
Severity Level	3+ Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3+ Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2+ Misdemeanors	1 Misdemeanor No Record
I	653 620 592	618 586 554	285 272 258	267 253 240	246 234 221	226 214 203	203 195 184	188 176 166	165 155 147
II	493 467 442	460 438 416	216 205 194	200 190 181	184 174 165	168 160 152	154 146 138	138 131 123	123 117 109
III	247 233 221	228 216 206	107 102 96	100 94 89	82 88 82	83 79 74	77 72 68	71 66 61	61 59 55
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	34 32 31
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	24 24 22	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	18 17 16	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	6 5 4

LEGEND

Presumptive Probation
Probation
Prison
Presumptive Imprisonment

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

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

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

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

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

21 (A) Prison sentence;

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

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

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

29 (A) Prison sentence; and

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

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

39 (g) The sentence for a violation of section 48 *of chapter 136 of the*
40 *2010 Session Laws of Kansas*, and amendments thereto, aggravated battery
41 against a law enforcement officer committed prior to July 1, 2006, or a
42 violation of section 47 *of chapter 136 of the 2010 Session Laws of Kansas*,
43 and amendments thereto, aggravated assault against a law enforcement

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

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

7 (i) (1) The sentence for the violation of the felony provision of
8 *subsection (b)(1)(D) of K.S.A. 8-1567, subsection (b)(3) of section 49 of*
9 *chapter 136 of the 2010 Session Laws of Kansas, subsections (b)(3) and*
10 *(b)(4) of section 109 of chapter 136 of the 2010 Session Laws of Kansas,*
11 *section 223 of chapter 136 of the 2010 Session Laws of Kansas and section*
12 *227 of chapter 136 of the 2010 Session Laws of Kansas, and amendments*
13 *thereto, shall be as provided by the specific mandatory sentencing*
14 *requirements of that section and shall not be subject to the provisions of*
15 *this section or section 288 of chapter 136 of the 2010 Session Laws of*
16 *Kansas, and amendments thereto.*

17 (2) If because of the offender's criminal history classification the
18 offender is subject to presumptive imprisonment or if the judge departs
19 from a presumptive probation sentence and the offender is subject to
20 imprisonment, the provisions of this section and section 288 of chapter
21 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall
22 apply and the offender shall not be subject to the mandatory sentence as
23 provided in section 109 of chapter 136 of the 2010 Session Laws of
24 Kansas, and amendments thereto.

25 (3) Notwithstanding the provisions of any other section, the term of
26 imprisonment imposed for the violation of the felony provision of
27 *subsection (b)(1)(D) of K.S.A. 8-1567, subsection (b)(3) of section 49 of*
28 *chapter 136 of the 2010 Session Laws of Kansas, subsections (b)(3) and*
29 *(b)(4) of section 109 of chapter 136 of the 2010 Session Laws of Kansas,*
30 *section 223 and section 227 of chapter 136 of the 2010 Session Laws of*
31 *Kansas, and amendments thereto, shall not be served in a state facility in*
32 *the custody of the secretary of corrections, except that the term of*
33 *imprisonment for felony violations of subsection (b)(1)(D) of K.S.A. 8-*
34 *1567, and amendments thereto, may be served in a state correctional*
35 *facility designated by the secretary of corrections if the secretary*
36 *determines that substance abuse treatment resources and facility capacity*
37 *is available. The secretary's determination regarding the availability of*
38 *treatment resources and facility capacity shall not be subject to review.*

39 (4) *Notwithstanding the provisions of any other section, the*
40 *sentencing court shall retain jurisdiction to modify the sentence imposed*
41 *for the violation of subsection (b)(1)(D) of K.S.A. 8-1567, and*
42 *amendments thereto.*

43 (j) (1) The sentence for any persistent sex offender whose current

1 convicted crime carries a presumptive term of imprisonment shall be
2 double the maximum duration of the presumptive imprisonment term. The
3 sentence for any persistent sex offender whose current conviction carries a
4 presumptive nonprison term shall be presumed imprisonment and shall be
5 double the maximum duration of the presumptive imprisonment term.

