

SENATE BILL No. 374

By Committee on Judiciary

2-5

1 AN ACT concerning driving under the influence; relating to testing;
2 administrative penalties; crimes, punishment and criminal procedure;
3 amending K.S.A. 8-2,137 and ~~8-2,145~~ and K.S.A. 2017 Supp. ~~8-2,142,~~
4 ~~8-2,144,~~ 8-1001, ~~8-1002,~~ 8-1012, 8-1013, ~~8-1020,~~ 8-1024, ~~8-1025,~~ 8-
5 1567, 65-1,107 and 75-712h and repealing the existing sections; *also*
6 *repealing K.S.A. 2017 Supp. 8-1025.*
7

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

9 New Section 1. ~~The following shall be taken into account by the court~~
10 ~~for the purpose of determining whether a conviction is a first, second,~~
11 ~~third, fourth or subsequent conviction in sentencing under K.S.A. 8-2,144~~
12 ~~or 8-1567 or K.S.A. 2017 Supp. 8-1025, and amendments thereto:~~

13 ~~(a) Convictions for a violation of K.S.A. 8-1567, and amendments~~
14 ~~thereto, or a violation of an ordinance of any city or resolution of any~~
15 ~~county within this state that prohibits the acts prohibited by that statute or~~
16 ~~is otherwise comparable, or any violation of Wichita municipal ordinance~~
17 ~~section 11.38.150, or entering into a diversion agreement in lieu of further~~
18 ~~criminal proceedings on a complaint alleging any such violation, but only~~
19 ~~convictions or diversions occurring on or after July 1, 2001;~~

20 ~~(b) convictions for a violation of K.S.A. 2017 Supp. 8-1025, and~~
21 ~~amendments thereto, or a violation of an ordinance of any city or~~
22 ~~resolution of any county or any law of another state that prohibits the acts~~
23 ~~prohibited by that statute or is otherwise comparable, or entering into a~~
24 ~~diversion agreement in lieu of further criminal proceedings on a complaint~~
25 ~~alleging any such violation, but only for convictions or diversions~~
26 ~~occurring on or after July 1, 2018;~~

27 ~~(c) convictions for a violation of the following sections occurring~~
28 ~~during a person's lifetime:~~

29 ~~(1) Driving a commercial motor vehicle under the influence, K.S.A.~~
30 ~~8-2,144, and amendments thereto;~~

31 ~~(2) operating a vessel under the influence of alcohol or drugs, K.S.A.~~
32 ~~32-1131, and amendments thereto;~~

33 ~~(3) involuntary manslaughter while driving under the influence of~~
34 ~~alcohol or drugs, K.S.A. 21-3442, prior to its repeal, or K.S.A. 21-5405(a)~~
35 ~~(3), and amendments thereto;~~

36 ~~(4) aggravated battery, as described in K.S.A. 21-5413(b)(3), and~~

1 ~~amendments thereto;~~

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

6 ~~(6) violation of an ordinance of any city, a resolution of any county or~~
7 ~~any law of another state that would constitute a crime described in this~~
8 ~~subsection, prohibits the acts prohibited in this subsection or is otherwise~~
9 ~~comparable thereto;~~

10 ~~(d) receiving punishment under the uniform code of military justice~~
11 ~~or Kansas code of military justice for an act that was committed on a~~
12 ~~military reservation and that would constitute a crime described in~~
13 ~~subsection (a), (b) or (c) if committed off a military reservation in this~~
14 ~~state;~~

15 ~~(e) convictions for a violation of any of the following laws, and~~
16 ~~amendments thereto, or entering into a diversion agreement in lieu of~~
17 ~~further criminal proceedings on a complaint alleging any such violations~~
18 ~~occurring on or after July 1, 2001:~~

19 ~~Alabama - Ala. §32-5A-191(a);~~

20 ~~Alaska - AS §28.35.030(a);~~

21 ~~Arizona - A.R.S. §28-1381(A);~~

22 ~~Arkansas - A.C.A. §5-65-103(a);~~

23 ~~California - Cal. Vehicle Code §23152;~~

24 ~~Colorado - C.R.S.A. §42-4-1301(1);~~

25 ~~Connecticut - C.G.S.A. §14-227a(a);~~

26 ~~Delaware - 21 Del.C. §4177(a);~~

27 ~~District of Columbia - D.C. Code §50-2206.11;~~

28 ~~Florida - F.S.A. §316.193(1);~~

29 ~~Georgia - OGCA §40-6-391(a);~~

30 ~~Hawaii - HRS §291E-61(a);~~

31 ~~Idaho - I.C. §18-8004(1);~~

32 ~~Illinois - 625 ILCS 5/11-501(a);~~

33 ~~Indiana - IC §9-30-5-1;~~

34 ~~Iowa - I.C.A. §321J.2(1);~~

35 ~~Kentucky - KRS §189A.010(1);~~

36 ~~Louisiana - La. R.S. §14:98(A);~~

37 ~~Maine - 29-A M.R.S.A. §2411(1-A);~~

38 ~~Maryland - MD Code, Transportation §21-902(a)(1);~~

39 ~~Massachusetts - M.G.L.A. 90 § 24;~~

40 ~~Michigan - M.C.L.A. §257.625;~~

41 ~~Minnesota - M.S.A. §169A.20;~~

42 ~~Mississippi - Miss. Code Ann. §63-11-30;~~

43 ~~Missouri - V.A.M.S. §577.010, V.A.M.S. §577.012;~~

1 Montana—MCA §61-8-401;
 2 Nebraska—Neb. Rev. St. §60-6,196;
 3 Nevada—N.R.S. §484C.110;
 4 New Hampshire—N.H. Rev. Stat. §265-A:2-;
 5 New Jersey—N.J.S.A. §39:4-50;
 6 New Mexico—NMSA §66-8-102;
 7 New York—(NYCRR) Veh & Traf §1192;
 8 North Carolina—N.C.G.S. §§ 20-4.01(14a), 20-138.1(a)(1);
 9 North Dakota—NDCC §39-08-01;
 10 Ohio—R.C. §4511.19;
 11 Oklahoma—47 Okl. St. Ann. §11-902;
 12 Oregon—O.R.S. §813.010(1)(b);
 13 Pennsylvania—75 Pa.C.S.A. §3802;
 14 Puerto Rico—9 L.P.R.A §5202-;
 15 Rhode Island—Gen. Laws 1956 §31-27-2;
 16 South Carolina—Code of Laws of South Carolina Annotated (Code
 17 1976) §56-5-2930(1);
 18 South Dakota—SDCL §32-23-1;
 19 Tennessee—T.C.A. §55-10-401;
 20 Texas—V.T.C.A., Penal Code §§49.01, 49.04, 49.045, 49.05, 49.06;
 21 Utah—U.C.A. §41-6a-502, U.C.A. §41-6a-517, U.C.A. §41-6a-517;
 22 Vermont—23 VSA §1201(a)(2);
 23 Virginia—Va. Code Ann. §18.2-266;
 24 Washington—RCWA §46.61.502;
 25 West Virginia—W. Va. Code §17C-5-2;
 26 Wisconsin—W.S.A. §346.63-;
 27 Wyoming—W.S. §31-5-233; or
 28 United States Government Property—36 C.F.R. §4.23; and
 29 ~~(f) convictions for a violation of any ordinance of any city or~~
 30 ~~resolution of any county outside this state that prohibits the acts prohibited~~
 31 ~~by K.S.A. 8-1567, and amendments thereto, or the acts prohibited by the~~
 32 ~~statute listed in subsection (e) wherein that violation occurred, or is~~
 33 ~~otherwise comparable thereto, or entering into a diversion agreement in~~
 34 ~~lieu of further criminal proceedings on a complaint alleging any such~~
 35 ~~violations occurring on or after July 1, 2001.~~

36 See 2. **Section 1.** K.S.A. 8-2,137 is hereby amended to read as
 37 follows: 8-2,137. (a) A person who drives a commercial motor vehicle
 38 within this state is deemed to have given consent *consents*, subject to the
 39 provisions of K.S.A. 8-1001 et seq., and amendments thereto, ~~and K.S.A.~~
 40 ~~8-1567, and amendments thereto~~, to take a test or tests of that person's
 41 blood, breath ~~or~~, urine *or other bodily substance* for the purpose of
 42 determining that person's alcohol concentration or the presence of other
 43 drugs.

1 (b) A test or tests may be administered at the direction of a law
2 enforcement officer, who after stopping or detaining the commercial motor
3 vehicle driver, has probable cause to believe that driver was driving a
4 commercial motor vehicle while having alcohol or other drugs in such
5 person's system.

6 ~~Sec. 3.—K.S.A. 2017 Supp. 8-2,142 is hereby amended to read as~~
7 ~~follows: 8-2,142. (a) A person is disqualified from driving a commercial~~
8 ~~motor vehicle for a period of not less than one year upon a first occurrence~~
9 ~~of any one of the following:~~

10 (1) ~~While operating a commercial motor vehicle:~~

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

13 (B) ~~the person is convicted of violating subsection (b) of K.S.A. 8-~~
14 ~~2,132(b), and amendments thereto;~~

15 (C) ~~the person is convicted of causing a fatality through the negligent~~
16 ~~operation of a commercial motor vehicle;~~

17 (D) ~~the person's test refusal or test failure, as defined in subsection~~
18 ~~(m); or~~

19 (E) ~~the person is convicted of a violation identified in subsection (a)~~
20 ~~(2)(A); or~~

21 (2) ~~while operating a noncommercial motor vehicle:~~

22 (A) ~~The person is convicted of a violation of K.S.A. 8-1567 or K.S.A.~~
23 ~~2017 Supp. 8-1025, and amendments thereto, or of a violation of an~~
24 ~~ordinance of any city in this state, a resolution of any county in this state~~
25 ~~or any law of another state, which ordinance or law declares to be~~
26 ~~unlawful the acts prohibited by that statute *an offense described in section*~~
27 ~~*1, and amendments thereto;* or~~

28 (B) ~~the person's test refusal or test failure, as defined in K.S.A. 8-~~
29 ~~1013, and amendments thereto; or~~

30 (3) ~~while operating any motor vehicle:~~

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

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

34 (b) ~~If any offenses, test refusal or test failure specified in subsection~~
35 ~~(a) occurred in a commercial motor vehicle while transporting a hazardous~~
36 ~~material required to be placarded, the person is disqualified for a period of~~
37 ~~not less than three years:~~

38 (c) ~~A person shall be disqualified for life upon the second or a~~
39 ~~subsequent occurrence of any offense, test refusal or test failure specified~~
40 ~~in subsection (a), or any combination thereof, arising from two or more~~
41 ~~separate incidents:~~

42 (d) ~~The secretary of revenue may adopt rules and regulations~~
43 ~~establishing guidelines, including conditions, under which a~~

1 disqualification for life under subsection (e) may be reduced to a period of
2 not less than 10 years.

