

HOUSE BILL No. 2439

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

12-21

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

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

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

11 (1) Recklessly;

12 (2) in the commission of, or attempt to commit, or flight from any
13 felony, other than an inherently dangerous felony as defined in K.S.A.
14 2017 Supp. 21-5402, and amendments thereto, that is enacted for the
15 protection of human life or safety or a misdemeanor that is enacted for the
16 protection of human life or safety, including acts described in K.S.A. 8-
17 1566 and ~~subsection (a) of 8-1568(a)~~, and amendments thereto, but
18 excluding the acts described in K.S.A. 8-1567, and amendments thereto;

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

21 (4) during the commission of a lawful act in an unlawful manner; *or*
22 (5) *in the commission of, or attempt to commit, or flight from an act*
23 *described in K.S.A. 8-1567, and amendments thereto, while:*

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

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

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

1 (b) Involuntary manslaughter as defined in:

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

4 (2) subsection (a)(3) is a severity level 4, person felony; *and*
5 (3) *subsection (a)(5) is a severity level 3, person felony.*

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

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

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

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

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

43 (c) (1) The person found guilty of a class A nonperson misdemeanor

Sec. 2. K.S.A. 2017 Supp. 21-5413 is hereby amended to read as follows:
See Attachment 1

1 on a third or subsequent conviction of this section shall be sentenced to not
2 less than 90 days' imprisonment and fined not less than \$1,500 if such
3 person's privilege to drive a motor vehicle is canceled, suspended or
4 revoked because such person:

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

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

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

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

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

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

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

40 (1) The alcohol concentration in the person's blood or breath, as
41 shown by any competent evidence, including other competent evidence, as
42 defined in K.S.A. 8-1013(f)(1), and amendments thereto, is 0.04 or more;

43 (2) the alcohol concentration in the person's blood or breath, as

1 measured within three hours of the time of driving a commercial motor
2 vehicle, is 0.04 or more; or

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

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

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

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

40 (C) on a third or subsequent conviction a nonperson felony. The
41 person convicted shall be sentenced to not less than 90 days nor more than
42 one year's imprisonment and fined not less than \$1,750 nor more than
43 \$2,500. The person convicted shall not be eligible for release on probation,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (3) "conviction" includes: (A) Entering into a diversion agreement in
43 lieu of further criminal proceedings on a complaint alleging a violation of

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

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

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

14 (o) For the purpose of this section:

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

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

21 (3) "drug" includes toxic vapors as such term is defined in K.S.A.
22 2017 Supp. 21-5712, and amendments thereto.

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

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

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

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

1 age or older.

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

4 (A) On a first conviction a class A, nonperson misdemeanor. The
5 person convicted shall be sentenced to not less than 90 days nor more than
6 one year's imprisonment and fined not less than \$1,250 nor more than
7 \$1,750. The person convicted shall serve at least five consecutive days'
8 imprisonment before the person is granted probation, suspension or
9 reduction of sentence or parole or is otherwise released. The five days'
10 imprisonment mandated by this subsection may be served in a work
11 release program only after such person has served 48 consecutive hours'
12 imprisonment, provided such work release program requires such person
13 to return to confinement at the end of each day in the work release
14 program. The person convicted, if placed into a work release program,
15 shall serve a minimum of 120 hours of confinement. Such 120 hours of
16 confinement shall be a period of at least 48 consecutive hours of
17 imprisonment followed by confinement hours at the end of and continuing
18 to the beginning of the offender's work day. The court may place the
19 person convicted under a house arrest program pursuant to K.S.A. 2017
20 Supp. 21-6609, and amendments thereto, to serve the five days'
21 imprisonment mandated by this subsection only after such person has
22 served 48 consecutive hours' imprisonment. The person convicted, if
23 placed under house arrest, shall be monitored by an electronic monitoring
24 device, which verifies the offender's location. The offender shall serve a
25 minimum of 120 hours of confinement within the boundaries of the
26 offender's residence. Any exceptions to remaining within the boundaries of
27 the offender's residence provided for in the house arrest agreement shall
28 not be counted as part of the 120 hours;

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

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

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

37 (D) on a third or subsequent conviction a nonperson felony. The
38 person convicted shall be sentenced to not less than 90 days nor more than
39 one year's imprisonment and fined \$2,500. The person convicted shall not
40 be eligible for release on probation, suspension or reduction of sentence or
41 parole until the person has served at least 90 days' imprisonment. The 90
42 days' imprisonment mandated by this subsection may be served in a work
43 release program only after such person has served 72 consecutive hours'

