

HOUSE SUBSTITUTE FOR BILL No. 6

By Committee on Corrections and Juvenile Justice

3-21

1 AN ACT concerning driving under the influence; relating to testing;
2 administrative penalties; crimes, punishment and criminal procedure;
3 amending K.S.A. 22-4704 and 22-4705 and K.S.A. 2010 Supp. 8-1001,
4 8-1014, 8-1015, 8-1567, 12-4106 and 75-5291 and repealing the
5 existing sections; also repealing K.S.A. 2009 Supp. 8-1567, as
6 amended by section 3 of chapter 153 of the 2010 Session Laws of
7 Kansas.

8

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

10 Section 1. K.S.A. 2010 Supp. 8-1001 is hereby amended to read as
11 follows: 8-1001. (a) Any person who operates or attempts to operate a
12 vehicle within this state is deemed to have given consent, subject to the
13 provisions of this act, to submit to one or more tests of the person's blood,
14 breath, urine or other bodily substance to determine the presence of
15 alcohol or drugs. The testing deemed consented to herein shall include all
16 quantitative and qualitative tests for alcohol and drugs. A person who is
17 dead or unconscious shall be deemed not to have withdrawn the person's
18 consent to such test or tests, which shall be administered in the manner
19 provided by this section.

20 (b) A law enforcement officer shall request a person to submit to a
21 test or tests deemed consented to under subsection (a): (1) If the officer has
22 reasonable grounds to believe the person was operating or attempting to
23 operate a vehicle while under the influence of alcohol or drugs, or both, or
24 to believe that the person was driving a commercial motor vehicle, as
25 defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol
26 or other drugs in such person's system, or was under the age of 21 years
27 while having alcohol or other drugs in such person's system; and one of the
28 following conditions exists: (A) The person has been arrested or otherwise
29 taken into custody for any offense involving operation or attempted
30 operation of a vehicle while under the influence of alcohol or drugs, or
31 both, or for a violation of K.S.A. 8-1567a, and amendments thereto, or
32 involving driving a commercial motor vehicle, as defined in K.S.A. 8-
33 2,128, and amendments thereto, while having alcohol or other drugs in
34 such person's system, in violation of a state statute or a city ordinance; or
35 (B) the person has been involved in a vehicle accident or collision

1 resulting in property damage or personal injury other than serious injury;
2 or (2) if the person was operating or attempting to operate a vehicle and
3 such vehicle has been involved in an accident or collision resulting in
4 serious injury or death of any person and the operator could be cited for
5 any traffic offense, as defined in K.S.A. 8-2117, and amendments thereto.
6 The traffic offense violation shall constitute probable cause for purposes of
7 paragraph (2). The test or tests under paragraph (2) shall not be required if
8 a law enforcement officer has reasonable grounds to believe the actions of
9 the operator did not contribute to the accident or collision. The law
10 enforcement officer directing administration of the test or tests may act on
11 personal knowledge or on the basis of the collective information available
12 to law enforcement officers involved in the accident investigation or arrest.

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

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

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

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

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

32 (e) When so directed by a law enforcement officer through a written
33 statement, the medical professional shall withdraw the sample as soon as
34 practical and shall deliver the sample to the law enforcement officer or
35 another law enforcement officer as directed by the requesting law
36 enforcement officer as soon as practical, provided the collection of the
37 sample does not jeopardize the person's life, cause serious injury to the
38 person or seriously impede the person's medical assessment, care or
39 treatment. The medical professional authorized herein to withdraw the
40 blood and the medical care facility where the blood is drawn may act on
41 good faith that the requirements have been met for directing the
42 withdrawing of blood once presented with the written statement provided
43 for under this subsection. The medical professional shall not require the

1 person to sign any additional consent or waiver form. In such a case, the
2 person authorized to withdraw blood and the medical care facility shall not
3 be liable in any action alleging lack of consent or lack of informed
4 consent.

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

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

16 (h) A law enforcement officer may request a urine sample upon
17 meeting the requirements of paragraph (1) of subsection (b) and shall
18 request a urine sample upon meeting the requirements of paragraph (2) of
19 subsection (b).

20 (i) If a law enforcement officer requests a person to submit to a test of
21 urine under this section, the collection of the urine sample shall be
22 supervised by persons of the same sex as the person being tested and shall
23 be conducted out of the view of any person other than the persons
24 supervising the collection of the sample and the person being tested, unless
25 the right to privacy is waived by the person being tested. When possible,
26 the supervising person shall be a law enforcement officer. The results of
27 qualitative testing for drug presence shall be admissible in evidence and
28 questions of accuracy or reliability shall go to the weight rather than the
29 admissibility of the evidence. If the person is medically unable to provide
30 a urine sample in such manner due to the injuries or treatment of the
31 injuries, the same authorization and procedure as used for the collection of
32 blood in subsections (d) and (e) shall apply to the collection of a urine
33 sample.