3 ~~(e) A person is disqualified from driving a commercial motor vehicle~~
4 ~~for life who uses a commercial motor vehicle or noncommercial motor~~
5 ~~vehicle in the commission of any felony involving the manufacture,~~
6 ~~distribution or dispensing of a controlled substance, or possession with~~
7 ~~intent to manufacture, distribute or dispense a controlled substance.~~

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

17 ~~(g) A person is disqualified from driving a commercial motor vehicle~~
18 ~~for a period of not less than 60 days if convicted of two serious traffic~~
19 ~~violations, or 120 days if convicted of three or more serious traffic~~
20 ~~violations, committed in a noncommercial motor vehicle arising from~~
21 ~~separate incidents occurring within a three-year period, if such convictions~~
22 ~~result in the revocation, cancellation or suspension of the person's driving~~
23 ~~privileges.~~

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

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

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

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

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

43 ~~(A) One hundred and eighty days nor more than two years if the~~

1 driver is convicted of a first violation of an out-of-service order; or

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

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

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

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

15 ~~(C) for persons who are always required to stop, failing to stop before~~
16 ~~driving onto the crossing;~~

17 ~~(D) for all persons failing to have sufficient space to drive completely~~
18 ~~through the crossing without stopping;~~

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

21 ~~(F) for all persons failing to negotiate a crossing because of~~
22 ~~insufficient undercarriage clearance.~~

23 ~~(2) A driver shall be disqualified from driving a commercial motor~~
24 ~~vehicle for not less than:~~

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

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

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

33 ~~(j) After suspending, revoking or canceling a commercial driver's~~
34 ~~license, the division shall update its records to reflect that action within 10~~
35 ~~days. After suspending, revoking or canceling a nonresident commercial~~
36 ~~driver's privileges, the division shall notify the licensing authority of the~~
37 ~~state which issued the commercial driver's license or nonresident~~
38 ~~commercial driver's license within 10 days. The notification shall include~~
39 ~~both the disqualification and the violation that resulted in the~~
40 ~~disqualification, suspension, revocation or cancellation.~~

41 ~~(k) Upon receiving notification from the licensing authority of~~
42 ~~another state, that it has disqualified a commercial driver's license holder~~
43 ~~licensed by this state, or has suspended, revoked or canceled such~~

1 ~~commercial driver's license holder's commercial driver's license, the~~
2 ~~division shall record such notification and the information such~~
3 ~~notification provides on the driver's record.~~

4 ~~(l) Upon suspension, revocation, cancellation or disqualification of a~~
5 ~~commercial driver's license under this act, the license shall be immediately~~
6 ~~surrendered to the division if still in the licensee's possession. If otherwise~~
7 ~~eligible, and upon payment of the required fees, the licensee may be issued~~
8 ~~a noncommercial driver's license for the period of suspension, revocation,~~
9 ~~cancellation or disqualification of the commercial driver's license under~~
10 ~~the same identifier number.~~

11 ~~(m) As used in this section, "test refusal" means a person's refusal to~~
12 ~~submit to and complete a test requested pursuant to K.S.A. 8-2,145, and~~
13 ~~amendments thereto; "test failure" means a person's submission to and~~
14 ~~completion of a test which determines that the person's alcohol~~
15 ~~concentration is 0.04 or greater, pursuant to K.S.A. 8-2,145, and~~
16 ~~amendments thereto.~~

17 ~~Sec. 4. 2. K.S.A. 2017 Supp. 8-2,144 is hereby amended to read as~~
18 ~~follows: 8-2,144. (a) Driving a commercial motor vehicle under the~~
19 ~~influence is operating or attempting to operate any commercial motor~~
20 ~~vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, within this~~
21 ~~state while:~~

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

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

28 (3) committing a violation of K.S.A. 8-1567(a), and amendments
29 thereto, or the ordinance of a city or resolution of a county which prohibits
30 any of the acts prohibited thereunder *or is otherwise comparable*.

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

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

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

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

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

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

3 (2) In addition, for any conviction pursuant to subsection (b)(1)(C), at
4 the time of the filing of the judgment form or journal entry as required by
5 K.S.A. 22-3426 or K.S.A. 2017 Supp. 21-6711, and amendments thereto,
6 the court shall cause a certified copy to be sent to the officer having the
7 offender in charge. The court shall determine whether the offender, upon
8 release from imprisonment, shall be supervised by community correctional
9 services or court services based upon the risk and needs of the offender.
10 The risk and needs of the offender shall be determined by use of a risk
11 assessment tool specified by the Kansas sentencing commission. The law
12 enforcement agency maintaining custody and control of a defendant for
13 imprisonment shall cause a certified copy of the judgment form or journal
14 entry to be sent to the supervision office designated by the court and upon
15 expiration of the term of imprisonment shall deliver the defendant to a
16 location designated by the supervision office designated by the court. After
17 the term of imprisonment imposed by the court, the person shall be placed
18 on supervision to community correctional services or court services, as
19 determined by the court, for a mandatory one-year period of supervision,
20 which such period of supervision shall not be reduced. During such
21 supervision, the person shall be required to participate in a
22 multidisciplinary model of services for substance use disorders facilitated
23 by a Kansas department for aging and disability services designated care
24 coordination agency to include assessment and, if appropriate, referral to a
25 community based substance use disorder treatment including recovery
26 management and mental health counseling as needed. The
27 multidisciplinary team shall include the designated care coordination
28 agency, the supervision officer, the aging and disability services
29 department designated treatment provider and the offender. *An offender*
30 *for whom a warrant has been issued by the court alleging a violation of*
31 *such supervision shall be considered a fugitive from justice if it is found*
32 *that the warrant cannot be served. If it is found the offender has violated*
33 *the provisions of this supervision, the court shall determine whether the*
34 *time from the issuing of the warrant to the date of the court's*
35 *determination of an alleged violation, or any part of it, shall be counted as*
36 *time served on supervision. Any violation of the conditions of such*
37 *supervision may subject such person to revocation of supervision and*
38 *imprisonment in jail for the remainder of the period of imprisonment, the*
39 *remainder of the supervision period, or any combination or portion*
40 *thereof. The term of supervision may be extended at the court's discretion*
41 *beyond one year; and any violation of the conditions of such extended term*
42 *of supervision may subject such person to the revocation of supervision*
43 *and imprisonment in jail of up to the remainder of the original sentence,*

1 *not the term of the extended supervision.*

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

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

20 (d) If a person is charged with a violation of *K.S.A. 8-1567(a)(4) or*
21 *(a)(5) as incorporated in this section* ~~involving drugs~~, the fact that the
22 person is or has been entitled to use the drug under the laws of this state
23 shall not constitute a defense against the charge.

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

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

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

1 concerning such person.

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

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

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

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

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

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

39 (2) If the elements of such ordinance violation are the same as the
40 elements of a violation of this section that would constitute, and be
41 punished as, a felony, the city attorney shall refer the violation to the
42 appropriate county or district attorney for prosecution. The county or
43 district attorney shall accept such referral and pursue a disposition of such

1 violation, and shall not refer any such violation back to the city attorney.

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

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

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

14 ~~(1) Convictions for a violation of K.S.A. 8-1567, and amendments~~
15 ~~thereto, or a violation of an ordinance of any city or resolution of any~~
16 ~~county which prohibits the acts that such section prohibits, or entering into~~
17 ~~a diversion agreement in lieu of further criminal proceedings on a~~
18 ~~complaint alleging any such violations, shall be taken into account, but~~
19 ~~only convictions or diversions occurring on or after July 1, 2001 or~~
20 ~~diversions listed in section 1, and amendments thereto. Except for~~
21 ~~violations of K.S.A. 2017 Supp. 8-1025, and amendments thereto, or~~
22 ~~comparable statutes, municipal ordinances or county resolutions, that~~
23 ~~occurred prior to July 1, 2018, nothing in this provision shall be construed~~
24 ~~as preventing any court from considering any convictions or diversions~~
25 ~~occurring during the person's lifetime in determining the sentence to be~~
26 ~~imposed within the limits provided for a first, second, third, fourth or~~
27 ~~subsequent offense;~~

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

41 ~~(3) "conviction" includes: (A) Entering into a diversion agreement in~~
42 ~~lieu of further criminal proceedings on a complaint alleging a violation of~~
43 ~~a crime described in subsection (n)(2); (B) conviction of a violation of an~~

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

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

10 (5) ~~(3) multiple convictions of any crime described in subsection (n)~~
11 ~~(1) or (n)(2) section 1(a), (b), (d) or (e), and amendments thereto, arising~~
12 ~~from the same arrest shall only be counted as one conviction~~

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

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

34 *(3) "conviction" includes: (A) Entering into a diversion agreement*
35 *in lieu of further criminal proceedings on a complaint alleging a*
36 *violation of a crime described in subsection (n)(2); (B) conviction of a*
37 *violation of an ordinance of a city in this state, a resolution of a county*
38 *in this state or any law of another state that would constitute a crime*
39 *described in subsection (n)(1) or (n)(2); and (C) receiving punishment*
40 *under the uniform code of military justice or Kansas code of military*
41 *justice for an act that was committed on a military reservation and that*
42 *would constitute a crime described in subsection (n)(1) or (n)(2) if*
43 *committed off a military reservation in this state;*

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

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

6 (o) For the purpose of this section:

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

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

13 (3) "drug" includes toxic vapors as such term is defined in K.S.A.
14 2017 Supp. 21-5712, and amendments thereto.

15 (p) On and after July 1, 2011, the amount of \$250 from each fine
16 imposed pursuant to this section shall be remitted by the clerk of the
17 district court to the state treasurer in accordance with the provisions of
18 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
19 remittance, the state treasurer shall credit the entire amount to the
20 community corrections supervision fund established by K.S.A. 2017 Supp.
21 75-52,113, and amendments thereto.