1 imprisonment, provided such work release program requires such person
2 to return to confinement at the end of each day in the work release
3 program. The person convicted, if placed into a work release program,
4 shall serve a minimum of 2,160 hours of confinement. Such 2,160 hours of
5 confinement shall be a period of at least 72 consecutive hours of
6 imprisonment followed by confinement hours at the end of and continuing
7 to the beginning of the offender's work day. The court may place the
8 person convicted under a house arrest program pursuant to K.S.A. 2017
9 Supp. 21-6609, and amendments thereto, to serve the 90 days'
10 imprisonment mandated by this subsection only after such person has
11 served 72 consecutive hours' imprisonment. The person convicted, if
12 placed under house arrest, shall be monitored by an electronic monitoring
13 device, which verifies the offender's location. The offender shall serve a
14 minimum of 2,160 hours of confinement within the boundaries of the
15 offender's residence. Any exceptions to remaining within the boundaries of
16 the offender's residence provided for in the house arrest agreement shall
17 not be counted as part of the 2,160 hours.

18 (2) The court may order that the term of imprisonment imposed
19 pursuant to subsection (b)(1)(C) or (b)(1)(D) be served in a state facility in
20 the custody of the secretary of corrections in a facility designated by the
21 secretary for the provision of substance abuse treatment pursuant to the
22 provisions of K.S.A. 2017 Supp. 21-6804, and amendments thereto. The
23 person shall remain imprisoned at the state facility only while participating
24 in the substance abuse treatment program designated by the secretary and
25 shall be returned to the custody of the sheriff for execution of the balance
26 of the term of imprisonment upon completion of or the person's discharge
27 from the substance abuse treatment program. Custody of the person shall
28 be returned to the sheriff for execution of the sentence imposed in the
29 event the secretary of corrections determines: (A) That substance abuse
30 treatment resources or the capacity of the facility designated by the
31 secretary for the incarceration and treatment of the person is not available;
32 (B) the person fails to meaningfully participate in the treatment program of
33 the designated facility; (C) the person is disruptive to the security or
34 operation of the designated facility; or (D) the medical or mental health
35 condition of the person renders the person unsuitable for confinement at
36 the designated facility. The determination by the secretary that the person
37 either is not to be admitted into the designated facility or is to be
38 transferred from the designated facility is not subject to review. The sheriff
39 shall be responsible for all transportation expenses to and from the state
40 correctional facility.

41 (3) In addition, for any conviction pursuant to subsection (b)(1)(B),
42 (b)(1)(C) or (b)(1)(D), at the time of the filing of the judgment form or
43 journal entry as required by K.S.A. 22-3426 or K.S.A. 2017 Supp. 21-

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

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

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

1 may order the person on house arrest, work release or other conditional
2 release.

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

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

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

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

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

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

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

34 (1) Convictions for a violation of K.S.A. 8-1567, and amendments
35 thereto, or a violation of an ordinance of any city or resolution of any
36 county which prohibits the acts that such section prohibits, or entering into
37 a diversion agreement in lieu of further criminal proceedings on a
38 complaint alleging any such violations, shall be taken into account, but
39 only convictions or diversions occurring: (A) On or after July 1, 2001; and
40 (B) when such person was 18 years of age or older. Nothing in this
41 provision shall be construed as preventing any court from considering any
42 convictions or diversions occurring during the person's lifetime in
43 determining the sentence to be imposed within the limits provided for a

1 first, second, third, fourth or subsequent offense;

2 (2) any convictions for a violation of the following sections which
3 occurred during a person's lifetime shall be taken into account, but only
4 convictions occurring when such person was 18 years of age or older: (A)
5 This section; (B) driving a commercial motor vehicle under the influence,
6 K.S.A. 8-2,144, and amendments thereto; (C) operating a vessel under the
7 influence of alcohol or drugs, K.S.A. 32-1131, and amendments thereto;
8 (D) involuntary manslaughter while driving under the influence of alcohol
9 or drugs, K.S.A. 21-3442, prior to its repeal, or K.S.A. 2017 Supp. 21-
10 5405(a)(3) *or* (a)(5), and amendments thereto; (E) aggravated battery as
11 described in K.S.A. 2017 Supp. 21-5413(b)(3), and amendments thereto;
12 and (F) aggravated vehicular homicide, K.S.A. 21-3405a, prior to its
13 repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the
14 crime was committed while committing a violation of K.S.A. 8-1567, and
15 amendments thereto;

16 (3) "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 (h)(2); (B) conviction of a violation of an
19 ordinance of a city in this state, a resolution of a county in this state or any
20 law of another state which would constitute a crime described in
21 subsection (h)(1) or (h)(2); 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 (h)(1) or (h)(2) if committed off
25 a military reservation in this state;

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

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

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

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

40 (i) Upon conviction of a person of a violation of this section or a
41 violation of a city ordinance or county resolution prohibiting the acts
42 prohibited by this section, the division, upon receiving a report of
43 conviction, shall suspend, restrict or suspend and restrict the person's

1 driving privileges as provided by K.S.A. 8-1014, and amendments thereto.