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

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

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

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

3 (4) if the person refuses to submit to and complete any test of breath,
4 blood or urine hereafter requested by a law enforcement officer, the
5 person's driving privileges will be suspended for one year for the first
6 occurrence, two years for the second occurrence, three years for the third
7 occurrence, 10 years for the fourth occurrence and permanently revoked
8 for a fifth or subsequent occurrence;

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

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

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

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

21 ~~(7) (6) if the person is less than 21 years of age at the time of the test~~
22 ~~request and submits to and completes the tests and the test results show an~~
23 ~~alcohol concentration of .08 or greater, the person's driving privileges will~~
24 ~~be suspended for one year except the person's driving privileges will be~~
25 ~~permanently revoked for a fifth or subsequent occurrence;~~

26 ~~(8) (7) refusal to submit to testing may be used against the person at~~
27 ~~any trial on a charge arising out of the operation or attempted operation of~~
28 ~~a vehicle while under the influence of alcohol or drugs, or both;~~

29 ~~(9) (8) the results of the testing may be used against the person at any~~
30 ~~trial on a charge arising out of the operation or attempted operation of a~~
31 ~~vehicle while under the influence of alcohol or drugs, or both; and~~

32 ~~(10) (9) after the completion of the testing, the person has the right to~~
33 ~~consult with an attorney and may secure additional testing, which, if~~
34 ~~desired, should be done as soon as possible and is customarily available~~
35 ~~from medical care facilities willing to conduct such testing.~~

36 (l) If a law enforcement officer has reasonable grounds to believe that
37 the person has been driving a commercial motor vehicle, as defined in
38 K.S.A. 8-2,128, and amendments thereto, while having alcohol or other
39 drugs in such person's system, the person shall also be provided the oral
40 and written notice pursuant to K.S.A. 8-2,145 and amendments thereto.
41 Any failure to give the notices required by K.S.A. 8-2,145 and
42 amendments thereto shall not invalidate any action taken as a result of the
43 requirements of this section. If a law enforcement officer has reasonable

1 grounds to believe that the person has been driving or attempting to drive a
2 vehicle while having alcohol or other drugs in such person's system and
3 such person was under 21 years of age, the person also shall be given the
4 notices required by K.S.A. 8-1567a, and amendments thereto. Any failure
5 to give the notices required by K.S.A. 8-1567a, and amendments thereto,
6 shall not invalidate any action taken as a result of the requirements of this
7 section.

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

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

18 (o) If a law enforcement officer had reasonable grounds to believe the
19 person had been driving a commercial motor vehicle, as defined in K.S.A.
20 8-2,128, and amendments thereto, and the test results show a blood or
21 breath alcohol concentration of .04 or greater, the person shall be
22 disqualified from driving a commercial motor vehicle, pursuant to K.S.A.
23 8-2,142, and amendments thereto. If a law enforcement officer had
24 reasonable grounds to believe the person had been driving a commercial
25 motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, and
26 the test results show a blood or breath alcohol concentration of .08 or
27 greater, or the person refuses a test, the person's driving privileges shall be
28 subject to suspension, or suspension and restriction, pursuant to this
29 section, in addition to being disqualified from driving a commercial motor
30 vehicle pursuant to K.S.A. 8-2,142, and amendments thereto.

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

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

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

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

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

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

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

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

14 (1) Disabling a person from the physical capacity to remove
15 themselves from the scene;

16 (2) renders a person unconscious;

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

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

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

22 Sec. 2. K.S.A. 2010 Supp. 8-1014 is hereby amended to read as
23 follows: 8-1014. (a) Except as provided by subsection (e) and K.S.A. 8-
24 2,142, and amendments thereto, if a person refuses a test, the division,
25 pursuant to K.S.A. 8-1002, and amendments thereto, shall:

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

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

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

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

42 (5) on the person's fifth or subsequent occurrence, ~~revoke~~ *suspend*
43 *the person's driving privileges for one year and at the end of the*

1 *suspension, restrict the person's driving privileges permanently to driving*
2 *only a motor vehicle equipped with an ignition interlock device.*

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

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

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

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

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

22 ~~(E) (E) on the person's fifth or subsequent occurrence, the person's~~
23 ~~driving privileges shall be permanently revoked. suspend the person's~~
24 ~~driving privileges for one year and at the end of the suspension, restrict~~
25 ~~the person's driving privileges permanently to driving only a motor vehicle~~
26 ~~equipped with an ignition interlock device.~~

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

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

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

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

43 (D) on the person's fourth occurrence, suspend the person's driving

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

4 (E) on the person's fifth or subsequent occurrence, ~~the person's~~
5 ~~driving privileges shall be permanently revoked.~~ *suspend the person's*
6 *driving privileges for one year and at the end of the suspension, restrict*
7 *the person's driving privileges permanently to driving only a motor vehicle*
8 *equipped with an ignition interlock device.*

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

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

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

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

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

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

42 (e) Except as provided in K.S.A. 8-2,142, and amendments thereto, if
43 a person's driving privileges are subject to suspension pursuant to this

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

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

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

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

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

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

42 (h) *As used in this section, "suspension" includes any period of*
43 *suspension and any period of restriction as provided in subsection (a) of*