22 See. 5.—K.S.A. 8-2,145 is hereby amended to read as follows: 8-2,145.

23 ~~(a) Prior to requesting a test or tests pursuant to K.S.A. 8-2,137, and~~
24 ~~amendments thereto, in addition to any notices provided pursuant to~~
25 ~~K.S.A. 8-1001, and amendments thereto, the following notice shall be~~
26 ~~provided orally and in writing: Whenever a law enforcement officer has~~
27 ~~reasonable grounds to believe a person has been driving a commercial~~
28 ~~motor vehicle while having alcohol or other drugs in such person's system~~
29 ~~and the person refuses to submit to and complete a test or tests requested~~
30 ~~by a law enforcement officer or submits to and completes a test requested~~
31 ~~by a law enforcement officer which determines that the person's alcohol~~
32 ~~concentration is 0.04 or greater or otherwise submits a test failure, as~~
33 ~~defined in K.S.A. 8-1013, and amendments thereto, the person will be~~
34 ~~disqualified from driving a commercial motor vehicle for at least one year,~~
35 ~~pursuant to Kansas law.~~

36 ~~(b) It shall not be a defense that the person did not understand the~~
37 ~~notices required by this section.~~

38 ~~(c) Upon completion of the notices set out in K.S.A. 8-1001, and~~
39 ~~amendments thereto, and the notices in subsection (a), the law~~
40 ~~enforcement officer shall proceed to request a test or tests. In addition to~~
41 ~~the completion of any certification required under K.S.A. 8-1002, and~~
42 ~~amendments thereto, a law enforcement officer's certification shall be~~
43 ~~prepared and signed by one or more officers to certify:~~

1 (1) ~~There existed reasonable grounds to believe the person had been~~
2 ~~driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and~~
3 ~~amendments thereto, while having alcohol or other drugs in such person's~~
4 ~~system;~~

5 (2) ~~the person had been placed under arrest, was in custody or had~~
6 ~~been involved in a motor vehicle accident or collision;~~

7 (3) ~~a law enforcement officer had presented the person with the~~
8 ~~notices required by this section; and~~

9 (4) ~~the person refused to submit to and complete a test or the test~~
10 ~~result for alcohol content of blood or breath was 0.04 or greater, or a test~~
11 ~~of the person's blood or oral fluid revealed a measurable amount of a~~
12 ~~controlled substance listed in K.S.A. 65-4105 or 65-4107, and~~
13 ~~amendments thereto, or its pharmacologically active metabolite.~~

14 (d) ~~For purposes of this section, certification shall be complete upon~~
15 ~~signing, and no additional acts of oath, affirmation, acknowledgment or~~
16 ~~proof of execution shall be required. The signed certification or a copy or~~
17 ~~photostatic reproduction thereof shall be admissible in evidence in all~~
18 ~~proceedings brought pursuant to this act, and receipt of any such~~
19 ~~certification, copy or reproduction shall accord the division authority to~~
20 ~~proceed as set forth herein. Any person who signs a certification submitted~~
21 ~~to the division knowing it contains a false statement is guilty of a class B~~
22 ~~misdemeanor.~~

23 (e) ~~Upon completing a certification under subsection (c), the officer~~
24 ~~shall serve upon the person notice of disqualification of the privilege to~~
25 ~~drive a commercial motor vehicle pursuant to K.S.A. 8-2,142, and~~
26 ~~amendments thereto, together with a copy of the certification. In cases~~
27 ~~where a 0.04 or greater test result, or other test failure, as defined in~~
28 ~~K.S.A. 8-1013, and amendments thereto, is established by a subsequent~~
29 ~~analysis of a breath or blood sample, the officer shall serve notice of such~~
30 ~~suspension in person or by another designated officer or by mailing the~~
31 ~~notice to the person at the address provided at the time of the test. If the~~
32 ~~determination of a test refusal or 0.04 or greater test result, or other test~~
33 ~~failure, as defined in K.S.A. 8-1013, and amendments thereto, is made~~
34 ~~while the person is still in custody, service shall be made in person by the~~
35 ~~officer on behalf of the division of vehicles.~~

36 (f) (1) ~~The notice shall contain the following information:~~

37 (1) (A) ~~The person's name, driver's license number and current~~
38 ~~address pursuant to K.S.A. 8-248, and amendments thereto;~~

39 (2) (B) ~~the reason and statutory grounds for the disqualification;~~

40 (3) (C) ~~the date notice is being served and the effective date of the~~
41 ~~disqualification, which shall be the 20th day after the date of service;~~

42 (4) (D) ~~the right of the person to request an administrative hearing;~~
43 ~~and~~

1 ~~(5) (E) the procedure the person must follow to request an~~
2 ~~administrative hearing; and~~

3 ~~(F) if the officer is certifying the result of a test of the person's blood~~
4 ~~or oral fluid that revealed a measurable amount of a controlled substance~~
5 ~~listed in K.S.A. 65-4105 or 65-4107, and amendments thereto, or its~~
6 ~~pharmacologically active metabolite, the notice shall also inform the~~
7 ~~person of the opportunity to establish the affirmative defense that the~~
8 ~~person lawfully ingested the controlled substance by order of a~~
9 ~~practitioner or mid-level practitioner, as defined in K.S.A. 65-4101, and~~
10 ~~amendments thereto, or otherwise ingested the controlled substance in~~
11 ~~accordance with the laws of the United States or the state of Kansas.~~

12 ~~(2) The notice of disqualification shall also inform the person that all~~
13 ~~correspondence will be mailed to the person at the address contained in the~~
14 ~~notice of disqualification unless the person notifies the division in writing~~
15 ~~of a different address or change of address. The address provided will be~~
16 ~~considered a change of address for purposes of K.S.A. 8-248, and~~
17 ~~amendments thereto, if the address furnished is different from that on file~~
18 ~~with the division.~~

19 ~~(g) If the person mails a written request which is postmarked within~~
20 ~~10 calendar days after service of the notice, if by personal service, or 13~~
21 ~~calendar days after service, if by mail, the division shall schedule a hearing~~
22 ~~in the county where the alleged violation occurred, or in a county adjacent~~
23 ~~thereto. The licensee may request that subpoenas be issued in accordance~~
24 ~~with the notice provided pursuant to subsection (d). Any request made by~~
25 ~~the licensee to subpoena witnesses must be made in writing at the time the~~
26 ~~hearing is requested and must include the name and current address of~~
27 ~~such witness and, except for the certifying law enforcement officer or~~
28 ~~officers, a statement of how the testimony of such witness is relevant.~~
29 ~~Upon receiving a timely request for a hearing, the division shall mail to the~~
30 ~~person notice of the time, date and place of hearing in accordance with~~
31 ~~subsection (i) and extend the person's temporary driving privileges until~~
32 ~~the date set for the hearing by the division, unless otherwise disqualified,~~
33 ~~suspended, revoked or canceled.~~

34 ~~(h) The law enforcement officer shall forward the certification~~
35 ~~required under subsection (c) to the director within five days of the date of~~
36 ~~certification. Upon receipt of the certification, the division shall review the~~
37 ~~certification to determine that it meets the requirements of subsection (c).~~
38 ~~Upon so determining, the director shall proceed to disqualify the driver~~
39 ~~from driving a commercial motor vehicle in accordance with the notice of~~
40 ~~disqualification previously served.~~

41 ~~(i) All notices of disqualification under this section and all notices of~~
42 ~~a hearing held under this section shall be sent by first-class mail and a~~
43 ~~United States post office certificate of mailing shall be obtained therefor.~~

1 All notices so mailed shall be deemed received three days after mailing.

2 ~~(j) Failure of a person to provide an adequate breath sample or~~
3 ~~samples as directed shall constitute a refusal unless the person shows that~~
4 ~~the failure was due to physical inability caused by a medical condition~~
5 ~~unrelated to any ingested alcohol or drugs.~~

6 ~~(k) The rules regarding evidence and procedure at hearings held~~
7 ~~under K.S.A. 8-1020, and amendments thereto, shall be applicable to~~
8 ~~hearings held under this section. At the hearing on a disqualification of~~
9 ~~commercial driving privileges, the issues shall be limited to those set out~~
10 ~~in the certification.~~

11 ~~(l) The division shall prepare and distribute forms for use by law~~
12 ~~enforcement officers in giving the notice required by this section.~~

13 Sec. ~~6~~. 3. K.S.A. 2017 Supp. 8-1001 is hereby amended to read as
14 follows: 8-1001. (a) Any person who operates or attempts to operate a
15 vehicle within this state ~~is deemed to have given consent~~ *consents*, subject
16 to the provisions of this article, to submit to one or more tests of the
17 person's blood, breath, urine or other bodily substance to determine the
18 presence of alcohol or drugs. The testing ~~deemed consented to herein~~ shall
19 include all quantitative and qualitative tests for alcohol and drugs. ~~A~~
20 ~~person who is dead or unconscious shall be deemed not to have withdrawn~~
21 ~~the person's consent to such test or tests, which shall be administered in the~~
22 ~~manner provided by this section~~ *The test must be administered in the*
23 *direction of a law enforcement officer, and the law enforcement officer*
24 *shall determine which manner of test is to be conducted or requested.*

25 (b) ~~(1) A law enforcement officer shall request a person to submit to a~~
26 ~~test or tests deemed consented to under subsection (a): (1) If, at the time of~~
27 ~~the request, the officer has reasonable grounds to believe the person was~~
28 ~~operating or attempting to operate a vehicle while under the influence of~~
29 ~~alcohol or drugs, or both~~ *One or more tests may be required of a person*
30 *when, at the time of the request, a law enforcement officer has probable*
31 *cause to believe the person has committed a violation of K.S.A. 8-1567(a),*
32 *and amendments thereto, or to believe that the person was driving a*
33 *commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments*
34 *thereto, while having alcohol or other drugs in such person's system, or*
35 *was to believe the person is under the age of 21 years and was operating or*
36 *attempting to operate a vehicle while having alcohol or other drugs in such*
37 *person's system; and one of the following conditions exists: (A) The*
38 *person has been arrested or otherwise taken into custody for any violation*
39 *of any state statute, county resolution or city ordinance; or (B) the person*
40 *has been involved in a motor vehicle accident or collision resulting in*
41 *property damage or, personal injury other than serious injury; or (2) if the*
42 *person was operating or attempting to operate a vehicle and such vehicle*
43 *has been involved in an accident or collision resulting in serious injury or*

1 death of any person and the operator could be cited for any traffic offense,
2 as defined in K.S.A. 8-2117, and amendments thereto. The traffic offense
3 violation shall constitute probable cause for purposes of paragraph (2). The
4 test or tests under paragraph (2) shall not be required if a law enforcement
5 officer has reasonable grounds to believe the actions of the operator did
6 not contribute to the accident or collision or death.

7 (2) The law enforcement officer directing administration of the test or
8 tests may act on personal knowledge or on the basis of the collective
9 information available to law enforcement officers involved in the accident
10 investigation or arrest.