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

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

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

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

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

24 (A) Division a record of all prior convictions obtained against such
25 person for any violations of any of the motor vehicle laws of this state; and
26 (B) Kansas bureau of investigation central repository all criminal
27 history record information concerning such person.

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

32 (l) No plea bargaining agreement shall be entered into nor shall any
33 judge approve a plea bargaining agreement entered into for the purpose of
34 permitting a person charged with a violation of this section, or a violation
35 of any ordinance of a city or resolution of any county in this state which
36 prohibits the acts prohibited by this section, to avoid the mandatory
37 penalties established by this section or by the ordinance. For the purpose
38 of this subsection, entering into a diversion agreement pursuant to K.S.A.
39 12-4413 et seq. or 22-2906 et seq., and amendments thereto, shall not
40 constitute plea bargaining.

41 (m) As used in this section, "imprisonment" shall include any
42 restrained environment in which the court and law enforcement agency
43 intend to retain custody and control of a defendant and such environment

1 has been approved by the board of county commissioners or the governing
2 body of a city.

3 (n) On and after July 1, 2012, the amount of \$250 from each fine
4 imposed pursuant to this section shall be remitted by the clerk of the
5 district court to the state treasurer in accordance with the provisions of
6 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
7 remittance, the state treasurer shall credit the entire amount to the
8 community corrections supervision fund established by K.S.A. 2017 Supp.
9 75-52,113, and amendments thereto.

10 Sec. 5. K.S.A. 2017 Supp. 8-1567 is hereby amended to read as
11 follows: 8-1567. (a) Driving under the influence is operating or attempting
12 to operate any vehicle within this state while:

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

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

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

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

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

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

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

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

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

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

1 the offender's residence provided for in the house arrest agreement shall
2 not be counted as part of the 2,160 hours;

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

29 (E) on a fourth or subsequent conviction a nonperson felony. The
30 person convicted shall be sentenced to not less than 90 days nor more than
31 one year's imprisonment and fined \$2,500. The person convicted shall not
32 be eligible for release on probation, suspension or reduction of sentence or
33 parole until the person has served at least 90 days' imprisonment. The 90
34 days' imprisonment mandated by this subsection may be served in a work
35 release program only after such person has served 72 consecutive hours'
36 imprisonment, provided such work release program requires such person
37 to return to confinement at the end of each day in the work release
38 program. The person convicted, if placed into a work release program,
39 shall serve a minimum of 2,160 hours of confinement. Such 2,160 hours of
40 confinement shall be a period of at least 72 consecutive hours of
41 imprisonment followed by confinement hours at the end of and continuing
42 to the beginning of the offender's work day. The court may place the
43 person convicted under a house arrest program pursuant to K.S.A. 2017

1 Supp. 21-6609, and amendments thereto, to serve the 90 days'
2 imprisonment mandated by this subsection only after such person has
3 served 72 consecutive hours' imprisonment. The person convicted, if
4 placed under house arrest, shall be monitored by an electronic monitoring
5 device, which verifies the offender's location. The offender shall serve a
6 minimum of 2,160 hours of confinement within the boundaries of the
7 offender's residence. Any exceptions to remaining within the boundaries of
8 the offender's residence provided for in the house arrest agreement shall
9 not be counted as part of the 2,160 hours.

10 (2) The court may order that the term of imprisonment imposed
11 pursuant to subsection (b)(1)(D) or (b)(1)(E) be served in a state facility in
12 the custody of the secretary of corrections in a facility designated by the
13 secretary for the provision of substance abuse treatment pursuant to the
14 provisions of K.S.A. 2017 Supp. 21-6804, and amendments thereto. The
15 person shall remain imprisoned at the state facility only while participating
16 in the substance abuse treatment program designated by the secretary and
17 shall be returned to the custody of the sheriff for execution of the balance
18 of the term of imprisonment upon completion of or the person's discharge
19 from the substance abuse treatment program. Custody of the person shall
20 be returned to the sheriff for execution of the sentence imposed in the
21 event the secretary of corrections determines: (A) That substance abuse
22 treatment resources or the capacity of the facility designated by the
23 secretary for the incarceration and treatment of the person is not available;
24 (B) the person fails to meaningfully participate in the treatment program of
25 the designated facility; (C) the person is disruptive to the security or
26 operation of the designated facility; or (D) the medical or mental health
27 condition of the person renders the person unsuitable for confinement at
28 the designated facility. The determination by the secretary that the person
29 either is not to be admitted into the designated facility or is to be
30 transferred from the designated facility is not subject to review. The sheriff
31 shall be responsible for all transportation expenses to and from the state
32 correctional facility.