1 *K.S.A. 8-1015, and amendments thereto.*

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

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

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

25 (2) *The division shall approve the request for such restricted license*
26 *unless such person's driving privileges have been restricted, suspended,*
27 *revoked or disqualified pursuant to another action by the division or a*
28 *court. If the request is approved, upon receipt of proof of the installation of*
29 *such device, the division shall issue a copy of the order imposing such*
30 *restrictions on the person's driving privileges and such order shall be*
31 *carried by the person at any time the person is operating a motor vehicle*
32 *on the highways of this state. Except as provided in K.S.A. 8-1017, and*
33 *amendments thereto, if such person is convicted of a violation of the*
34 *restrictions, such person's driving privileges shall be suspended for an*
35 *additional year, in addition to any term of suspension or restriction as*
36 *provided in subsection (a), (b) or (c) of K.S.A. 8-1014, and amendments*
37 *thereto.*

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

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

6 (2) In lieu of the restrictions set out in subsection (b)(1), the division,
7 upon request of the person whose driving privileges are to be restricted,
8 may restrict the person's driving privileges to driving only a motor vehicle
9 equipped with an ignition interlock device. Upon restricting a person's
10 driving privileges pursuant to this subsection, the division shall issue a
11 copy of the order imposing the restrictions which is required to be carried
12 by the person at any time the person is operating a motor vehicle on the
13 highways of this state.

14 (c) Except as provided in subsection (b), when a person has
15 completed the suspension pursuant to subsection ~~(b)~~ (a), (b) or (c) of
16 K.S.A. 8-1014, and amendments thereto, the division shall restrict the
17 person's driving privileges pursuant to subsection ~~(b)~~ (a), (b) or (c) of
18 K.S.A. 8-1014, and amendments thereto, to driving only a motor vehicle
19 equipped with an ignition interlock device, ~~approved by the division and~~
20 ~~maintained at the person's expense. Proof of the installation of such device,~~
21 ~~for the entire restriction period, shall be provided to the division before the~~
22 ~~person's driving privileges are fully reinstated.~~ Upon restricting a person's
23 driving privileges pursuant to this subsection, the division shall issue a
24 copy of the order imposing the restrictions which is required to be carried
25 by the person at any time the person is operating a motor vehicle on the
26 highways of this state.

27 (d) Whenever an ignition interlock device is required by law, such
28 ignition interlock device shall be approved by the division and maintained
29 at the person's expense. Proof of the installation of such ignition interlock
30 device, for the entire period required by the applicable law, shall be
31 provided to the division before the person's driving privileges are fully
32 reinstated.

33 (e) Except as provided further, any person whose license is restricted
34 to operating only a motor vehicle with an ignition interlock device
35 installed may operate an employer's vehicle without an ignition interlock
36 device installed during normal business activities, provided that the
37 person does not partly or entirely own or control the employer's vehicle or
38 business. The provisions of this subsection shall not apply to any person
39 whose driving privileges have been restricted for the remainder of the one-
40 year suspension period as provided in subsection (a).

41 ~~(d)~~ (f) Upon expiration of the period of time for which restrictions are
42 imposed pursuant to this section, the licensee may apply to the division for
43 the return of any license previously surrendered by the licensee. If the

1 license has expired, the person may apply to the division for a new license,
2 which shall be issued by the division upon payment of the proper fee and
3 satisfaction of the other conditions established by law, unless the person's
4 driving privileges have been suspended or revoked prior to expiration.

5 *(g) Any person who has had the person's driving privileges suspended*
6 *or restricted pursuant to subsection (a), (b) or (c) of K.S.A. 8-1014, prior*
7 *to the amendments by this act, may apply to the division to have the*
8 *suspension and restriction penalties modified in conformity with the*
9 *provisions of subsection (a), (b) or (c) of K.S.A. 8-1014, and amendments*
10 *thereto. The division shall assess an application fee of \$59 for a person to*
11 *apply to modify the suspension and restriction penalties previously issued.*
12 *The division shall remit all application fees to the state treasurer in*
13 *accordance with the provisions of K.S.A. 75-4215, and amendments*
14 *thereto. Upon receipt of such remittance, the state treasurer shall deposit*
15 *the entire amount in the state treasury and shall credit such moneys to the*
16 *division of vehicles operating fund. The application fee established in this*
17 *section shall be the only fee collected or moneys in the nature of a fee*
18 *collected for such application. Such fee shall only be established by an act*
19 *of the legislature and no other authority is established by law or otherwise*
20 *to collect a fee. The division shall modify the suspension and restriction*
21 *penalties, unless such person's driving privileges have been restricted,*
22 *suspended, revoked or disqualified pursuant to another action by the*
23 *division or a court.*

24 Sec. 4. K.S.A. 2010 Supp. 8-1567 is hereby amended to read as
25 follows: 8-1567. (a) No person shall operate or attempt to operate any
26 vehicle within this state while:

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

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

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

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

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

41 (b) No person shall operate or attempt to operate any vehicle within
42 this state if the person is a habitual user of any narcotic, hypnotic,
43 somnifacient or stimulating drug.