11 (c) *When requesting a test or tests of breath or other bodily substance*
12 *other than blood or urine, under this section, the person shall be given*
13 *oral and written notice that:*

14 (1) *Kansas law requires the person to take a test to determine if the*
15 *person is under the influence of alcohol or drugs, or both;*

16 (2) *there is no right to consult with an attorney regarding whether to*
17 *submit to testing, but, after the completion of the testing, the person may*
18 *request and has the right to consult with an attorney and may secure*
19 *additional testing;*

20 (3) *if the person refuses to submit to and complete the test or tests, or*
21 *if the person fails a test, the person's driving privileges will be suspended*
22 *for a period of at least 30 days and up to one year;*

23 (4) *refusal to submit to testing may be used against the person at any*
24 *trial or hearing on a charge arising out of refusal to submit to testing or*
25 *the operation or attempted operation of a vehicle while under the*
26 *influence of alcohol or drugs, or both; and*

27 (5) *the results of the testing may be used against the person at any*
28 *trial or hearing on a charge arising out of the operation or attempted*
29 *operation of a vehicle while under the influence of alcohol or drugs, or*
30 *both.*

31 (d) *When requesting a test or tests of blood or urine, under this*
32 *section, the person shall be given oral and written notice that:*

33 (1) *Kansas law requires the person to take a test to determine if the*
34 *person is under the influence of alcohol or drugs, or both;*

35 (2) *if the person refuses to submit to and complete the test or tests, or*
36 *if the person fails a test, the person's driving privileges will be suspended*
37 *for a period of at least 30 days and up to one year;*

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

42 (4) *after the completion of the testing, the person may request and*
43 *has the right to consult with an attorney and may secure additional*

1 testing.

2 (e) Nothing in this section shall be construed to limit the right of a
3 law enforcement officer to conduct any search of a person's breath or
4 other bodily substance, other than blood or urine, incident to a lawful
5 arrest pursuant to the constitution of the United States, with or without
6 providing the person the advisories authorized in subsection (c), nor limit
7 the admissibility at any trial or hearing of alcohol or drug concentration
8 testing results obtained pursuant to such a search.

9 (f) Nothing in this section shall be construed to limit the right of a
10 law enforcement officer to conduct or obtain a blood or urine test of a
11 person pursuant to a warrant under K.S.A. 22-2502, and amendments
12 thereto, the constitution of the United States or a judicially recognized
13 exception to the search warrant requirement, with or without providing the
14 person the advisories authorized in subsection (d), nor limit the
15 admissibility at any trial or hearing of alcohol or drug concentration
16 testing results obtained pursuant to such a search.

17 (g) A law enforcement officer may direct a medical professional, as
18 described in subsection (h), to draw one or more samples of blood from a
19 person to determine the blood's alcohol or drug concentration:

20 (1) If the person has given consent, with or without the advisories in
21 subsection (d), and meets the requirements of subsection (b);

22 (2) if law enforcement has obtained a search warrant authorizing the
23 collection of blood from the person; or

24 (3) if the person refuses or is unable to consent to submit to and
25 complete a test, and another judicially recognized exception to the
26 warrant requirement applies.

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

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

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

43 ~~(2) if medically unable to consent, if the person meets the~~

1 requirements of paragraph (2) of subsection (b); or

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

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

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

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

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

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

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

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

13 ~~(k) Before a test or tests are administered under this section, the~~
14 ~~person shall be given oral and written notice that:~~

15 ~~(1) Kansas law requires the person to submit to and complete one or~~
16 ~~more tests of breath, blood or urine to determine if the person is under the~~
17 ~~influence of alcohol or drugs, or both;~~

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

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

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

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

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

38 ~~(5) if the person refuses to submit to and complete any test of breath,~~
39 ~~blood or urine hereafter requested by a law enforcement officer, the~~
40 ~~person's driving privileges will be suspended for one year for the first or~~
41 ~~subsequent occurrence;~~

42 ~~(6) if the person submits to and completes the test or tests and the test~~
43 ~~results show:~~

1 ~~(A) An alcohol concentration of .08 or greater, the person's driving~~
2 ~~privileges will be suspended for 30 days for the first occurrence and one~~
3 ~~year for the second or subsequent occurrence; or~~

4 ~~(B) an alcohol concentration of .15 or greater, the person's driving~~
5 ~~privileges will be suspended for one year for the first or subsequent~~
6 ~~occurrence;~~

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

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

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

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

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

38 ~~(n) The person's refusal shall be admissible in evidence against the~~
39 ~~person at any trial on a charge arising out of the alleged operation or~~
40 ~~attempted operation of a vehicle while under the influence of alcohol or~~
41 ~~drugs, or both. The person's refusal shall be admissible in evidence against~~
42 ~~the person at any trial on a charge arising out of the alleged violation of~~
43 ~~K.S.A. 2017 Supp. 8-1025, and amendments thereto.~~

1 (o) If a law enforcement officer had ~~reasonable grounds~~ *probable*
2 *cause* to believe the person had been driving a commercial motor vehicle,
3 as defined in K.S.A. 8-2,128, and amendments thereto, and the test results
4 show a blood or breath alcohol concentration of .04 or greater, the person
5 shall be disqualified from driving a commercial motor vehicle, pursuant to
6 K.S.A. 8-2,142, and amendments thereto. If a law enforcement officer had
7 ~~reasonable grounds~~ *probable cause* to believe the person had been driving
8 ~~a commercial motor vehicle, as defined in K.S.A. 8-2,128, and~~
9 ~~amendments thereto, and the test results show a blood or breath alcohol~~
10 ~~concentration of .08 or greater~~ *any motor vehicle, the person fails a test, as*
11 *defined in K.S.A. 8-1013(h), and amendments thereto*, or the person
12 refuses a test, the person's driving privileges shall be subject to suspension,
13 or suspension and restriction, pursuant to this section, in addition to being
14 disqualified from driving a commercial motor vehicle pursuant to K.S.A.
15 8-2,142, and amendments thereto.

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

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

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

29 (s) (r) No test results shall be suppressed because of ~~technical~~
30 ~~irregularities~~ *not affecting the substantial rights of the accused* in the
31 consent or notice ~~required~~ *authorized* pursuant to this act. *Failure to*
32 *provide any or all of the notices set forth in subsection (c) or (d) shall not*
33 *be an issue or defense in any action other than an administrative action*
34 *regarding the subject's driving privileges. If the United States supreme*
35 *court or an appellate court of this state determines that any portion of this*
36 *section is unconstitutional, the attorney general may amend the notices*
37 *provided in subsection (c) or (d) for publication by the Kansas department*
38 *of revenue according to its policies and procedures.*

39 (t) (s) Nothing in this section shall be construed to limit the
40 admissibility at any trial of alcohol or drug concentration testing results
41 obtained pursuant to a search warrant *or other judicially recognized*
42 *exception to the warrant requirement.*

43 (u) (t) Upon the request of any person submitting to testing under this

1 section, a report of the results of the testing shall be made available to such
2 person *when available*.

3 ~~(v)~~ (u) This act is remedial law and shall be liberally construed to
4 promote public health, safety and welfare.

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

8 ~~(1) Disabling a person from the physical capacity to remove~~
9 ~~themselves from the scene;~~

10 ~~(2) renders a person unconscious;~~

11 ~~(3) the immediate loss of or absence of the normal use of at least one~~
12 ~~limb;~~

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

14 ~~(5) otherwise indicates the person may die or be permanently disabled~~
15 ~~by the injury.~~

16 ~~Sec. 7. K.S.A. 2017 Supp. 8-1002 is hereby amended to read as~~
17 ~~follows: 8-1002. (a) Whenever a test is requested pursuant to this act and~~
18 ~~results in either a test failure or test refusal, a law enforcement officer's~~
19 ~~certification shall be prepared. If the person had been driving a~~
20 ~~commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments~~
21 ~~thereto, a separate certification pursuant to K.S.A. 8-2,145, and~~
22 ~~amendments thereto, shall be prepared in addition to any certification~~
23 ~~required by this section. The certification required by this section shall be~~
24 ~~signed by one or more officers to certify:~~

25 ~~(1) With regard to a test refusal, that: (A) There existed reasonable~~
26 ~~grounds to believe the person was operating or attempting to operate a~~
27 ~~vehicle while under the influence of alcohol or drugs, or both, or to believe~~
28 ~~that the person had been driving a commercial motor vehicle, as defined in~~
29 ~~K.S.A. 8-2,128, and amendments thereto, or is under 21 years of age while~~
30 ~~having alcohol or other drugs in such person's system; (B) the person had~~
31 ~~been placed under arrest, was in custody or had been involved in a vehicle~~
32 ~~accident or collision; (C) a law enforcement officer had presented the~~
33 ~~person with the oral and written notice required by K.S.A. 8-1001, and~~
34 ~~amendments thereto; and (D) the person refused to submit to and complete~~
35 ~~a test as requested by a law enforcement officer.~~

36 ~~(2) With regard to a test failure, that: (A) There existed reasonable~~
37 ~~grounds to believe the person was operating a vehicle while under the~~
38 ~~influence of alcohol or drugs, or both, or to believe that the person had~~
39 ~~been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128,~~
40 ~~and amendments thereto, or is under 21 years of age while having alcohol~~
41 ~~or other drugs in such person's system; (B) the person had been placed~~
42 ~~under arrest, was in custody or had been involved in a vehicle accident or~~
43 ~~collision; (C) a law enforcement officer had presented the person with the~~

1 oral and written notice required by K.S.A. 8-1001, and amendments
2 thereto; and (D) the result of the test showed that the person had an alcohol
3 concentration of 0.08 or greater in such person's blood or breath *or had a*
4 *measurable amount of a controlled substance listed in K.S.A. 65-4105 or*
5 *65-4107, and amendments thereto, or its pharmacologically active*
6 *metabolite in the person's blood or oral fluid. If the officer is certifying*
7 *that the result of a test of the person's blood or oral fluid revealed a*
8 *measurable amount of a controlled substance listed in K.S.A. 65-4105 or*
9 *65-4107, and amendments thereto, or its pharmacologically active*
10 *metabolite, the notice shall also inform the person of the opportunity to*
11 *establish the affirmative defense that the person lawfully ingested the*
12 *controlled substance by order of a practitioner or mid-level practitioner,*
13 *as defined in K.S.A. 65-4101, and amendments thereto, or otherwise*
14 *ingested the controlled substance in accordance with the laws of the*
15 *United States or the state of Kansas.*

16 (3) ~~With regard to failure of a breath test, in addition to those matters~~
17 ~~required to be certified under subsection (a)(2), that: (A) The testing~~
18 ~~equipment used was certified by the Kansas department of health and~~
19 ~~environment; (B) the testing procedures used were in accordance with the~~
20 ~~requirements set out by the Kansas department of health and environment;~~
21 ~~and (C) the person who operated the testing equipment was certified by the~~
22 ~~Kansas department of health and environment to operate such equipment.~~

23 (b) For purposes of this section, certification shall be complete upon
24 signing, and no additional acts of oath, affirmation, acknowledgment or
25 proof of execution shall be required. The signed certification or a copy or
26 photostatic reproduction thereof shall be admissible in evidence in all
27 proceedings brought pursuant to this act, and receipt of any such
28 certification, copy or reproduction shall accord the department authority to
29 proceed as set forth herein. Any person who signs a certification submitted
30 to the division knowing it contains a false statement is guilty of a class B
31 nonperson misdemeanor.