33 (3) In addition, for any conviction pursuant to subsection (b)(1)(C),
34 (b)(1)(D) or (b)(1)(E), at the time of the filing of the judgment form or
35 journal entry as required by K.S.A. 22-3426 or K.S.A. 2017 Supp. 21-
36 6711, and amendments thereto, the court shall cause a certified copy to be
37 sent to the officer having the offender in charge. The court shall determine
38 whether the offender, upon release from imprisonment, shall be supervised
39 by community correctional services or court services based upon the risk
40 and needs of the offender. The risk and needs of the offender shall be
41 determined by use of a risk assessment tool specified by the Kansas
42 sentencing commission. The law enforcement agency maintaining custody
43 and control of a defendant for imprisonment shall cause a certified copy of

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

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

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

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

41 (e) The court may establish the terms and time for payment of any
42 fines, fees, assessments and costs imposed pursuant to this section. Any
43 assessment and costs shall be required to be paid not later than 90 days

1 after imposed, and any remainder of the fine shall be paid prior to the final
2 release of the defendant by the court.

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

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

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

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

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

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

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

39 (2) any convictions for a violation of the following sections occurring
40 during a person's lifetime shall be taken into account: (A) Refusing to
41 submit to a test to determine the presence of alcohol or drugs, K.S.A. 2017
42 Supp. 8-1025, and amendments thereto; (B) driving a commercial motor
43 vehicle under the influence, K.S.A. 8-2,144, and amendments thereto; (C)

1 operating a vessel under the influence of alcohol or drugs, K.S.A. 32-1131,
2 and amendments thereto; (D) involuntary manslaughter while driving
3 under the influence of alcohol or drugs, K.S.A. 21-3442, prior to its repeal,
4 or ~~subsection (a)(3) of K.S.A. 2017 Supp. 21-5405(a)(3) or (a)(5), and~~
5 amendments thereto; (E) aggravated battery as described in ~~subsection (b)~~
6 ~~(3) of K.S.A. 2017 Supp. 21-5413(b)(3), and amendments thereto; and (F)~~
7 aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or
8 vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was
9 committed while committing a violation of K.S.A. 8-1567, and
10 amendments thereto;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 2017 Supp. 21-5712, and amendments thereto.

2 (p)(1) The amount of the increase in fines as specified in this section
3 shall be remitted by the clerk of the district court to the state treasurer in
4 accordance with the provisions of K.S.A. 75-4215, and amendments
5 thereto. Upon receipt of remittance of the increase provided in this act, the
6 state treasurer shall deposit the entire amount in the state treasury and the
7 state treasurer shall credit 50% to the community alcoholism and
8 intoxication programs fund and 50% to the department of corrections
9 alcohol and drug abuse treatment fund, which is hereby created in the state
10 treasury.

11 (2) On and after July 1, 2011, the amount of \$250 from each fine
12 imposed pursuant to this section shall be remitted by the clerk of the
13 district court to the state treasurer in accordance with the provisions of
14 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
15 remittance, the state treasurer shall credit the entire amount to the
16 community corrections supervision fund established by K.S.A. 2017 Supp.
17 75-52,113, and amendments thereto.

18 Sec. 6. K.S.A. 2017 Supp. 21-6811 is hereby amended to read as
19 follows: 21-6811. In addition to the provisions of K.S.A. 2017 Supp. 21-
20 6810, and amendments thereto, the following shall apply in determining an
21 offender's criminal history classification as contained in the presumptive
22 sentencing guidelines grids:

23 (a) Every three prior adult convictions or juvenile adjudications of
24 class A and class B person misdemeanors in the offender's criminal history,
25 or any combination thereof, shall be rated as one adult conviction or one
26 juvenile adjudication of a person felony for criminal history purposes.
27 Every three prior adult convictions or juvenile adjudications of assault as
28 defined in K.S.A. 21-3408, prior to its repeal, or K.S.A. 2017 Supp. 21-
29 5412(a), and amendments thereto, occurring within a period commencing
30 three years prior to the date of conviction for the current crime of
31 conviction shall be rated as one adult conviction or one juvenile
32 adjudication of a person felony for criminal history purposes.