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

4 (d) (1) Upon a first conviction of a violation of this section, a person
5 shall be guilty of a class B, nonperson misdemeanor and sentenced to not
6 less than 48 consecutive hours nor more than six months' imprisonment, or
7 in the court's discretion 100 hours of public service, and fined not less than
8 \$500 nor more than \$1,000. The person convicted must serve at least 48
9 consecutive hours' imprisonment or 100 hours of public service either
10 before or as a condition of any grant of probation or suspension, reduction
11 of sentence or parole.

12 (2) In addition, the court shall enter an order which requires that the
13 person enroll in and successfully complete an alcohol and drug safety
14 action education program or treatment program as provided in K.S.A. 8-
15 1008, and amendments thereto, or both the education and treatment
16 programs.

17 (e) (1) On a second conviction of a violation of this section, a person
18 shall be guilty of a class A, nonperson misdemeanor and sentenced to not
19 less than 90 days nor more than one year's imprisonment and fined not less
20 than \$1,000 nor more than \$1,500. The person convicted must serve at
21 least five consecutive days' imprisonment before the person is granted
22 probation, suspension or reduction of sentence or parole or is otherwise
23 released. The five days' imprisonment mandated by this subsection may be
24 served in a work release program only after such person has served 48
25 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 court may place the person convicted under a
28 house arrest program pursuant to ~~K.S.A. 21-4603b~~ *section 249 of chapter*
29 *136 of the 2010 Session Laws of Kansas*, and amendments thereto, to serve
30 the remainder of the minimum sentence only after such person has served
31 48 consecutive hours' imprisonment.

32 (2) As a condition of any grant of probation, suspension of sentence
33 or parole or of any other release, the person shall be required to enter into
34 and complete a treatment program for alcohol and drug abuse as provided
35 in K.S.A. 8-1008, and amendments thereto.

36 (f) (1) On the third conviction of a violation of this section, a person
37 shall be guilty of a nonperson felony and sentenced to not less than 90
38 days nor more than one year's imprisonment and fined not less than \$1,500
39 nor more than \$2,500. The person convicted shall not be eligible for
40 release on probation, suspension or reduction of sentence or parole until
41 the person has served at least 90 days' imprisonment. The 90 days'
42 imprisonment mandated by this paragraph may be served in a work release
43 program only after such person has served 48 consecutive hours'

1 imprisonment, provided such work release program requires such person
2 to return to confinement at the end of each day in the work release
3 program. The court may place the person convicted under a house arrest
4 program pursuant to ~~K.S.A. 21-4603b~~ *section 249 of chapter 136 of the*
5 *2010 Session Laws of Kansas*, and amendments thereto, to serve the
6 remainder of the minimum sentence only after such person has served 48
7 consecutive hours' imprisonment.

8 (2) The court may order that the term of imprisonment imposed
9 pursuant to paragraph (1) be served in a state facility in the custody of the
10 secretary of corrections in a facility designated by the secretary for the
11 provision of substance abuse treatment pursuant to the provisions of
12 ~~K.S.A. 21-4704~~ *section 285 of chapter 136 of the 2010 Session Laws of*
13 *Kansas*, and amendments thereto. The person shall remain imprisoned at
14 the state facility only while participating in the substance abuse treatment
15 program designated by the secretary and shall be returned to the custody of
16 the sheriff for execution of the balance of the term of imprisonment upon
17 completion of or the person's discharge from the substance abuse treatment
18 program. Custody of the person shall be returned to the sheriff for
19 execution of the sentence imposed in the event the secretary of corrections
20 determines: (A) That substance abuse treatment resources or the capacity
21 of the facility designated by the secretary for the incarceration and
22 treatment of the person is not available; (B) the person fails to
23 meaningfully participate in the treatment program of the designated
24 facility; (C) the person is disruptive to the security or operation of the
25 designated facility; or (D) the medical or mental health condition of the
26 person renders the person unsuitable for confinement at the designated
27 facility. The determination by the secretary that the person either is not to
28 be admitted into the designated facility or is to be transferred from the
29 designated facility is not subject to review. The sheriff shall be responsible
30 for all transportation expenses to and from the state correctional facility.