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

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

10 (ii) at the time of the conviction under paragraph (A)(i) has at least
11 one conviction for a sexually violent crime, as defined in K.S.A. 22-3717,
12 and amendments thereto, in this state or comparable felony under the laws
13 of another state, the federal government or a foreign government; or

14 (B) (i) has been convicted of rape, as defined in K.S.A. 21-3502,
15 prior to its repeal, or section 67 of chapter 136 of the 2010 Session Laws of
16 Kansas, and amendments thereto; and

17 (ii) at the time of the conviction under paragraph (B)(i) has at least
18 one conviction for rape in this state or comparable felony under the laws of
19 another state, the federal government or a foreign government.

20 (3) Except as provided in paragraph (2)(B), the provisions of this
21 subsection shall not apply to any person whose current convicted crime is
22 a severity level 1 or 2 felony.

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

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

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

33 (B) the commission of felony violations of K.S.A. ~~2009~~ 2010 Supp.
34 21-36a01 through 21-36a17, and amendments thereto; and

35 (C) its members have a common name or common identifying sign or
36 symbol; and

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

42 (l) Except as provided in subsection (o), the sentence for a violation
43 of subsection (a)(1) of section 93 of chapter 136 of the 2010 Session Laws

1 *of Kansas, and amendments thereto, or any attempt or conspiracy, as*
2 *defined in sections 33 and 34 of chapter 136 of the 2010 Session Laws of*
3 *Kansas, and amendments thereto, to commit such offense, when such*
4 *person being sentenced has a prior conviction for a violation of subsection*
5 *(a) or (b) of K.S.A. 21-3715, prior to its repeal, 21-3716, prior to its repeal,*
6 *subsection (a)(1) or (a)(2) of section 93 of chapter 136 of the 2010*
7 *Session Laws of Kansas or subsection (b) of section 93 of chapter 136 of*
8 *the 2010 Session Laws of Kansas, and amendments thereto, or any attempt*
9 *or conspiracy to commit such offenses, shall be presumed presumptive*
10 *imprisonment.*

11 (m) The sentence for a violation of K.S.A 22-4903 or subsection (a)
12 (2) of section 138 *of chapter 136 of the 2010 Session Laws of Kansas,* and
13 amendments thereto, shall be presumptive imprisonment. If an offense
14 under such sections is classified in grid blocks 5-E, 5-F, 5-G, 5-H or 5-I,
15 the court may impose an optional nonprison sentence as provided in
16 subsection (q).

17 (n) The sentence for a violation of criminal deprivation of property, as
18 defined in section 89 *of chapter 136 of the 2010 Session Laws of Kansas,*
19 and amendments thereto, when such property is a motor vehicle, and when
20 such person being sentenced has any combination of two or more prior
21 convictions of subsection (b) of K.S.A. 21-3705, prior to its repeal, or of
22 criminal deprivation of property, as defined in section 89 *of chapter 136 of*
23 *the 2010 Session Laws of Kansas,* and amendments thereto, when such
24 property is a motor vehicle, shall be presumptive imprisonment. Such
25 sentence shall not be considered a departure and shall not be subject to
26 appeal.

27 (o) The sentence for a felony violation of theft of property as defined
28 in section 87 *of chapter 136 of the 2010 Session Laws of Kansas,* and
29 amendments thereto, or burglary as defined in subsection (a) of section 93
30 *of chapter 136 of the 2010 Session Laws of Kansas,* and amendments
31 thereto, when such person being sentenced has no prior convictions for a
32 violation of K.S.A. 21-3701 or 21-3715, prior to their repeal, or theft of
33 property as defined in section 87 *of chapter 136 of the 2010 Session Laws*
34 *of Kansas,* and amendments thereto, or burglary as defined in subsection
35 (a) of section 93 *of chapter 136 of the 2010 Session Laws of Kansas,* and
36 amendments thereto; or the sentence for a felony violation of theft of
37 property as defined in section 87 *of chapter 136 of the 2010 Session Laws*
38 *of Kansas,* and amendments thereto, when such person being sentenced
39 has one or two prior felony convictions for a violation of K.S.A. 21-3701,
40 21-3715 or 21-3716, prior to their repeal, or theft of property as defined in
41 section 87 *of chapter 136 of the 2010 Session Laws of Kansas,* and
42 amendments thereto, or burglary as defined in section 93 *of chapter 136 of*
43 *the 2010 Session Laws of Kansas,* and amendments thereto; or the