33 (b) A conviction of criminal possession of a firearm as defined in
34 K.S.A. 21-4204(a)(1) or (a)(5), prior to its repeal, criminal use of weapons
35 as defined in K.S.A. 2017 Supp. 21-6301(a)(10) or (a)(11), and
36 amendments thereto, or unlawful possession of a firearm as in effect on
37 June 30, 2005, and as defined in K.S.A. 21-4218, prior to its repeal, will be
38 scored as a select class B nonperson misdemeanor conviction or
39 adjudication and shall not be scored as a person misdemeanor for criminal
40 history purposes.

41 (c)(1) If the current crime of conviction was committed before July
42 1, 1996, and is for K.S.A. 21-3404(b), as in effect on June 30, 1996,
43 involuntary manslaughter in the commission of driving under the

1 influence, then, each prior adult conviction or juvenile adjudication for
2 K.S.A. 8-1567, and amendments thereto, shall count as one person felony
3 for criminal history purposes.

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

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

16 (A) The first prior adult conviction, diversion in lieu of criminal
17 prosecution or juvenile adjudication for the following shall count as one
18 nonperson felony for criminal history purposes: (i) Any act described in
19 K.S.A. 8-2,144 or 8-1567 or K.S.A. 2017 Supp. 8-1025, and amendments
20 thereto; or (ii) a violation of a law of another state or an ordinance of any
21 city, or resolution of any county, which prohibits any act described in
22 K.S.A. 8-2,144 or 8-1567 or K.S.A. 2017 Supp. 8-1025, and amendments
23 thereto; and

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

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

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

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

41 The facts required to classify prior burglary adult convictions and
42 juvenile adjudications shall be established by the state by a preponderance
43 of the evidence.

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

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

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

7 (B) If a crime is a misdemeanor in another state, the state of Kansas
8 shall refer to the comparable offense in order to classify the out-of-state
9 crime as a class A, B or C misdemeanor. If the comparable misdemeanor
10 crime in the state of Kansas is a felony, the out-of-state crime shall be
11 classified as a class A misdemeanor. If the state of Kansas does not have a
12 comparable crime, the out-of-state crime shall not be used in classifying
13 the offender's criminal history.

14 (3) The state of Kansas shall classify the crime as person or
15 nonperson. In designating a crime as person or nonperson, comparable
16 offenses under the Kansas criminal code in effect on the date the current
17 crime of conviction was committed shall be referred to. If the state of
18 Kansas does not have a comparable offense in effect on the date the
19 current crime of conviction was committed, the out-of-state conviction
20 shall be classified as a nonperson crime.

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

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

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

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

38 (h) Drug crimes are designated as nonperson crimes for criminal
39 history scoring.

40 (i) If the current crime of conviction is for a violation of K.S.A. 8-
41 1602(b)(3) through (b)(5), and amendments thereto, each of the following
42 prior convictions for offenses committed on or after July 1, 2011, shall
43 count as a person felony for criminal history purposes: K.S.A. 8-235, 8-

1 262, 8-287, 8-291, 8-1566, 8-1567, 8-1568, 8-1602, 8-1605 and 40-3104,
2 and amendments thereto, and K.S.A. 2017 Supp. 21-5405(a)(3) *or* (a)(5)
3 and 21-5406, and amendments thereto, or a violation of a city ordinance or
4 law of another state which would also constitute a violation of such
5 sections.

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

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

16 (b) There shall be no expungement of records or files concerning acts
17 committed by a juvenile which, if committed by an adult, would constitute
18 a violation of K.S.A. 21-3401, prior to its repeal, or K.S.A. 2017 Supp. 21-
19 5402, and amendments thereto, murder in the first degree; K.S.A. 21-3402,
20 prior to its repeal, or K.S.A. 2017 Supp. 21-5403, and amendments
21 thereto, murder in the second degree; K.S.A. 21-3403, prior to its repeal,
22 or K.S.A. 2017 Supp. 21-5404, and amendments thereto, voluntary
23 manslaughter; K.S.A. 21-3404, prior to its repeal, or K.S.A. 2017 Supp.
24 21-5405, and amendments thereto, involuntary manslaughter; K.S.A. 21-
25 3439, prior to its repeal, or K.S.A. 2017 Supp. 21-5401, and amendments
26 thereto, capital murder; K.S.A. 21-3442, prior to its repeal, or K.S.A. 2017
27 Supp. 21-5405(a)(3) *or* (a)(5), and amendments thereto, involuntary
28 manslaughter while driving under the influence of alcohol or drugs; K.S.A.
29 21-3502, prior to its repeal, or K.S.A. 2017 Supp. 21-5503, and
30 amendments thereto, rape; K.S.A. 21-3503, prior to its repeal, or K.S.A.
31 2017 Supp. 21-5506(a), and amendments thereto, indecent liberties with a
32 child; K.S.A. 21-3504, prior to its repeal, or K.S.A. 2017 Supp. 21-
33 5506(b), and amendments thereto, aggravated indecent liberties with a
34 child; K.S.A. 21-3506, prior to its repeal, or K.S.A. 2017 Supp. 21-
35 5504(b), and amendments thereto, aggravated criminal sodomy; K.S.A.
36 21-3510, prior to its repeal, or K.S.A. 2017 Supp. 21-5508(a), and
37 amendments thereto, indecent solicitation of a child; K.S.A. 21-3511, prior
38 to its repeal, or K.S.A. 2017 Supp. 21-5508(b), and amendments thereto,
39 aggravated indecent solicitation of a child; K.S.A. 21-3516, prior to its
40 repeal, or K.S.A. 2017 Supp. 21-5510, and amendments thereto, sexual
41 exploitation of a child; K.S.A. 2017 Supp. 21-5514(a), and amendments
42 thereto, internet trading in child pornography; K.S.A. 2017 Supp. 21-
43 5514(b), and amendments thereto, aggravated internet trading in child