32 (e) ~~When the officer directing administration of the testing~~
33 ~~determines that a person has refused a test and the criteria of subsection (a)~~
34 ~~(1) have been met or determines that a person has failed a test and the~~
35 ~~criteria of subsection (a)(2) have been met, the officer shall serve upon the~~
36 ~~person notice of suspension of driving privileges pursuant to K.S.A. 8-~~
37 ~~1014, and amendments thereto. If the determination is made while the~~
38 ~~person is still in custody, service shall be made in person by the officer on~~
39 ~~behalf of the division of vehicles. In cases where a test failure is~~
40 ~~established by a subsequent analysis of a breath, blood or urine sample~~
41 ~~oral fluid, the officer shall serve notice of such suspension in person or by~~
42 ~~another designated officer or by mailing the notice to the person at the~~
43 ~~address provided at the time of the test.~~

1 ~~(d) In addition to the information required by subsection (a), the law~~
2 ~~enforcement officer's certification and notice of suspension shall contain~~
3 ~~the following information: (1) The person's name, driver's license number~~
4 ~~and current address; (2) the reason and statutory grounds for the~~
5 ~~suspension; (3) the date notice is being served and a statement that the~~
6 ~~effective date of the suspension shall be the 30th day after the date of~~
7 ~~service; (4) the right of the person to request an administrative hearing;~~
8 ~~and (5) the procedure the person must follow to request an administrative~~
9 ~~hearing. The law enforcement officer's certification and notice of~~
10 ~~suspension shall also inform the person that: (1) Constitutional issues~~
11 ~~cannot be decided at the administrative hearing, but may be preserved and~~
12 ~~raised in a petition for review of the hearing as provided in K.S.A. 8-~~
13 ~~1020(o) and (p), and amendments thereto; and (2) all correspondence will~~
14 ~~be mailed to the person at the address contained in the law enforcement~~
15 ~~officer's certification and notice of suspension unless the person notifies~~
16 ~~the division in writing of a different address or change of address. The~~
17 ~~address provided will be considered a change of address for purposes of~~
18 ~~K.S.A. 8-248, and amendments thereto, if the address furnished is different~~
19 ~~from that on file with the division.~~

20 ~~(e) If a person refuses a test or if a person is still in custody when it is~~
21 ~~determined that the person has failed a test, the officer shall take any~~
22 ~~license in the possession of the person and, if the license is not expired,~~
23 ~~suspended, revoked or canceled, shall issue a temporary license effective~~
24 ~~until the 30th day after the date of service set out in the law enforcement~~
25 ~~officer's certification and notice of suspension. If the test failure is~~
26 ~~established by a subsequent analysis of a breath or blood sample, the~~
27 ~~temporary license shall be served together with the copy of the law~~
28 ~~enforcement officer's certification and notice of suspension. A temporary~~
29 ~~license issued pursuant to this subsection shall bear the same restrictions~~
30 ~~and limitations as the license for which it was exchanged. Within seven~~
31 ~~days after the date of service of a copy of the law enforcement officer's~~
32 ~~certification and notice of suspension the officer's certification and notice~~
33 ~~of suspension, along with any licenses taken, shall be forwarded to the~~
34 ~~division.~~

35 ~~(f) Upon receipt of the law enforcement officer's certification, the~~
36 ~~division shall review the certification to determine that it meets the~~
37 ~~requirements of subsection (a). Upon so determining, the division shall~~
38 ~~proceed to suspend the person's driving privileges in accordance with the~~
39 ~~notice of suspension previously served. If the requirements of subsection~~
40 ~~(a) are not met, the division shall dismiss the administrative proceeding~~
41 ~~and return any license surrendered by the person.~~

42 ~~(g) The division shall prepare and distribute forms for use by law~~
43 ~~enforcement officers in giving the notice required by this section.~~

1 ~~(h) The provisions of K.S.A. 60-206, and amendments thereto,~~
2 ~~regarding the computation of time shall be applicable in determining the~~
3 ~~effective date of suspension set out in subsection (d).~~

4 ~~Sec. 8-4. K.S.A. 2017 Supp. 8-1012 is hereby amended to read as~~
5 ~~follows: 8-1012. (a) Any person who operates or attempts to operate a~~
6 ~~vehicle within this state is deemed to have given consent to submit to a~~
7 ~~preliminary screening test of the person's breath or saliva, or both, subject~~
8 ~~to the provisions set out in subsection (b).~~

9 ~~(b)—A law enforcement officer may request a person who is operating~~
10 ~~or attempting to operate a vehicle within this state to submit to a~~
11 ~~preliminary screening test of the person's breath or *saliva oral fluid*, or~~
12 ~~both, *if otherwise permitted by law* or if the officer has reasonable~~
13 ~~suspicion to believe the person has been operating or attempting to operate~~
14 ~~a vehicle while under the influence of alcohol or drugs, or both alcohol~~
15 ~~and drugs.~~

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

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

36 ~~(e) (b) Any preliminary screening of a person's breath shall be~~
37 ~~conducted with a device approved pursuant to K.S.A. 65-1,107, and~~
38 ~~amendments thereto. *Any preliminary screening of a person's oral fluid*~~
39 ~~*shall be conducted in accordance with rules and regulations, if any,*~~
40 ~~*approved pursuant to K.S.A. 75-712h, and amendments thereto.*~~

41 ~~Sec. 9-5. K.S.A. 2017 Supp. 8-1013 is hereby amended to read as~~
42 ~~follows: 8-1013. As used in K.S.A. 8-1001 through 8-1010, 8-1011, 8-~~
43 ~~1012, 8-1014, 8-1015, 8-1016, 8-1017 and 8-1018, and amendments~~

1 thereto, and this section:

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

4 (b) (1) "Alcohol or drug-related conviction" means any of the
5 following: (A) Conviction of vehicular battery or aggravated vehicular
6 homicide, if the crime is committed while committing a violation of
7 K.S.A. 8-1567, and amendments thereto, or the ordinance of a city or
8 resolution of a county in this state which prohibits any acts prohibited by
9 that statute, or conviction of a violation of K.S.A. 8-2,144 or 8-1567 ~~or~~
10 ~~K.S.A. 2017 Supp. 8-1025~~, and amendments thereto, or conviction of a
11 violation of aggravated battery as described in ~~subsection (b)(3) of~~ K.S.A.
12 2017 Supp. 21-5413(b)(3), and amendments thereto; (B) conviction of a
13 violation of a law of another state which would constitute a crime
14 described in subsection (b)(1)(A) if committed in this state; (C) conviction
15 of a violation of an ordinance of a city in this state or a resolution of a
16 county in this state which would constitute a crime described in subsection
17 (b)(1)(A), whether or not such conviction is in a court of record; or (D)
18 conviction of an act which was committed on a military reservation and
19 which would constitute a violation of K.S.A. 8-2,144 or 8-1567 ~~or~~ ~~K.S.A.~~
20 ~~2017 Supp. 8-1025~~, and amendments thereto, or would constitute a crime
21 described in subsection (b)(1)(A) if committed off a military reservation in
22 this state.

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

30 (c) "Division" means the division of vehicles of the department of
31 revenue.

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

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

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

43 (g) "Samples" includes breath supplied directly for testing, which

1 breath is not preserved.

2 (h) "Test failure" or "fails a test" refers to a person's having results of
3 a test administered pursuant to this act, other than a preliminary screening
4 test, which show an alcohol concentration of 0.08 or greater in the person's
5 blood or breath, ~~or a measurable amount of a controlled substance listed~~
6 ~~in K.S.A. 65-4105 or 65-4107, and amendments thereto, or its~~
7 ~~pharmacologically active metabolite in the person's blood or oral fluid,~~
8 and includes failure of any such test on a military reservation.

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

14 (j) "Law enforcement officer" has the meaning provided by K.S.A.
15 2017 Supp. 21-5111, and amendments thereto, and includes any person
16 authorized by law to make an arrest on a military reservation for an act
17 which would constitute a violation of K.S.A. 8-1567 ~~or K.S.A. 2017 Supp.~~
18 ~~8-1025,~~ and amendments thereto, if committed off a military reservation in
19 this state.

20 ~~(k) A "pharmacologically active metabolite" is a drug that has been~~
21 ~~metabolized by the body into a modified form of the ingested drug that~~
22 ~~continues to produce effects in the body similar to that of the parent drug.~~

23 Sec. 10. K.S.A. 2017 Supp. 8-1020 is hereby amended to read as
24 follows: 8-1020. (a) Any licensee served with an officer's certification and
25 notice of suspension pursuant to K.S.A. 8-1002, and amendments thereto,
26 may request an administrative hearing. Such request may be made either
27 by:

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

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

32 ~~(b) If the licensee makes a timely request for an administrative~~
33 ~~hearing and makes a timely payment of the required hearing fee, any~~
34 ~~temporary license issued pursuant to K.S.A. 8-1002, and amendments~~
35 ~~thereto, shall remain in effect until the 30th day after the effective date of~~
36 ~~the decision made by the division.~~

37 ~~(c) If the licensee fails to make a timely request for an administrative~~
38 ~~hearing together with the required hearing fee, the licensee's driving~~
39 ~~privileges shall be suspended or suspended and then restricted in~~
40 ~~accordance with the notice of suspension served pursuant to K.S.A. 8-~~
41 ~~1002, and amendments thereto.~~

42 ~~(d) (1) Upon receipt of a timely request for a hearing together with~~
43 ~~the required hearing fee, the division shall forthwith set the matter for~~

1 hearing before a representative of the director and provide notice of the
2 extension of temporary driving privileges. The hearing shall be held by
3 telephone conference call unless the hearing request includes a request that
4 the hearing be held in person before a representative of the director. The
5 officer's certification and notice of suspension shall inform the licensee of
6 the availability of a hearing before a representative of the director. Except
7 for a hearing conducted by telephone conference call, the hearing shall be
8 conducted in the county where the arrest occurred or a county adjacent
9 thereto.

10 (2) The division shall charge a fee of \$50 for a hearing, to be paid
11 within the time period for making a timely request for a hearing, whether
12 held by telephone or in person, to be applied by the division for
13 administrative costs to conduct the hearing. The division shall remit all
14 hearing fees to the state treasurer in accordance with the provisions of
15 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
16 remittance, the state treasurer shall deposit the entire amount in the state
17 treasury to the credit of the division of vehicles operating fund. The
18 hearing fee established in this section shall be the only fee collected or
19 moneys in the nature of a fee collected for such hearing. Such fee shall
20 only be established by an act of the legislature and no other authority is
21 established by law or otherwise to collect a fee.

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

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

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

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

32 (4) in the case of a breath test failure, a copy of the Kansas
33 department of health and environment testing protocol checklist; and

34 (5) in the case of a drug test failure, a copy of the report from the lab
35 certifying the test result.