31 ~~The court shall also require as a condition of parole that such person~~
32 ~~enter into and complete a treatment program for alcohol and drug abuse as~~
33 ~~provided by K.S.A. 8-1008, and amendments thereto.~~

34 (3) *At the time of the filing of the judgment form or journal entry as*
35 *required by K.S.A. 22-3426 or section 280 of chapter 136 of the 2010*
36 *Session Laws of Kansas, and amendments thereto, the court shall cause a*
37 *certified copy to be sent to the officer having the offender in charge. The*
38 *law enforcement agency maintaining custody and control of a defendant*
39 *for imprisonment shall cause a certified copy of the judgment form or*
40 *journal entry to be sent to the director of the community corrections*
41 *program for the county of conviction when the term of imprisonment*
42 *expires and upon expiration of the term of imprisonment shall deliver the*
43 *defendant to a location designated by the director of the community*

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

20 (g) (1) On the fourth or subsequent conviction of a violation of this
21 section, a person shall be guilty of a nonperson felony and sentenced to not
22 less than 90 days nor more than one year's imprisonment and fined \$2,500.
23 The person convicted shall not be eligible for release on probation,
24 suspension or reduction of sentence or parole until the person has served at
25 least 90 days' imprisonment. The 90 days' imprisonment mandated by this
26 paragraph may be served in a work release program only after such person
27 has served 72 consecutive hours' imprisonment, provided such work
28 release program requires such person to return to confinement at the end of
29 each day in the work release program.

30 (2) The court may order that the term of imprisonment imposed
31 pursuant to paragraph (1) be served in a state facility in the custody of the
32 secretary of corrections in a facility designated by the secretary for the
33 provision of substance abuse treatment pursuant to the provisions of
34 ~~K.S.A. 21-4704~~ *section 285 of chapter 136 of the 2010 Session Laws of*
35 *Kansas*, and amendments thereto. The person shall remain imprisoned at
36 the state facility only while participating in the substance abuse treatment
37 program designated by the secretary and shall be returned to the custody of
38 the sheriff for execution of the balance of the term of imprisonment upon
39 completion of or the person's discharge from the substance abuse treatment
40 program. Custody of the person shall be returned to the sheriff for
41 execution of the sentence imposed in the event the secretary of corrections
42 determines: (A) That substance abuse treatment resources or the capacity
43 of the facility designated by the secretary for the incarceration and

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

10 ~~At the time of the filing of the judgment form or journal entry as~~
11 ~~required by K.S.A. 21-4620 or 22-3426, and amendments thereto, the~~
12 ~~court shall cause a certified copy to be sent to the officer having the~~
13 ~~offender in charge. The law enforcement agency maintaining custody and~~
14 ~~control of a defendant for imprisonment shall cause a certified copy of the~~
15 ~~judgment form or journal entry to be sent to the secretary of corrections~~
16 ~~within three business days of receipt of the judgment form or journal entry~~
17 ~~from the court and notify the secretary of corrections when the term of~~
18 ~~imprisonment expires and upon expiration of the term of imprisonment~~
19 ~~shall deliver the defendant to a location designated by the secretary. After~~
20 ~~the term of imprisonment imposed by the court, the person shall be placed~~
21 ~~in the custody of the secretary of corrections for a mandatory one-year~~
22 ~~period of postrelease supervision, which such period of postrelease~~
23 ~~supervision shall not be reduced. During such postrelease supervision, the~~
24 ~~person shall be required to participate in an inpatient or outpatient program~~
25 ~~for alcohol and drug abuse, including, but not limited to, an approved~~
26 ~~aftercare plan or mental health counseling, as determined by the secretary~~
27 ~~and satisfy conditions imposed by the Kansas parole board as provided by~~
28 ~~K.S.A. 22-3717, and amendments thereto. Any violation of the conditions~~
29 ~~of such postrelease supervision may subject such person to revocation of~~
30 ~~postrelease supervision pursuant to K.S.A. 75-5217 et seq., and~~
31 ~~amendments thereto and as otherwise provided by law.~~

32 *(3) At the time of the filing of the judgment form or journal entry as*
33 *required by K.S.A. 22-3426 or section 280 of chapter 136 of the 2010*
34 *Session Laws of Kansas, and amendments thereto, the court shall cause a*
35 *certified copy to be sent to the officer having the offender in charge. The*
36 *law enforcement agency maintaining custody and control of a defendant*
37 *for imprisonment shall cause a certified copy of the judgment form or*
38 *journal entry to be sent to the director of the community corrections*
39 *program for the county of conviction when the term of imprisonment*
40 *expires and upon expiration of the term of imprisonment shall deliver the*
41 *defendant to a location designated by the director of the community*
42 *corrections program. After the term of imprisonment imposed by the court,*
43 *the person shall be placed in the custody of the community correctional*

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

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

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

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

1 (k) (1) Except as provided in paragraph (5), in addition to any other
2 penalty which may be imposed upon a first conviction of a violation of this
3 section, the court may order that the convicted person's motor vehicle or
4 vehicles be impounded or immobilized for a period not to exceed one year
5 and that the convicted person pay all towing, impoundment and storage
6 fees or other immobilization costs.

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

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

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

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

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

22 (5) As used in this subsection, the convicted person's motor vehicle or
23 vehicles shall include any vehicle leased by such person. If the lease on the
24 convicted person's motor vehicle subject to impoundment or
25 immobilization expires in less than one year from the date of the
26 impoundment or immobilization, the time of impoundment or
27 immobilization of such vehicle shall be the amount of time remaining on
28 the lease.