1 pornography; K.S.A. 21-3603, prior to its repeal, or K.S.A. 2017 Supp. 21-
2 5604(b), and amendments thereto, aggravated incest; K.S.A. 21-3608,
3 prior to its repeal, or K.S.A. 2017 Supp. 21-5601(a), and amendments
4 thereto, endangering a child; K.S.A. 21-3609, prior to its repeal, or K.S.A.
5 2017 Supp. 21-5602, and amendments thereto, abuse of a child; or which
6 would constitute an attempt to commit a violation of any of the offenses
7 specified in this subsection.

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

14 (d) When a petition for expungement is filed, the court shall set a date
15 for a hearing on the petition and shall give notice thereof to the county or
16 district attorney. The petition shall state: (1) The juvenile's full name; (2)
17 the full name of the juvenile as reflected in the court record, if different
18 than (1); (3) the juvenile's sex and date of birth; (4) the offense for which
19 the juvenile was adjudicated; (5) the date of the trial; and (6) the identity
20 of the trial court. Except as otherwise provided by law, a petition for
21 expungement shall be accompanied by a docket fee in the amount of \$176.
22 On and after July 1, 2017, through June 30, 2019, the supreme court may
23 impose a charge, not to exceed \$19 per case, to fund the costs of non-
24 judicial personnel. All petitions for expungement shall be docketed in the
25 original action. Any person who may have relevant information about the
26 petitioner may testify at the hearing. The court may inquire into the
27 background of the petitioner.

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

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

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

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

1 (b);

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

7 (C) the circumstances and behavior of the petitioner warrant
8 expungement.

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

11 (f) Upon entry of an order expunging records or files, the offense
12 which the records or files concern shall be treated as if it never occurred,
13 except that upon conviction of a crime or adjudication in a subsequent
14 action under this code the offense may be considered in determining the
15 sentence to be imposed. The petitioner, the court and all law enforcement
16 officers and other public offices and agencies shall properly reply on
17 inquiry that no record or file exists with respect to the juvenile. Inspection
18 of the expunged files or records thereafter may be permitted by order of
19 the court upon petition by the person who is the subject thereof. The
20 inspection shall be limited to inspection by the person who is the subject of
21 the files or records and the person's designees.

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

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

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

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

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

41 (1) The person whose record was expunged;

42 (2) a private detective agency or a private patrol operator, and the
43 request is accompanied by a statement that the request is being made in

1 conjunction with an application for employment with such agency or
2 operator by the person whose record has been expunged;

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

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

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

12 (6) the Kansas lottery, and the request is accompanied by a statement
13 that the request is being made to aid in determining qualifications for
14 employment with the Kansas lottery or for work in sensitive areas within
15 the Kansas lottery as deemed appropriate by the executive director of the
16 Kansas lottery;

17 (7) the governor or the Kansas racing commission, or a designee of
18 the commission, and the request is accompanied by a statement that the
19 request is being made to aid in determining qualifications for executive
20 director of the commission, for employment with the commission, for
21 work in sensitive areas in parimutuel racing as deemed appropriate by the
22 executive director of the commission or for licensure, renewal of licensure
23 or continued licensure by the commission;

24 (8) the Kansas sentencing commission; or

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

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

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

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

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

39 (1) Murder in the first degree, as defined in K.S.A. 2017 Supp. 21-
40 5402, and amendments thereto;

41 (2) murder in the second degree, as defined in K.S.A. 2017 Supp. 21-
42 5403, and amendments thereto;