36 (f) At or prior to the time the notice of hearing is sent, the division
37 shall issue an order allowing the licensee or the licensee's attorney to
38 review any law enforcement report and video or audio tape record made of
39 the events upon which the administrative action is based. Such review
40 shall take place at a reasonable time designated by the law enforcement
41 agency and shall be made at the location where the law enforcement report
42 or video or audio tape is kept. The licensee may obtain a copy of any such
43 law enforcement report or video or audio tape upon request and upon

1 payment of a reasonable fee to the law enforcement agency, not to exceed
2 \$25 per tape or \$.25 per page of the law enforcement report.

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

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

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

20 ~~(B) the person was in custody or arrested or was involved in a vehicle
21 accident or collision resulting in property damage, personal injury or
22 death;~~

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

26 ~~(D) the person refused to submit to and complete a test as requested
27 by a law enforcement officer.~~

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

30 ~~(A) A law enforcement officer had reasonable grounds to believe the
31 person was operating a vehicle while under the influence of alcohol or
32 drugs, or both, or had been driving a commercial motor vehicle, as defined
33 in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other
34 drugs in such person's system or was under the age of 21 years and was
35 operating or attempting to operate a vehicle while having alcohol or other
36 drugs in such person's system;~~

37 ~~(B) the person was in custody or arrested or was involved in a vehicle
38 accident or collision resulting in property damage, personal injury or
39 death;~~

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

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

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

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

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

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

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

10 ~~(A) A law enforcement officer had reasonable grounds to believe the~~
11 ~~person was operating a vehicle while under the influence of alcohol or~~
12 ~~drugs, or both, or had been driving a commercial motor vehicle, as defined~~
13 ~~in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other~~
14 ~~drugs in such person's system or was under the age of 21 years and was~~
15 ~~operating or attempting to operate a vehicle while having alcohol or other~~
16 ~~drugs in such person's system;~~

17 ~~(B) the person was in custody or arrested or was involved in a vehicle~~
18 ~~accident or collision resulting in property damage, personal injury or~~
19 ~~death;~~

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

22 ~~(D) the testing equipment used was reliable;~~

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

24 ~~(F) the testing procedures used were reliable;~~

25 ~~(G) the test result determined that the person had an alcohol~~
26 ~~concentration of 0.08 or greater in such person's blood *or a measurable*~~
27 ~~*amount of a controlled substance listed in K.S.A. 65-4105 or 65-4107, and*~~
28 ~~*amendments thereto, or its pharmacologically active metabolite in such*~~
29 ~~*person's blood, or oral fluid; and*~~

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

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

41 ~~(j) At a hearing pursuant to this section, or upon court review of an~~
42 ~~order entered at such a hearing, in which the report of blood test results~~
43 ~~have been prepared by the Kansas bureau of investigation or other forensic~~

1 laboratory of a state or local law enforcement agency are to be introduced
2 as evidence, the report, or a copy of the report, of the findings of the
3 forensic examiner shall be admissible into evidence in the same manner
4 and with the same force and effect as if the forensic examiner who
5 performed such examination, analysis, comparison or identification and
6 prepared the report thereon had testified in person.

7 (k) ~~At the hearing, the licensee has the burden of proof by a~~
8 ~~preponderance of the evidence to show that the facts set out in the officer's~~
9 ~~certification are false or insufficient, or that any prohibited controlled-~~
10 ~~substance or pharmacologically active metabolite in the licensee's blood~~
11 ~~or oral fluid was lawfully ingested by order of a practitioner or mid-level~~
12 ~~practitioner, as defined in K.S.A. 65-4101, and amendments thereto, or~~
13 ~~otherwise ingested in accordance with the laws of the United States or the~~
14 ~~state of Kansas, and that the order suspending or suspending and~~
15 ~~restricting the licensee's driving privileges should be dismissed.~~

16 (1) ~~Evidence at the hearing shall be limited to the following:~~

17 (1) ~~The documents set out in subsection (e);~~

18 (2) ~~the testimony of the licensee;~~

19 (3) ~~the testimony of any certifying officer;~~

20 (4) ~~the testimony of any witness present at the time of the issuance of~~
21 ~~the certification and called by the licensee;~~

22 (5) ~~any affidavits submitted from other witnesses;~~

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

26 (7) ~~any video or audio tape record of the events upon which the~~
27 ~~administrative action is based.~~

28 (m) ~~After the hearing, the representative of the director shall enter an~~
29 ~~order affirming the order of suspension or suspension and restriction of~~
30 ~~driving privileges or for good cause appearing therefor, dismiss the~~
31 ~~administrative action. If the representative of the director enters an order~~
32 ~~affirming the order of suspension or suspension and restriction of driving~~
33 ~~privileges, the suspension or suspension and restriction shall begin on the~~
34 ~~30th day after the effective date of the order of suspension or suspension~~
35 ~~and restriction. If the person whose privileges are suspended is a~~
36 ~~nonresident licensee, the license of the person shall be forwarded to the~~
37 ~~appropriate licensing authority in the person's state of residence if the~~
38 ~~result at the hearing is adverse to such person or if no timely request for a~~
39 ~~hearing is received.~~

40 (n) ~~The representative of the director may issue an order at the close~~
41 ~~of the hearing or may take the matter under advisement and issue a hearing~~
42 ~~order at a later date. If the order is made at the close of the hearing, the~~
43 ~~licensee or the licensee's attorney shall be served with a copy of the order~~

1 by the representative of the director. If the matter is taken under
2 advisement or if the hearing was by telephone conference call, the licensee
3 and any attorney who appeared at the administrative hearing upon behalf
4 of the licensee each shall be served with a copy of the hearing order by
5 mail. Any law enforcement officer who appeared at the hearing also may
6 be mailed a copy of the hearing order. The effective date of the hearing
7 order shall be the date upon which the hearing order is served, whether
8 served in person or by mail.

9 (o) ~~The licensee may file a petition for review of the hearing order~~
10 ~~pursuant to K.S.A. 8-259, and amendments thereto. Upon filing a petition~~
11 ~~for review, the licensee shall serve the secretary of revenue with a copy of~~
12 ~~the petition and summons. Upon receipt of a copy of the petition for~~
13 ~~review by the secretary, the temporary license issued pursuant to~~
14 ~~subsection (b) shall be extended until the decision on the petition for~~
15 ~~review is final.~~

16 (p) ~~Such review shall be in accordance with this section and the~~
17 ~~Kansas judicial review act. To the extent that this section and any other~~
18 ~~provision of law conflicts, this section shall prevail. The petition for~~
19 ~~review shall be filed within 14 days after the effective date of the order.~~
20 ~~Venue of the action for review is the county where the person was arrested~~
21 ~~or the accident occurred, or, if the hearing was not conducted by telephone~~
22 ~~conference call, the county where the administrative proceeding was held.~~
23 ~~The action for review shall be by trial de novo to the court and the~~
24 ~~evidentiary restrictions of subsection (l) shall not apply to the trial de~~
25 ~~novo. The court shall take testimony, examine the facts of the case and~~
26 ~~determine whether the petitioner is entitled to driving privileges or~~
27 ~~whether the petitioner's driving privileges are subject to suspension or~~
28 ~~suspension and restriction under the provisions of this act.~~
29 ~~Notwithstanding K.S.A. 77-617, and amendments thereto, the court: (1)~~
30 ~~May also consider and determine any constitutional issue, including, but~~
31 ~~not limited to, the lawfulness of the law enforcement encounter, even if~~
32 ~~such issue was not raised before the agency; and (2) shall also consider~~
33 ~~and determine any constitutional issue, including, but not limited to, the~~
34 ~~lawfulness of the law enforcement encounter, if such issue is raised by the~~
35 ~~petitioner in the petition for review, even if such issue was not raised~~
36 ~~before the agency. If the court finds that the grounds for action by the~~
37 ~~agency have been met, the court shall affirm.~~

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

40 (r) ~~Notwithstanding the requirement to issue a temporary license in~~
41 ~~K.S.A. 8-1002, and amendments thereto, and the requirements to extend~~
42 ~~the temporary license in this section, any such temporary driving~~
43 ~~privileges are subject to restriction, suspension, revocation or cancellation~~

1 as provided in K.S.A. 8-1014, and amendments thereto, or for other cause.

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

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

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

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

26 Sec.-H: 6. K.S.A. 2017 Supp. 8-1024 is hereby amended to read as
27 follows: 8-1024. No medical care facility, clinical laboratory, medical
28 clinic, other medical institution, person licensed to practice medicine or
29 surgery, person acting under the direction of any such licensed person,
30 licensed physician assistant, registered nurse, licensed practical nurse,
31 medical technician, emergency medical technician, phlebotomist, health
32 care provider or person who participates in good faith in the obtaining,
33 withdrawal, collection or testing of blood, breath, urine or other bodily
34 substance at the direction of a law enforcement officer pursuant to K.S.A.
35 8-1001, and amendments thereto, *or otherwise as authorized by law*, shall
36 incur any civil, administrative or criminal liability as a result of such
37 participation, regardless of whether or not the patient resisted or objected
38 to the administration of the procedure or test.

39 Sec. 12. ~~K.S.A. 2017 Supp. 8-1025 is hereby amended to read as~~
40 ~~follows: 8-1025. (a) Refusing to submit to a *breath* test to determine the~~
41 ~~presence of alcohol or drugs is refusing to submit to or complete a test or~~
42 ~~tests deemed consented to under K.S.A. 8-1001(a), and amendments~~
43 ~~thereto, if such person has:~~

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

4 ~~(2) any prior conviction for a violation of K.S.A. 8-1567 or 8-2,144,~~
5 ~~and amendments thereto, or a violation of an ordinance of any city or~~
6 ~~resolution of any county which prohibits the acts that such section~~
7 ~~prohibits, or entering into a diversion agreement in lieu of further criminal~~
8 ~~proceedings on a complaint alleging any such violations, which occurred:~~
9 ~~(A) On or after July 1, 2001; and (B) when such person was 18 years of~~
10 ~~age or older is the act of refusing to submit to or complete a breath test,~~
11 ~~other than a preliminary screening as defined in K.S.A. 8-1012, and~~
12 ~~amendments thereto, to determine the presence of alcohol when lawfully~~
13 ~~requested or directed to submit to such testing by a law enforcement~~
14 ~~officer.~~

15 ~~(b) (1) Refusing to submit to a *breath* test to determine the presence~~
16 ~~of alcohol or drugs is:~~

17 ~~(A) On a first conviction a class B, nonperson misdemeanor. The~~
18 ~~person convicted shall be sentenced to not less than 48 consecutive hours~~
19 ~~nor more than six months' imprisonment, or in the court's discretion, 100~~
20 ~~hours of public service, and fined not less than \$750 nor more than~~
21 ~~\$1,000. The person convicted shall serve at least 48 consecutive hours'~~
22 ~~imprisonment or 100 hours of public service, either before or as a~~
23 ~~condition of any grant of probation or suspension, reduction of sentence~~
24 ~~or parole. The court may place the person convicted under a house arrest~~
25 ~~program pursuant to K.S.A. 2017-Supp. 21-6609, and amendments thereto,~~
26 ~~to serve the remainder of the sentence only after such person has served~~
27 ~~48 consecutive hours' imprisonment;~~