1 sentence for a felony violation of burglary as defined in subsection (a) of
2 section 93 of chapter 136 of the 2010 Session Laws of Kansas, and
3 amendments thereto, when such person being sentenced has one prior
4 felony conviction for a violation of K.S.A. 21-3701, 21-3715 or 21-3716,
5 prior to their repeal, or theft of property as defined in section 87 of chapter
6 136 of the 2010 Session Laws of Kansas, and amendments thereto, or
7 burglary as defined in section 93 of chapter 136 of the 2010 Session Laws
8 of Kansas, and amendments thereto, shall be the sentence as provided by
9 this section, except that the court may order an optional nonprison
10 sentence for a defendant to participate in a drug treatment program,
11 including, but not limited to, an approved after-care plan, if the court
12 makes the following findings on the record:

13 (1) Substance abuse was an underlying factor in the commission of
14 the crime;

15 (2) substance abuse treatment in the community is likely to be more
16 effective than a prison term in reducing the risk of offender recidivism;
17 and

18 (3) participation in an intensive substance abuse treatment program
19 will serve community safety interests.

20 A defendant sentenced to an optional nonprison sentence under this
21 subsection shall be supervised by community correctional services. The
22 provisions of subsection (f)(1) of section 305 of chapter 136 of the 2010
23 Session Laws of Kansas, and amendments thereto, shall apply to a
24 defendant sentenced under this subsection. The sentence under this
25 subsection shall not be considered a departure and shall not be subject to
26 appeal.

27 (p) The sentence for a felony violation of theft of property as defined
28 in section 87 of chapter 136 of the 2010 Session Laws of Kansas, and
29 amendments thereto, when such person being sentenced has any
30 combination of three or more prior felony convictions for violations of
31 K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal, or theft of
32 property as defined in section 87 of chapter 136 of the 2010 Session Laws
33 of Kansas, and amendments thereto, or burglary as defined in section 93 of
34 chapter 136 of the 2010 Session Laws of Kansas; or the sentence for a
35 violation of burglary as defined in subsection (a) of section 93 of chapter
36 136 of the 2010 Session Laws of Kansas, and amendments thereto, when
37 such person being sentenced has any combination of two or more prior
38 convictions for violations of K.S.A. 21-3701, 21-3715 and 21-3716, prior
39 to their repeal, or theft of property as defined in section 87 of chapter 136
40 of the 2010 Session Laws of Kansas, and amendments thereto, or burglary
41 as defined in section 93 of chapter 136 of the 2010 Session Laws of
42 Kansas, and amendments thereto, shall be presumed imprisonment and the
43 defendant shall be sentenced to prison as provided by this section, except

1 that the court may recommend that an offender be placed in the custody of
2 the secretary of corrections, in a facility designated by the secretary to
3 participate in an intensive substance abuse treatment program, upon
4 making the following findings on the record:

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

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

10 (3) participation in an intensive substance abuse treatment program
11 with the possibility of an early release from imprisonment will serve
12 community safety interests by promoting offender reformation.

13 The intensive substance abuse treatment program shall be determined
14 by the secretary of corrections, but shall be for a period of at least four
15 months. Upon the successful completion of such intensive treatment
16 program, the offender shall be returned to the court and the court may
17 modify the sentence by directing that a less severe penalty be imposed in
18 lieu of that originally adjudged within statutory limits. If the offender's
19 term of imprisonment expires, the offender shall be placed under the
20 applicable period of postrelease supervision. The sentence under this
21 subsection shall not be considered a departure and shall not be subject to
22 appeal.

23 (q) As used in this section, an "optional nonprison sentence" is a
24 sentence which the court may impose, in lieu of the presumptive sentence,
25 upon making the following findings on the record:

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

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

31 (3) the nonprison sanction will serve community safety interests by
32 promoting offender reformation.

33 Any decision made by the court regarding the imposition of an optional
34 nonprison sentence shall not be considered a departure and shall not be
35 subject to appeal.