43 (3) capital murder, as defined in K.S.A. 2017 Supp. 21-5401, and

- 1 amendments thereto;
- 2 (4) rape, as defined in K.S.A. 2017 Supp. 21-5503, and amendments
- 3 thereto;
- 4 (5) aggravated criminal sodomy, as defined in ~~subsection (b) of~~
- 5 K.S.A. 2017 Supp. 21-5504(b), and amendments thereto;
- 6 (6) sexual exploitation of a child, as defined in K.S.A. 2017 Supp. 21-
- 7 5510, and amendments thereto;
- 8 (7) kidnapping as defined in ~~subsection (a) of~~ K.S.A. 2017 Supp. 21-
- 9 5408(a), and amendments thereto;
- 10 (8) aggravated kidnapping, as defined in ~~subsection (b) of~~ K.S.A.
- 11 2017 Supp. 21-5408(b), and amendments thereto;
- 12 (9) criminal restraint, as defined in K.S.A. 2017 Supp. 21-5411, and
- 13 amendments thereto;
- 14 (10) indecent solicitation of a child, as defined in ~~subsection (a) of~~
- 15 K.S.A. 2017 Supp. 21-5508(a), and amendments thereto;
- 16 (11) aggravated indecent solicitation of a child, as defined in
- 17 ~~subsection (b) of~~ K.S.A. 2017 Supp. 21-5508(b), and amendments thereto;
- 18 (12) indecent liberties with a child, as defined in ~~subsection (a) of~~
- 19 K.S.A. 2017 Supp. 21-5506(a), and amendments thereto;
- 20 (13) aggravated indecent liberties with a child, as defined in
- 21 ~~subsection (b) of~~ K.S.A. 2017 Supp. 21-5506(b), and amendments thereto;
- 22 (14) criminal sodomy, as defined in ~~subsection (a) of~~ K.S.A. 2017
- 23 Supp. 21-5504(a), and amendments thereto;
- 24 (15) child abuse, as defined in K.S.A. 2017 Supp. 21-5602, and
- 25 amendments thereto;
- 26 (16) aggravated robbery, as defined in ~~subsection (b) of~~ K.S.A. 2017
- 27 Supp. 21-5420(b), and amendments thereto;
- 28 (17) burglary, as defined in ~~subsection (a) of~~ K.S.A. 2017 Supp. 21-
- 29 5807(a), and amendments thereto;
- 30 (18) aggravated burglary, as defined in ~~subsection (b) of~~ K.S.A. 2017
- 31 Supp. 21-5807(b), and amendments thereto;
- 32 (19) theft, as defined in K.S.A. 2017 Supp. 21-5801, and amendments
- 33 thereto;
- 34 (20) vehicular homicide, as defined in K.S.A. 2017 Supp. 21-5406,
- 35 and amendments thereto;
- 36 (21) involuntary manslaughter while driving under the influence, as
- 37 defined in ~~subsection (a)(3) of~~ K.S.A. 2017 Supp. 21-5405(a)(3) or (a)(5),
- 38 and amendments thereto; or
- 39 (22) stalking, as defined in K.S.A. 2017 Supp. 21-5427, and
- 40 amendments thereto.
- 41 (b) The secretary of corrections shall submit such report to the
- 42 speaker of the house of representatives and the president of the senate
- 43 annually, beginning January 1, 2007.

- 1 Sec. 9. K.S.A. 2017 Supp. 8-262, 8-2, 144, 8-1025, 8-1567, 21-5405,
- 2 21-6811, 38-2312 and 75-52,148 are hereby repealed.
- 3 Sec. 10. This act shall take effect and be in force from and after its
- 4 publication in the statute book.

21-5413. **Battery; aggravated battery; battery against certain persons; aggravated battery against certain persons. (a) Battery is:**

- (1) Knowingly or recklessly causing bodily harm to another person; or
- (2) knowingly causing physical contact with another person when done in a rude, insulting or angry manner.

(b) Aggravated battery is:

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

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

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

- (2) (A) recklessly causing great bodily harm to another person or disfigurement of another person; or

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

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

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

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

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

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

~~(C) such person has been deemed a habitual violator as defined in K.S.A. 8-285, and amendments thereto, or violating an ordinance of any city in this state, any resolution of any county in this state or any law of another state, which ordinance, resolution or law declares to be unlawful the acts prohibited by that statute .~~

(c) Battery against a law enforcement officer is:

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

(A) Uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty; (B) uniformed or properly identified state, county or city law enforcement officer, other than a state correctional officer or employee, a city or county correctional officer or employee or a juvenile detention facility officer, or employee, while such officer is engaged in the performance of such officer's duty;