29 (l) (1) Except as provided in paragraph (3), in addition to any other
30 penalty which may be imposed upon a second or subsequent conviction of
31 a violation of this section, the court shall order that each motor vehicle
32 owned or leased by the convicted person shall either be equipped with an
33 ignition interlock device or be impounded or immobilized for a period of
34 two years. The convicted person shall pay all costs associated with the
35 installation, maintenance and removal of the ignition interlock device and
36 all towing, impoundment and storage fees or other immobilization costs.

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

40 (3) As used in this subsection, the convicted person's motor vehicle or
41 vehicles shall include any vehicle leased by such person. If the lease on the
42 convicted person's motor vehicle subject to impoundment or
43 immobilization expires in less than two years from the date of the

1 impoundment or immobilization, the time of impoundment or
2 immobilization of such vehicle shall be the amount of time remaining on
3 the lease.

4 (m) (1) Prior to filing a complaint alleging a violation of this section,
5 a prosecutor shall request and shall receive from the division a record of
6 all prior convictions obtained against such person for any violations of any
7 of the motor vehicle laws of this state.

8 (2) Prior to filing a complaint alleging a violation of this section, a
9 prosecutor shall request and shall receive from the Kansas bureau of
10 investigation central repository all criminal history record information
11 concerning such person.

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

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

22 (1) "Conviction" includes being convicted of a violation of this
23 section or entering into a diversion agreement in lieu of further criminal
24 proceedings on a complaint alleging a violation of this section;

25 (2) "conviction" includes being convicted of a violation of a law of
26 another state or an ordinance of any city, or resolution of any county,
27 which prohibits the acts that this section prohibits or entering into a
28 diversion agreement in lieu of further criminal proceedings in a case
29 alleging a violation of such law, ordinance or resolution;

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

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

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

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

1 (q) (1) (A) Nothing contained in this section shall be construed as
2 preventing any city from enacting ordinances, or any county from adopting
3 resolutions, declaring acts prohibited or made unlawful by this act as
4 unlawful or prohibited in such city or county and prescribing penalties for
5 violation thereof. Except as specifically provided by this subsection, the
6 minimum penalty prescribed by any such ordinance or resolution shall not
7 be less than the minimum penalty prescribed by this act for the same
8 violation, and the maximum penalty in any such ordinance or resolution
9 shall not exceed the maximum penalty prescribed for the same violation.

10 (B) On and after July 1, 2007, and retroactive for ordinance violations
11 committed on or after July 1, 2006, an ordinance may grant to a municipal
12 court jurisdiction over a violation of such ordinance which is concurrent
13 with the jurisdiction of the district court over a violation of this section,
14 notwithstanding that the elements of such ordinance violation are the same
15 as the elements of a violation of this section that would constitute, and be
16 punished as, a felony.

17 (C) Any such ordinance or resolution shall authorize the court to
18 order that the convicted person pay restitution to any victim who suffered
19 loss due to the violation for which the person was convicted. Except as
20 provided in paragraph (5), any such ordinance or resolution may require or
21 authorize the court to order that the convicted person's motor vehicle or
22 vehicles be impounded or immobilized for a period not to exceed one year
23 and that the convicted person pay all towing, impoundment and storage
24 fees or other immobilization costs.

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

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

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

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

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

40 (5) As used in this subsection, the convicted person's motor vehicle or
41 vehicles shall include any vehicle leased by such person. If the lease on the
42 convicted person's motor vehicle subject to impoundment or
43 immobilization expires in less than one year from the date of the

1 impoundment or immobilization, the time of impoundment or
2 immobilization of such vehicle shall be the amount of time remaining on
3 the lease.

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

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

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

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

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

33 (u) Upon a fourth or subsequent conviction, the judge of any court in
34 which any person is convicted of violating this section, may revoke the
35 person's license plate or temporary registration certificate of the motor
36 vehicle driven during the violation of this section for a period of one year.
37 Upon revoking any license plate or temporary registration certificate
38 pursuant to this subsection, the court shall require that such license plate or
39 temporary registration certificate be surrendered to the court.

40 (v) For the purpose of this section: (1) "Alcohol concentration" means
41 the number of grams of alcohol per 100 milliliters of blood or per 210
42 liters of breath.

43 (2) "Imprisonment" shall include any restrained environment in

1 which the court and law enforcement agency intend to retain custody and
2 control of a defendant and such environment has been approved by the
3 board of county commissioners or the governing body of a city.

4 (3) "Drug" includes toxic vapors as such term is defined in K.S.A.
5 2010 Supp. 21-36a12, and amendments thereto.

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

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

20 Sec. 5. K.S.A. 2010 Supp. 12-4106 is hereby amended to read as
21 follows: 12-4106. (a) The municipal judge shall have the power to
22 administer the oaths and enforce all orders, rules and judgments made by
23 such municipal judge, and may fine or imprison for contempt in the same
24 manner and to the same extent as a judge of the district court.

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

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

40 (d) The municipal judge shall promptly make such reports and
41 furnish the information requested by any departmental justice or the
42 judicial administrator, in the manner and form prescribed by the supreme
43 court.