36 (r) The sentence for a violation of subsection (c)(2) of section 48 of
37 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments thereto,
38 shall be presumptive imprisonment and shall be served consecutively to
39 any other term or terms of imprisonment imposed. Such sentence shall not
40 be considered a departure and shall not be subject to appeal.

41 (s) *The sentence for a violation of section 76 of chapter 136 of the*
42 *2010 Session Laws of Kansas, and amendments thereto, shall be*
43 *presumptive imprisonment. Such sentence shall not be considered a*

1 *departure and shall not be subject to appeal.*

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

7 *(2) The sentence imposed pursuant to paragraph (1) shall be*
8 *presumptive imprisonment and shall be served consecutively to any other*
9 *term or terms of imprisonment imposed. Such sentence shall not be*
10 *considered a departure and shall not be subject to appeal.*

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

17 *(u) The sentence for a violation of subsection (b)(1)(C) of K.S.A. 8-*
18 *2,144, and amendments thereto, shall be presumptive imprisonment. Such*
19 *sentence shall not be considered a departure and shall not be subject to*
20 *appeal. Notwithstanding the provisions of any other section, an offense*
21 *under subsection (b)(1)(C) of K.S.A. 8-2,144, and amendments thereto,*
22 *shall be classified in the following grid block, except when, because of the*
23 *offender's criminal history classification, the offense is classified in a grid*
24 *block which exceeds the grid block specified:*

25 *(1) A 3rd conviction shall be classified in grid block 7-H;*

26 *(2) a 4th conviction shall be classified in grid block 7-G;*

27 *(3) a 5th conviction shall be classified in grid block 7-F;*

28 *(4) a 6th conviction shall be classified in grid block 7-E;*

29 *(5) a 7th conviction shall be classified in grid block 7-D;*

30 *(6) an 8th conviction shall be classified in grid block 7-C;*

31 *(7) a 9th conviction shall be classified in grid block 7-B; and*

32 *(8) a 10th or subsequent conviction shall be classified in grin block*
33 *7-A.*

34 *(v) The sentence for a violation of subsection (b)(1)(F) of K.S.A. 8-*
35 *1567, and amendments thereto, shall be presumptive imprisonment. Such*
36 *sentence shall not be considered a departure and shall not be subject to*
37 *appeal. Notwithstanding the provisions of any other section, an offense*
38 *under subsection (b)(1)(F) of K.S.A. 8-1567, and amendments thereto,*
39 *shall be classified in the following grid block, except when, because of the*
40 *offender's criminal history classification, the offense is classified in a grid*
41 *block which exceeds the grid block specified:*

42 *(1) A 4th conviction shall be classified in grid block 7-H;*

43 *(2) a 5th conviction shall be classified in grid block 7-G;*

- 1 (3) a 6th conviction shall be classified in grid block 7-F;
- 2 (4) a 7th conviction shall be classified in grid block 7-E;
- 3 (5) an 8th conviction shall be classified in grid block 7-D;
- 4 (6) a 9th conviction shall be classified in grid block 7-C;
- 5 (7) a 10th conviction shall be classified in grid block 7-B; and
- 6 (8) an 11th or subsequent conviction shall be classified in grid block
7 7-A.

8 Sec. 46. Section 292 of chapter 136 of the 2010 Session Laws of
9 Kansas, is hereby amended to read as follows: Sec. 292. In addition to the
10 provisions of section 291 of chapter 136 of the 2010 Session Laws of
11 Kansas, and amendments thereto, the following shall apply in determining
12 an offender's criminal history classification as contained in the
13 presumptive sentencing guidelines grids:

14 (a) Every three prior adult convictions or juvenile adjudications of
15 class A and class B person misdemeanors in the offender's criminal history,
16 or any combination thereof, shall be rated as one adult conviction or one
17 juvenile adjudication of a person felony for criminal history purposes.
18 Every three prior adult convictions or juvenile adjudications of assault as
19 defined in subsection (a) of section 47 of chapter 136 of the 2010 Session
20 Laws of Kansas, and amendments thereto, occurring within a period
21 commencing three years prior to the date of conviction for the current
22 crime of conviction shall be rated as one adult conviction or one juvenile
23 adjudication of a person felony for criminal history purposes.