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

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

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

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

(A) Uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty; or (B) uniformed or properly identified state, county or city law enforcement officer, other than a state correctional officer or employee, a city or county correctional officer or employee or a juvenile detention facility officer, or employee, while such officer is engaged in the performance of such officer's duty;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (2) an aggravated battery, as defined in subsection (b)(1)(B) or (b)(1)(C), committed against a:
- (A) Uniformed or properly identified state, county or city law enforcement officer while the officer is engaged in the performance of the officer's duty;
 - (B) uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty;
 - (C) judge, while such judge is engaged in the performance of such judge's duty;
 - (D) attorney, while such attorney is engaged in the performance of such attorney's duty; or
 - (E) community corrections officer or court services officer, while such officer is engaged in the performance of such officer's duty; or
- (3) knowingly causing, with a motor vehicle, bodily harm to a:
- (A) Uniformed or properly identified state, county or city law enforcement officer while the officer is engaged in the performance of the officer's duty; or
 - (B) uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty.
- (e) Battery against a school employee is a battery, as defined in subsection (a), committed against a school employee in or on any school property or grounds upon which is located a building or structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12 or at any regularly scheduled school sponsored activity or event, while such employee is engaged in the performance of such employee's duty.
- (f) Battery against a mental health employee is a battery, as defined in subsection (a), committed against a mental health employee by a person in the custody of the secretary for aging and disability services, while such employee is engaged in the performance of such employee's duty.
- (g) (1) Battery is a class B person misdemeanor.
- (2) Aggravated battery as defined in:
- (A) Subsection (b)(1)(A) or (b)(4) is a severity level 4, person felony;
 - (B) subsection (b)(1)(B) or (b)(1)(C) is a severity level 7, person felony;
 - (C) subsection (b)(2)(A) or (b)(3)(A) is a severity level 5, person felony; and
 - (D) subsection (b)(2)(B) or (b)(3)(B) is a severity level 8, person felony.
- (3) Battery against a law enforcement officer as defined in:
- (A) Subsection (c)(1) is a class A person misdemeanor;
 - (B) subsection (c)(2) is a severity level 7, person felony; and
 - (C) subsection (c)(3) is a severity level 5, person felony.
- (4) Aggravated battery against a law enforcement officer as defined in:
- (A) Subsection (d)(1) or (d)(3) is a severity level 3, person felony; and
 - (B) subsection (d)(2) is a severity level 4, person felony.
- (5) Battery against a school employee is a class A person misdemeanor.
- (6) Battery against a mental health employee is a severity level 7, person felony.

(h) As used in this section:

- (1) "Correctional institution" means any institution or facility under the supervision and control of the secretary of corrections;
- (2) "state correctional officer or employee" means any officer or employee of the Kansas department of corrections or any independent contractor, or any employee of such contractor, whose duties include working at a correctional institution;
- (3) "juvenile detention facility officer or employee" means any officer or employee of a juvenile detention facility as defined in K.S.A. 2017 Supp. 38-2302, and amendments thereto;
- (4) "city or county correctional officer or employee" means any correctional officer or employee of the city or county or any independent contractor, or any employee of such contractor, whose duties include working at a city holding facility or county jail facility;
- (5) "school employee" means any employee of a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12;
- (6) "mental health employee" means: (A) An employee of the Kansas department for aging and disability services working at Larned state hospital, Osawatomie state hospital, Kansas neurological institute and Parsons state hospital and training center and the treatment staff as defined in K.S.A. 59-29a02, and amendments thereto; and (B) contractors and employees of contractors under contract to provide services to the Kansas department for aging and disability services working at any such institution or facility;
- (7) "judge" means a duly elected or appointed justice of the supreme court, judge of the court of appeals, judge of any district court of Kansas, district magistrate judge or municipal court judge;
- (8) "attorney" means a: (A) County attorney, assistant county attorney, special assistant county attorney, district attorney, assistant district attorney, special assistant district attorney, attorney general, assistant attorney general or special assistant attorney general; and (B) public defender, assistant public defender, contract counsel for the state board of indigents' defense services or an attorney who is appointed by the court to perform services for an indigent person as provided by article 45 of chapter 22 of the Kansas Statutes Annotated, and amendments thereto;
- (9) "community corrections officer" means an employee of a community correctional services program responsible for supervision of adults or juveniles as assigned by the court to community corrections supervision and any other employee of a community correctional services program that provides enhanced supervision of offenders such as house arrest and surveillance programs; and
- (10) "court services officer" means an employee of the Kansas judicial branch or local judicial district responsible for supervising, monitoring or writing reports relating to adults or juveniles as assigned by the court, or performing related duties as assigned by the court.