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

7 (f) *In all cases alleging a violation of a city ordinance prohibiting the*
8 *acts prohibited by K.S.A. 8-1567, and amendments thereto, the municipal*
9 *court judge shall ensure that information concerning persons arrested or*
10 *charged with a violation of a city ordinance prohibiting the acts prohibited*
11 *by K.S.A. 8-1567, and amendments thereto, is forwarded to the Kansas*
12 *bureau of investigation central repository the municipal court reports the*
13 *filing and disposition of such case to the Kansas bureau of investigation*
14 *central repository, and, on and after July 1, 2013, reports the filing and*
15 *disposition of such case electronically to the Kansas bureau of*
16 *investigation central repository.*

17 Sec. 6. K.S.A. 22-4704 is hereby amended to read as follows: 22-
18 4704. (a) In accordance with the provisions of K.S.A. 77-415 *et seq.*, and
19 amendments thereto, the director shall adopt appropriate rules and
20 regulations for agencies in the executive branch of government and for
21 criminal justice agencies other than those that are part of the judicial
22 branch of government to implement the provisions of this act.

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

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

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

33 (3) necessary for the coordination of all criminal justice data and
34 information processing activities as they relate to criminal history record
35 information;

36 (4) governing the dissemination of criminal history record
37 information;

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

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

43 (7) governing the development and content of agreements between

1 the central repository and criminal justice and noncriminal justice
2 agencies;

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

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

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

11 (f) (1) *On or before July 1, 2012, the director shall adopt rules and*
12 *regulations requiring district courts to report the filing of all cases*
13 *alleging a violation of K.S.A. 8-1567, and amendments thereto, to the*
14 *central repository.*

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

19 Sec. 7. K.S.A. 22-4705 is hereby amended to read as follows: 22-
20 4705. (a) The following events are reportable events under this act:

21 (1) Issuance of an arrest warrant;

22 (2) an arrest;

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

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

25 ~~(4)~~ (5) dismissal or quashing of an indictment or criminal
26 information;

27 ~~(5)~~ (6) an acquittal, conviction or other disposition at or following
28 trial, including a finding of probation before judgment;

29 ~~(6)~~ (7) imposition of a sentence;

30 ~~(7)~~ (8) commitment to a correctional facility, whether state or locally
31 operated;

32 ~~(8)~~ (9) release from detention or confinement;

33 ~~(9)~~ (10) an escape from confinement;

34 ~~(10)~~ (11) a pardon, reprieve, commutation of sentence or other change
35 in a sentence, including a change ordered by a court;

36 ~~(11)~~ (12) judgment of an appellate court that modifies or reverses the
37 lower court decision;

38 ~~(12)~~ (13) order of a court in a collateral proceeding that affects a
39 person's conviction, sentence or confinement, including any expungement
40 or annulment of arrests or convictions pursuant to state statute; and

41 ~~(13)~~ (14) any other event arising out of or occurring during the course
42 of criminal justice proceedings declared to be reportable by rule or
43 regulation of the director.

1 (b) There is hereby established a criminal justice information system
2 central repository for the collection, storage, and dissemination of criminal
3 history record information. The central repository shall be operated by the
4 Kansas bureau of investigation under the administrative control of the
5 director.

6 (c) Except as otherwise provided by this subsection, every criminal
7 justice agency shall report criminal history record information, whether
8 collected manually or by means of an automated system, to the central
9 repository, in accordance with rules and regulations adopted pursuant to
10 this act. A criminal justice agency shall report to the central repository
11 those reportable events involving a violation of a county resolution or city
12 ordinance only when required by rules and regulations adopted by the
13 director.

14 (d) Reporting methods may include:

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

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

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

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

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

30 Sec. 8. K.S.A. 2010 Supp. 75-5291 is hereby amended to read as
31 follows: 75-5291. (a) (1) The secretary of corrections may make grants to
32 counties for the development, implementation, operation and improvement
33 of community correctional services that address the criminogenic needs of
34 felony offenders including, but not limited to, adult intensive supervision,
35 substance abuse and mental health services, employment and residential
36 services, and facilities for the detention or confinement, care or treatment
37 of offenders as provided in this section except that no community
38 corrections funds shall be expended by the secretary for the purpose of
39 establishing or operating a conservation camp as provided by K.S.A. 75-
40 52,127 and amendments thereto.

41 (2) Except as otherwise provided, placement of offenders in
42 community correctional services programs by the court shall be limited to
43 placement of adult offenders, convicted of a felony offense:

1 (A) Whose offense is classified in grid blocks 5-H, 5-I or 6-G of the
2 sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-
3 G, 3-H or 3-I of the sentencing guidelines grid for drug crimes. In
4 addition, the court may place in a community correctional services
5 program adult offenders, convicted of a felony offense, whose offense is
6 classified in grid blocks 6-H, 6-I, 7-C, 7-D, 7-E, 7-F, 7-G, 7-H or 7-I of the
7 sentencing guidelines grid for nondrug crimes;

8 (B) whose severity level and criminal history score designate a
9 presumptive prison sentence on either sentencing guidelines grid but
10 receive a nonprison sentence as a result of departure;