24 (b) A conviction of criminal use of weapons as defined in subsection
25 (a)(8) or (a)(13) of section 186 of chapter 136 of the 2010 Session Laws of
26 Kansas, and amendments thereto, or possession of a firearm on the
27 grounds or in the state capitol building as defined in section 194 of chapter
28 136 of the 2010 Session Laws of Kansas, and amendments thereto, will be
29 scored as a select class B nonperson misdemeanor conviction or
30 adjudication and shall not be scored as a person misdemeanor for criminal
31 history purposes.

32 (c) (1) If the current crime of conviction was committed before July
33 1, 1996, and is for subsection (b) of K.S.A. 21-3404, as in effect on June
34 30, 1996, involuntary manslaughter in the commission of driving under the
35 influence, then, each prior adult conviction or juvenile adjudication for
36 K.S.A. 8-1567, and amendments thereto, shall count as one person felony
37 for criminal history purposes.

38 (2) If the current crime of conviction was committed on or after July
39 1, 1996, and prior to July 1, 2011, and is for a violation of subsection (a)
40 (3) of section 40 of chapter 136 of the 2010 Session Laws of Kansas, and
41 amendments thereto, each prior adult conviction, diversion in lieu of
42 criminal prosecution or juvenile adjudication for: (A) An act described in
43 K.S.A. 8-1567, and amendments thereto; or (B) a violation of a law of

1 another state or an ordinance of any city, or resolution of any county,
2 which prohibits the act described in K.S.A. 8-1567, and amendments
3 thereto, shall count as one person felony for criminal history purposes.

4 (3) *If the current crime of conviction was committed on or after July*
5 *1, 2011, and is for a violation of subsection (a)(3) of section 40 of chapter*
6 *136 of the 2010 Session Laws of Kansas, and amendments thereto, each*
7 *prior adult conviction, diversion in lieu of criminal prosecution or juvenile*
8 *adjudication for the following shall count as one person felony for*
9 *criminal history purposes: (A) K.S.A. 8-2,144, and amendments thereto;*
10 *(B) K.S.A. 8-1567, and amendments thereto; (C) K.S.A. 32-1131, and*
11 *amendments thereto; (D) subsection (a)(3) of section 40 of chapter 136 of*
12 *the 2010 Session Laws of Kansas, and amendments thereto; and (E)*
13 *aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or*
14 *vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was*
15 *committed while committing a violation of K.S.A. 8-1567, and*
16 *amendments thereto.*

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

19 (1) As a prior person felony if the prior conviction or adjudication
20 was classified as a burglary as defined in subsection (a)(1) of section 93 of
21 chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

22 (2) As a prior nonperson felony if the prior conviction or adjudication
23 was classified as a burglary as defined in subsection (a)(2) or (a)(3) of
24 section 93 of chapter 136 of the 2010 Session Laws of Kansas, and
25 amendments thereto.

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

29 (e) Out-of-state convictions and juvenile adjudications shall be used
30 in classifying the offender's criminal history. An out-of-state crime will be
31 classified as either a felony or a misdemeanor according to the convicting
32 jurisdiction. If a crime is a felony in another state, it will be counted as a
33 felony in Kansas. The state of Kansas shall classify the crime as person or
34 nonperson. In designating a crime as person or nonperson comparable
35 offenses shall be referred to. If the state of Kansas does not have a
36 comparable offense, the out-of-state conviction shall be classified as a
37 nonperson crime. Convictions or adjudications occurring within the federal
38 system, other state systems, the District of Columbia, foreign, tribal or
39 military courts are considered out-of-state convictions or adjudications.
40 The facts required to classify out-of-state adult convictions and juvenile
41 adjudications shall be established by the state by a preponderance of the
42 evidence.

43 (f) Except as provided in subsections (d)(3)(B), (d)(3)(C), (d)(3)(D)

1 and (d)(4) of section 291 *of chapter 136 of the 2010 Session Laws of*
2 *Kansas*, and amendments thereto, juvenile adjudications will be applied in
3 the same manner as adult convictions. Out-of-state juvenile adjudications
4 will be treated as juvenile adjudications in Kansas.