28 ~~(B) On a first second conviction a class A, nonperson misdemeanor.~~
29 ~~The person convicted shall be sentenced to not less than 90 days nor more~~
30 ~~than one year's imprisonment and fined not less than \$1,250 nor more than~~
31 ~~\$1,750. The person convicted shall serve at least five consecutive days'~~
32 ~~imprisonment before the person is granted probation, suspension or~~
33 ~~reduction of sentence or parole or is otherwise released. The five days'~~
34 ~~imprisonment mandated by this subsection may be served in a work~~
35 ~~release program only after such person has served 48 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 120 hours of confinement. Such 120 hours of~~
40 ~~confinement shall be a period of at least 48 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 five days'
2 imprisonment mandated by this subsection only after such person has
3 served 48 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 120 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 120 hours;

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

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

1 48 consecutive hours' imprisonment, provided such work release program
2 requires such person to return to confinement at the end of each day in the
3 work release program. The person convicted, if placed into a work release
4 program, shall serve a minimum of 2,160 hours of confinement. Such
5 2,160 hours of confinement shall be a period of at least 48 consecutive
6 hours of imprisonment followed by confinement hours at the end of and
7 continuing to the beginning of the offender's work day. The court may
8 place the person convicted under a house arrest program pursuant to
9 K.S.A. 2017 Supp. 21-6609, and amendments thereto, to serve the 90 days'
10 imprisonment mandated by this subsection only after such person has
11 served 48 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; and

18 (D) (E)—on a third *fourth* or subsequent conviction a nonperson felony.
19 The person convicted shall be sentenced to not less than 90 days nor more
20 than one year's imprisonment and fined \$2,500. The person convicted shall
21 not be eligible for release on probation, suspension or reduction of
22 sentence or parole until the person has served at least 90 days'
23 imprisonment. The 90 days' imprisonment mandated by this subsection
24 may be served in a work release program only after such person has served
25 72 consecutive hours' imprisonment, provided such work release program
26 requires such person to return to confinement at the end of each day in the
27 work release program. The person convicted, if placed into a work release
28 program, shall serve a minimum of 2,160 hours of confinement. Such
29 2,160 hours of confinement shall be a period of at least 72 consecutive
30 hours of imprisonment followed by confinement hours at the end of and
31 continuing to the beginning of the offender's work day. The court may
32 place the person convicted under a house arrest program pursuant to
33 K.S.A. 2017 Supp. 21-6609, and amendments thereto, to serve the 90 days'
34 imprisonment mandated by this subsection only after such person has
35 served 72 consecutive hours' imprisonment. The person convicted, if
36 placed under house arrest, shall be monitored by an electronic monitoring
37 device, which verifies the offender's location. The offender shall serve a
38 minimum of 2,160 hours of confinement within the boundaries of the
39 offender's residence. Any exceptions to remaining within the boundaries of
40 the offender's residence provided for in the house arrest agreement shall
41 not be counted as part of the 2,160 hours.

42 (2) The court may order that the term of imprisonment imposed
43 pursuant to subsection (b)(1)(C) or (b)(1)(D) *or* (b)(1)(E) be served in a

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

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

1 coordination agency to include assessment and, if appropriate, referral to a
2 community based substance use disorder treatment including recovery
3 management and mental health counseling as needed. The
4 multidisciplinary team shall include the designated care coordination
5 agency, the supervision officer, the aging and disability services
6 department designated treatment provider and the offender. *A defendant
7 for whom a warrant has been issued by the court alleging a violation of
8 this supervision shall be considered a fugitive from justice if it is found
9 that the warrant cannot be served. If it is found the defendant has violated
10 the provisions of this supervision, the court shall determine whether the
11 time from the issuing of the warrant to the date of the court's
12 determination of an alleged violation, or any part of it, shall be counted as
13 time served on supervision. Any violation of the conditions of such
14 supervision may subject such person to revocation of supervision and
15 imprisonment in jail for the remainder of the period of imprisonment, the
16 remainder of the supervision period, or any combination or portion
17 thereof. The term of supervision may be extended at the court's discretion
18 beyond one year, and any violation of the conditions of such extended term
19 of supervision may subject such person to the revocation of supervision
20 and imprisonment in jail of up to the remainder of the original sentence,
21 not the term of the extended supervision.*

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

28 (c) ~~Any person 18 years of age or older convicted of violating this
29 section or an ordinance which prohibits the acts that this section prohibits
30 who had one or more children under the age of 14 18 years in the vehicle
31 at the time of the offense shall have such person's punishment enhanced by
32 one month of imprisonment. This imprisonment must be served
33 consecutively to any other minimum mandatory penalty imposed for a
34 violation of this section or an ordinance which prohibits the acts that this
35 section prohibits. Any enhanced penalty imposed shall not exceed the
36 maximum sentence allowable by law. During the service of the enhanced
37 penalty, the judge may order the person on house arrest, work release or
38 other conditional release.~~

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

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

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

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

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

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

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

27 (1) ~~Convictions for a violation of K.S.A. 8-1567, and amendments~~
28 ~~thereto, or a violation of an ordinance of any city or resolution of any~~
29 ~~county which prohibits the acts that such section prohibits, or entering into~~
30 ~~a diversion agreement in lieu of further criminal proceedings on a~~
31 ~~complaint alleging any such violations, shall be taken into account, but~~
32 ~~only convictions or diversions occurring: (A) On or after July 1, 2001; and~~
33 ~~(B) when such person was 18 years of age or older. *or diversions listed in*~~
34 ~~*section 1, and amendments thereto. Except for violations of K.S.A. 2017-*~~
35 ~~*Supp. 8-1025, and amendments thereto, or comparable statutes, municipal*~~
36 ~~*ordinances or county resolutions, that occurred prior to July 1, 2018,*~~
37 ~~nothing in this provision shall be construed as preventing any court from~~
38 ~~considering any convictions or diversions occurring during the person's~~
39 ~~lifetime in determining the sentence to be imposed within the limits~~
40 ~~provided for a first, second, third, fourth or subsequent offense;~~

41 (2) ~~any convictions for a violation of the following sections which~~
42 ~~occurred during a person's lifetime shall be taken into account, but only~~
43 ~~convictions occurring when such person was 18 years of age or older: (A)~~

1 This section; (B) driving a commercial motor vehicle under the influence,
2 K.S.A. 8-2,144, and amendments thereto; (C) operating a vessel under the
3 influence of alcohol or drugs, K.S.A. 32-1131, and amendments thereto;
4 (D) involuntary manslaughter while driving under the influence of alcohol
5 or drugs, K.S.A. 21-3442, prior to its repeal, or K.S.A. 2017 Supp. 21-
6 5405(a)(3), and amendments thereto; (E) aggravated battery as described
7 in K.S.A. 2017 Supp. 21-5413(b)(3), and amendments thereto; and (F)
8 aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or
9 vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was
10 committed while committing a violation of K.S.A. 8-1567, and
11 amendments thereto;

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

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

24 (5) ~~(3)~~ multiple convictions of any crime described in subsection (h)
25 (1) or (h)(2) ~~section 1(a), (b), (d) or (e), and amendments thereto,~~ arising
26 from the same arrest shall only be counted as one conviction;

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

33 (7) ~~(4)~~ a person may enter into a diversion agreement in lieu of
34 further criminal proceedings for a violation of this section, or an ordinance
35 which prohibits the acts of this section, only once during the person's
36 lifetime.

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

42 (j) (1) Nothing contained in this section shall be construed as
43 preventing any city from enacting ordinances, or any county from adopting

1 resolutions, declaring acts prohibited or made unlawful by this act as
2 unlawful or prohibited in such city or county and prescribing penalties for
3 violation thereof.

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

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

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

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

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

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

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

29 (l) No plea bargaining agreement shall be entered into nor shall any
30 judge approve a plea bargaining agreement entered into for the purpose of
31 permitting a person charged with a violation of this section, or a violation
32 of any ordinance of a city or resolution of any county in this state which
33 prohibits the acts prohibited by this section, to avoid the mandatory
34 penalties established by this section or by the ordinance. For the purpose
35 of this subsection, entering into a diversion agreement pursuant to K.S.A.
36 12-4413 et seq. or 22-2906 et seq., and amendments thereto, shall not
37 constitute plea bargaining. *The prohibitions of this subsection shall not*
38 *apply if the person is convicted for a violation of K.S.A. 8-1567, and*
39 *amendments thereto, arising from the same arrest.*

40 (m) As used in this section, "imprisonment" shall include any
41 restrained environment in which the court and law enforcement agency
42 intend to retain custody and control of a defendant and such environment
43 has been approved by the board of county commissioners or the governing

1 body of a city.

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

9 Sec. ~~13~~. 7. K.S.A. 2017 Supp. 8-1567 is hereby amended to read as
10 follows: 8-1567. (a) Driving under the influence is operating or attempting
11 to operate any vehicle within this state while:

12 (1) The alcohol concentration in the person's blood or breath as
13 shown by any competent evidence, including other competent evidence, as
14 defined in ~~paragraph (1) of subsection (f) of K.S.A. 8-1013(f)(1), and~~
15 ~~amendments thereto, is 0.08 or more;~~

16 (2) the alcohol concentration in the person's blood or breath, as
17 measured within three hours of the time of operating or attempting to
18 operate a vehicle, is 0.08 or more;

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

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

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

26 ~~(6) having present in the person's blood any amount, as measured~~
27 ~~within three hours of the time of operating or attempting to operate a~~
28 ~~vehicle, of a controlled substance listed in K.S.A. 65-4105 or 65-4107, and~~
29 ~~amendments thereto, or its pharmacologically active metabolite, as~~
30 ~~defined in K.S.A. 8-1013, and amendments thereto. It shall be an~~
31 ~~affirmative defense to a violation of this paragraph that the person~~
32 ~~lawfully ingested the controlled substance by order of a practitioner or~~
33 ~~mid-level practitioner, as defined in K.S.A. 65-4101, and amendments~~
34 ~~thereto, or otherwise ingested the controlled substance in accordance with~~
35 ~~the laws of the United States or the state of Kansas.~~

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

37 (A) On a first conviction a class B, nonperson misdemeanor. The
38 person convicted shall be sentenced to not less than 48 consecutive hours
39 nor more than six months' imprisonment, or in the court's discretion 100
40 hours of public service, and fined not less than \$750 nor more than \$1,000.
41 The person convicted shall serve at least 48 consecutive hours'
42 imprisonment or 100 hours of public service either before or as a condition
43 of any grant of probation or suspension, reduction of sentence or parole.