11 (C) all offenders convicted of an offense which satisfies the definition
12 of offender pursuant to K.S.A. 22-4902, and amendments thereto, and
13 which is classified as a severity level 7 or higher offense and who receive a
14 nonprison sentence, regardless of the manner in which the sentence is
15 imposed;

16 (D) any offender for whom a violation of conditions of release or
17 assignment or a nonprison sanction has been established as provided in
18 K.S.A. 22-3716, and amendments thereto, prior to revocation resulting in
19 the offender being required to serve any time for the sentence imposed or
20 which might originally have been imposed in a state facility in the custody
21 of the secretary of corrections;

22 (E) on and after January 1, 2011, for offenders who are expected to be
23 subject to supervision in Kansas, who are determined to be "high risk or
24 needs, or both" by the use of a statewide, mandatory, standardized risk
25 assessment tool or instrument which shall be specified by the Kansas
26 sentencing commission;

27 (F) placed in community correctional services programs as a
28 condition of supervision following the successful completion of a
29 conservation camp program; ~~or~~

30 (G) who has been sentenced to community corrections supervision
31 pursuant to K.S.A. 21-4729, *prior to its repeal, or section 305 of chapter*
32 *136 of the 2010 Session Laws of Kansas*, and amendments thereto; *or*

33 (H) *who has been placed in community correctional services*
34 *programs for supervision by the court pursuant to K.S.A. 8-1567, and*
35 *amendments thereto.*

36 (3) Notwithstanding any law to the contrary and subject to the
37 availability of funding therefor, adult offenders sentenced to community
38 supervision in Johnson county for felony crimes that occurred on or after
39 July 1, 2002, but before January 1, 2011, shall be placed under court
40 services or community corrections supervision based upon court rules
41 issued by the chief judge of the 10th judicial district. The provisions
42 contained in this subsection shall not apply to offenders transferred by the
43 assigned agency to an agency located outside of Johnson county. The

1 provisions of this paragraph shall expire on January 1, 2011.

2 (4) Nothing in this act shall prohibit a community correctional
3 services program from providing services to juvenile offenders upon
4 approval by the local community corrections advisory board. Grants from
5 community corrections funds administered by the secretary of corrections
6 shall not be expended for such services.

7 (5) The court may require an offender for whom a violation of
8 conditions of release or assignment or a nonprison sanction has been
9 established, as provided in K.S.A. 22-3716, and amendments thereto, to
10 serve any time for the sentence imposed or which might originally have
11 been imposed in a state facility in the custody of the secretary of
12 corrections without a prior assignment to a community correctional
13 services program if the court finds and sets forth with particularity the
14 reasons for finding that the safety of the members of the public will be
15 jeopardized or that the welfare of the inmate will not be served by such
16 assignment to a community correctional services program.

17 (b) (1) In order to establish a mechanism for community correctional
18 services to participate in the department of corrections annual budget
19 planning process, the secretary of corrections shall establish a community
20 corrections advisory committee to identify new or enhanced correctional
21 or treatment interventions designed to divert offenders from prison.

22 (2) The secretary shall appoint one member from the southeast
23 community corrections region, one member from the northeast community
24 corrections region, one member from the central community corrections
25 region and one member from the western community corrections region.
26 The deputy secretary of community and field services shall designate two
27 members from the state at large. The secretary shall have final
28 appointment approval of the members designated by the deputy secretary.
29 The committee shall reflect the diversity of community correctional
30 services with respect to geographical location and average daily population
31 of offenders under supervision.

32 (3) Each member shall be appointed for a term of three years and
33 such terms shall be staggered as determined by the secretary. Members
34 shall be eligible for reappointment.

35 (4) The committee, in collaboration with the deputy secretary of
36 community and field services or the deputy secretary's designee, shall
37 routinely examine and report to the secretary on the following issues:

- 38 (A) Efficiencies in the delivery of field supervision services;
39 (B) effectiveness and enhancement of existing interventions;
40 (C) identification of new interventions; and
41 (D) statewide performance indicators.

42 (5) The committee's report concerning enhanced or new interventions
43 shall address:

- 1 (A) Goals and measurable objectives;
- 2 (B) projected costs;
- 3 (C) the impact on public safety; and
- 4 (D) the evaluation process.

5 (6) The committee shall submit its report to the secretary annually on
6 or before July 15 in order for the enhanced or new interventions to be
7 considered for inclusion within the department of corrections budget
8 request for community correctional services or in the department's
9 enhanced services budget request for the subsequent fiscal year.

10 Sec. 9. K.S.A. 22-4704 and 22-4705 and K.S.A. 2009 Supp. 8-1567,
11 as amended by section 3 of chapter 153 of the 2010 Session Laws of
12 Kansas and K.S.A. 2010 Supp. 8-1001, 8-1014, 8-1015, 8-1567, 12-4106
13 and 75-5291 are hereby repealed.

14 Sec. 10. This act shall take effect and be in force from and after its
15 publication in the statute book.

16