5 (g) A prior felony conviction of an attempt, a conspiracy or a
6 solicitation as provided in section 33, 34 or 35 *of chapter 136 of the 2010*
7 *Session Laws of Kansas*, and amendments thereto, to commit a crime shall
8 be treated as a person or nonperson crime in accordance with the
9 designation assigned to the underlying crime.

10 (h) Drug crimes are designated as nonperson crimes for criminal
11 history scoring.

12 Sec. 47. Section 299 of chapter 136 of the 2010 Session Laws of
13 Kansas is hereby amended to read as follows: Sec. 299. (a) When a
14 departure sentence is appropriate, the sentencing judge may depart from
15 the sentencing guidelines as provided in this section.

16 (1) The sentencing judge shall not impose a downward dispositional
17 departure sentence for any crime of extreme sexual violence, as defined in
18 section 296 *of chapter 136 of the 2010 Session Laws of Kansas*, and
19 amendments thereto. The sentencing judge shall not impose a downward
20 durational departure sentence for any crime of extreme sexual violence, as
21 defined in section 296 *of chapter 136 of the 2010 Session Laws of Kansas*,
22 and amendments thereto, to less than 50% of the center of the range of the
23 sentence for such crime.

24 (2) *The sentencing judge shall not impose a downward dispositional*
25 *departure sentence or a downward durational departure sentence for a*
26 *violation of subsection (b)(1)(C) of K.S.A. 8-2,144 or subsection (b)(1)(F)*
27 *of K.S.A. 8-1567, and amendments thereto.*

28 (b) When a sentencing judge departs in setting the duration of a
29 presumptive term of imprisonment:

30 (1) The judge shall consider and apply the sentencing guidelines,
31 ~~which is~~ to impose a sentence that is proportionate to the severity of the
32 crime of conviction and the offender's criminal history; and

33 (2) the presumptive term of imprisonment set in such departure shall
34 not total more than double the maximum duration of the presumptive
35 imprisonment term.

36 (c) When a sentencing judge imposes a prison term as a dispositional
37 departure:

38 (1) The judge shall consider and apply ~~the primary purpose of the~~
39 ~~sentencing guidelines, which is~~ to impose a sentence that is proportionate
40 to the severity of the crime of conviction; and

41 (2) the term of imprisonment shall not exceed the maximum duration
42 of the presumptive imprisonment term listed within the sentencing grid.
43 Any sentence inconsistent with the provisions of this section shall

1 constitute an additional departure and shall require substantial and
2 compelling reasons independent of the reasons given for the dispositional
3 departure.

4 (d) If the sentencing judge imposes a nonprison sentence as a
5 dispositional departure from the guidelines, the recommended duration
6 shall be as provided in subsection (c) of section 248 *of chapter 136 of the*
7 *2010 Session Laws of Kansas*, and amendments thereto.

8 Sec. 48. K.S.A. 8-285, 8-1008, 8-1009, 8-1016, 8-1017, 12-4414, 12-
9 4415, 12-4416, 22-2908, 22-3610, 22-4704, 22-4705 and 79-4101 and
10 K.S.A. 2009 Supp. 8-1567, as amended by section 3 of chapter 153 of the
11 2010 Session Laws of Kansas, 21-4704, as amended by section 6 of
12 chapter 147 of the 2010 Session Laws of Kansas, 22-2908, as amended by
13 section 9 of chapter 101 of the 2010 Session Laws of Kansas, 22-2909, as
14 amended by section 10 of chapter 101 of the 2010 Session Laws of
15 Kansas, and K.S.A. 2010 Supp. 8-235, 8-262, 8-2,142, 8-2,144, 8-1001, 8-
16 1012, 8-1013, 8-1014, 8-1015, 8-1020, 8-1020a, 8-1022, 8-1567, 12-4104,
17 12-4106, 12-4516, 12-4517, 21-4704, 22-2802, 22-2909, 22-3717, 22-
18 3717c, 28-176, 60-427, 74-2012, 74-7301, 75-5291 and 79-4108 and
19 sections 14, 254, 285, 292 and 299 of chapter 136 of the 2010 Session
20 Laws of Kansas are hereby repealed.

21 Sec. 49. This act shall take effect and be in force from and after its
22 publication in the statute book.