1 The court may place the person convicted under a house arrest program
2 pursuant to K.S.A. 2017 Supp. 21-6609, and amendments thereto, to serve
3 the remainder of the sentence only after such person has served 48
4 consecutive hours' imprisonment;

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

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

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

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

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

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

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

42 (3) In addition, for any conviction pursuant to subsection (b)(1)(C),
43 (b)(1)(D) or (b)(1)(E), at the time of the filing of the judgment form or

1 journal entry as required by K.S.A. 22-3426 or K.S.A. 2017 Supp. 21-
2 6711, and amendments thereto, the court shall cause a certified copy to be
3 sent to the officer having the offender in charge. The court shall determine
4 whether the offender, upon release from imprisonment, shall be supervised
5 by community correctional services or court services based upon the risk
6 and needs of the offender. The risk and needs of the offender shall be
7 determined by use of a risk assessment tool specified by the Kansas
8 sentencing commission. The law enforcement agency maintaining custody
9 and control of a defendant for imprisonment shall cause a certified copy of
10 the judgment form or journal entry to be sent to the supervision office
11 designated by the court and upon expiration of the term of imprisonment
12 shall deliver the defendant to a location designated by the supervision
13 office designated by the court. After the term of imprisonment imposed by
14 the court, the person shall be placed on supervision to community
15 correctional services or court services, as determined by the court, for a
16 mandatory one-year period of supervision, which such period of
17 supervision shall not be reduced. During such supervision, the person shall
18 be required to participate in a multidisciplinary model of services for
19 substance use disorders facilitated by a Kansas department for aging and
20 disability services designated care coordination agency to include
21 assessment and, if appropriate, referral to a community based substance
22 use disorder treatment including recovery management and mental health
23 counseling as needed. The multidisciplinary team shall include the
24 designated care coordination agency, the supervision officer, the Kansas
25 department for aging and disability services designated treatment provider
26 and the offender. *An offender for whom a warrant has been issued by the*
27 *court alleging a violation of this supervision shall be considered a fugitive*
28 *from justice if it is found that the warrant cannot be served. If it is found*
29 *the offender has violated the provisions of this supervision, the court shall*
30 *determine whether the time from the issuing of the warrant to the date of*
31 *the court's determination of an alleged violation, or any part of it, shall be*
32 *counted as time served on supervision. Any violation of the conditions of*
33 *such supervision may subject such person to revocation of supervision and*
34 *imprisonment in jail for the remainder of the period of imprisonment, the*
35 *remainder of the supervision period, or any combination or portion*
36 *thereof. The term of supervision may be extended at the court's discretion*
37 *beyond one year, and any violation of the conditions of such extended term*
38 *of supervision may subject such person to the revocation of supervision*
39 *and imprisonment in jail of up to the remainder of the original sentence,*
40 *not the term of the extended supervision.*

41 (4) In addition, prior to sentencing for any conviction pursuant to
42 subsection (b)(1)(A) or (b)(1)(B), the court shall order the person to
43 participate in an alcohol and drug evaluation conducted by a provider in

1 accordance with K.S.A. 8-1008, and amendments thereto. The person shall
2 be required to follow any recommendation made by the provider after such
3 evaluation, unless otherwise ordered by the court.

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

15 (d) If a person is charged with a violation of ~~this section involving~~
16 ~~drugs subsection (a)(4) or (a)(5)~~, the fact that the person is or has been
17 entitled to use the drug under the laws of this state shall not constitute a
18 defense against the charge.

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

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

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

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

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

40 (h) The court shall electronically report every conviction of a
41 violation of this section and every diversion agreement entered into in lieu
42 of further criminal proceedings on a complaint alleging a violation of this
43 section to the division, *including any finding regarding the alcohol*

1 *concentration in the offender's blood or breath.* Prior to sentencing under
2 the provisions of this section, the court shall request and shall receive from
3 the division a record of all prior convictions obtained against such person
4 for any violations of any of the motor vehicle laws of this state.

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

8 ~~(1) Convictions for a violation of this section, or a violation of an~~
9 ~~ordinance of any city or resolution of any county which prohibits the acts~~
10 ~~that this section prohibits, or entering into a diversion agreement in lieu of~~
11 ~~further criminal proceedings on a complaint alleging any such violations,~~
12 ~~shall be taken into account, but only convictions or diversions occurring~~
13 ~~on or after July 1, 2001, or diversions listed in section 1, and amendments~~
14 ~~thereto. Except for violations of K.S.A. 2017 Supp. 8-1025, and~~
15 ~~amendments thereto, or comparable statutes, municipal ordinances or~~
16 ~~county resolutions, that occurred prior to July 1, 2018, nothing in this~~
17 ~~provision shall be construed as preventing any court from considering any~~
18 ~~convictions or diversions occurring during the person's lifetime in~~
19 ~~determining the sentence to be imposed within the limits provided for a~~
20 ~~first, second, third, fourth or subsequent offense;~~

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

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

1 reservation in this state;

2 ~~(4) multiple convictions of any crime described in subsection (i)(1) or~~
3 ~~(i)(2) section 1(a), (b), (d) or (e), and amendments thereto, arising from~~
4 ~~the same arrest shall only be counted as one conviction;~~

5 ~~(5) (3) it is irrelevant whether an offense occurred before or after~~
6 ~~conviction for a previous offense; and~~

7 ~~(6) (4) a person may enter into a diversion agreement in lieu of~~
8 ~~further criminal proceedings for a violation of this section, and~~
9 ~~amendments thereto, or an ordinance which prohibits the acts of this~~
10 ~~section, and amendments thereto, only once during the person's lifetime~~

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

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

34 *(3) "conviction" includes: (A) Entering into a diversion agreement*
35 *in lieu of further criminal proceedings on a complaint alleging a*
36 *violation of a crime described in subsection (i)(2); (B) conviction of a*
37 *violation of an ordinance of a city in this state, a resolution of a county*
38 *in this state or any law of another state that would constitute a crime*
39 *described in subsection (i)(1) or (i)(2); and (C) receiving punishment*
40 *under the uniform code of military justice or Kansas code of military*
41 *justice for an act that was committed on a military reservation and that*
42 *would constitute a crime described in subsection (i)(1) or (i)(2) if*
43 *committed off a military reservation in this state;*

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

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

6 ***(6) a person may enter into a diversion agreement in lieu of further***
7 ***criminal proceedings for a violation of this section or an ordinance that***
8 ***prohibits the acts of this section only once during the person's lifetime.***

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

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

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

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

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

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

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

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

42 (2) If the elements of such ordinance violation are the same as the
43 elements of a violation of this section that would constitute, and be

1 punished as, a felony, the city attorney shall refer the violation to the
2 appropriate county or district attorney for prosecution.

3 (m) No plea bargaining agreement shall be entered into nor shall any
4 judge approve a plea bargaining agreement entered into for the purpose of
5 permitting a person charged with a violation of this section, or a violation
6 of any ordinance of a city or resolution of any county in this state which
7 prohibits the acts prohibited by this section, to avoid the mandatory
8 penalties established by this section or by the ordinance. For the purpose
9 of this subsection, entering into a diversion agreement pursuant to K.S.A.
10 12-4413 et seq. or 22-2906 et seq., and amendments thereto, shall not
11 constitute plea bargaining. ~~The prohibitions of this subsection shall not
12 apply if the person is convicted for a violation of K.S.A. 8-1025, and
13 amendments thereto, arising from the same arrest.~~

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

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

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

25 (3) "drug" includes toxic vapors as such term is defined in K.S.A.
26 2017 Supp. 21-5712, and amendments thereto.

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

36 (2) On and after July 1, 2011, the amount of \$250 from each fine
37 imposed pursuant to this section shall be remitted by the clerk of the
38 district court to the state treasurer in accordance with the provisions of
39 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
40 remittance, the state treasurer shall credit the entire amount to the
41 community corrections supervision fund established by K.S.A. 2017 Supp.
42 75-52,113, and amendments thereto.

43 ~~Sec. 14. 8.~~ K.S.A. 2017 Supp. 65-1,107 is hereby amended to read as

1 follows: 65-1,107. The secretary of health and environment may adopt
2 rules and regulations establishing:

3 (a) The procedures, testing protocols and qualifications of authorized
4 personnel, instruments and methods used in laboratories performing tests
5 for the presence of controlled substances included in schedule I or II of the
6 uniform controlled substances act or metabolites thereof;

7 (b) the procedures, testing protocols, qualifications of personnel and
8 standards of performance in the testing of human breath for law
9 enforcement purposes, including procedures for the periodic inspection of
10 apparatus, equipment and devices, other than preliminary screening
11 devices, approved by the secretary of health and environment for the
12 testing of human breath for law enforcement purposes;

13 (c) the requirements for the training, certification and periodic testing
14 of persons who operate apparatus, equipment or devices, other than
15 preliminary screening devices, for the testing of human breath for law
16 enforcement purposes;

17 (d) criteria for preliminary screening devices for testing of breath for
18 law enforcement purposes, based on health and performance
19 considerations; and

20 (e) a list of preliminary screening devices which are approved for
21 testing of breath for law enforcement purposes and which law enforcement
22 agencies may purchase and train officers to use as aids in determining: (1)
23 Probable cause to arrest and grounds for *requesting or* requiring testing
24 pursuant to K.S.A. 8-1001, and amendments thereto, *or as otherwise*
25 *authorized by law*; and (2) violations of K.S.A. 41-727, and amendments
26 thereto.

27 ~~Sec. 15.~~ **9.** K.S.A. 2017 Supp. 75-712h is hereby amended to read as
28 follows: 75-712h. The director of the Kansas bureau of investigation is
29 authorized to adopt rules and regulations establishing: (a) Criteria for
30 preliminary screening devices for testing of ~~saliva~~ *oral fluid* for law
31 enforcement purposes, based on health and performance considerations;
32 and (b) a list of preliminary screening devices which are approved for
33 testing of ~~saliva~~ *oral fluid* for law enforcement purposes and which law
34 enforcement agencies may purchase and train officers to use as aids in
35 determining probable cause to arrest and grounds for *requesting or*
36 *requiring* testing pursuant to K.S.A. 8-1001, and amendments thereto, *or*
37 *as otherwise authorized by law*.

38 ~~Sec. 16.~~ **10.** K.S.A. 8-2,137 and ~~8-2,145~~ and K.S.A. 2017 Supp. ~~8-~~
39 ~~2,142~~; 8-2,144, 8-1001, ~~8-1002~~, 8-1012, 8-1013, ~~8-1020~~, 8-1024, 8-1025,
40 8-1567, 65-1,107 and 75-712h are hereby repealed.

41 ~~Sec. 17.~~ **11.** This act shall take effect and be in force from and after its
42 publication in the statute book.