

HOUSE BILL No. 2263

By Representatives Kinzer and Jack

2-4

9 AN ACT concerning crimes and punishment; establishing aggravated
10 driving under the influence; relating to existing driving under the in-
11 fluence law; amending K.S.A. 8-1005, 8-1008, 8-1009, 8-1017, 8-1019
12 and 8-1567a and K.S.A. 2008 Supp. 8-1001, 8-1012, 8-1013, 8-1014,
13 8-1022, 8-1567 and 21-4704 and repealing the existing sections; also
14 repealing K.S.A. 21-3442.
15

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

17 New Section 1. (a) For the purpose of this section: “Alcohol concen-
18 tration,” “conviction,” “drug” and “imprisonment” shall have the mean-
19 ings ascribed thereto in K.S.A. 8-1567, and amendments thereto.

20 (b) Aggravated driving under the influence is the commission of driv-
21 ing under the influence of alcohol or drugs, as defined in K.S.A. 8-1567,
22 and amendments thereto, committed:

23 (1) (A) While the alcohol concentration in the person’s blood or
24 breath, as shown by any competent evidence, including other competent
25 evidence, as defined in subsection (f)(1) of K.S.A. 8-1013, and amend-
26 ments thereto, is .24 or more; or

27 (B) while the alcohol concentration in the person’s blood or breath,
28 as measured within two hours of the time of operating or attempting to
29 operate a vehicle, is .24 or more;

30 (2) when such person commits a violation of K.S.A. 8-235, and
31 amendments thereto;

32 (3) at a time when such person’s privilege to operate a vehicle is
33 canceled, suspended or revoked or while such person’s privilege to obtain
34 a driver’s license is suspended or revoked pursuant to K.S.A. 8-252a, and
35 amendments thereto, as described in K.S.A. 8-262, and amendments
36 thereto;

37 (4) at a time when such person’s driving privileges are revoked pur-
38 suant to K.S.A. 8-286, and amendments thereto;

39 (5) at a time when such person’s driving privileges are restricted to
40 operation of a vehicle equipped with an interlock ignition device;

41 (6) when such person commits a violation of K.S.A. 8-1605, and
42 amendments thereto;

43 (7) when such person commits a violation of K.S.A. 8-1606, and

1 amendments thereto;

2 (8) when such person had one or more children under the age of 18
3 years in the vehicle at the time of the offense;

4 (9) when such person's actions result in the unintentional injury of a
5 human being;

6 (10) recklessly, causing bodily harm to another person;

7 (11) when such person's actions result in the unintentional injury of
8 a human being resulting in great bodily harm; and

9 (12) when such person's actions result in the unintentional killing of
10 a human being.

11 (c) If such person has no prior conviction:

12 (1) A person convicted of aggravated driving under the influence, as
13 described in subsections (b)(1) through (b)(6), shall be guilty of a class A
14 nonperson misdemeanor and sentenced to not less than 180 days nor
15 more than one years' imprisonment and fined not less than \$1,000 nor
16 more than \$1,500. The person convicted must serve at least 10 consec-
17 utive days' imprisonment before the person is granted work release, house
18 arrest, probation, suspension or reduction of sentence or parole or is
19 otherwise released;

20 (2) a person convicted of aggravated driving under the influence, as
21 described in subsections (b)(7) through (b)(9), shall be guilty of a class A
22 person misdemeanor and sentenced to one years' imprisonment and fined
23 not less than \$1,000 nor more than \$1,500. The person convicted must
24 serve at least 30 consecutive days' imprisonment before the person is
25 granted probation, suspension or reduction of sentence or parole or is
26 otherwise released. Any imprisonment ordered by the court may be
27 served in a work release program only after such person has served 15
28 consecutive days' imprisonment, provided such work release program re-
29 quires the person to return to confinement at the end of each day in the
30 work release program. The court may place the person convicted under
31 a house arrest program pursuant to K.S.A. 21-4603b, and amendments
32 thereto, to serve the remainder of any sentence only after such person
33 has served 15 consecutive days' imprisonment.

34 As a condition of any grant of probation, suspension of sentence or
35 parole or of any other release in paragraphs (1) or (2), the person shall
36 be required to enter into and complete a treatment program for alcohol
37 and drug abuse pursuant to K.S.A. 8-1008, and amendments thereto;

38 (3) a person convicted of aggravated driving under the influence, as
39 described in subsection (b)(10), shall be guilty of a severity level 8, person
40 felony. The person convicted shall not be eligible for release on probation,
41 suspension or reduction of sentence or parole until the person has served
42 at least 60 consecutive days' imprisonment;

43 (4) a person convicted of aggravated driving under the influence, as

1 described in subsection (b)(11), shall be guilty of a severity level 5, person
2 felony. The person convicted shall not be eligible for release on probation,
3 suspension or reduction of sentence or parole until the person has served
4 at least 90 days' imprisonment;

5 (5) a person convicted of aggravated driving under the influence, as
6 described in subsection (b)(12), shall be guilty of a severity level 4, person
7 felony.

8 As a condition of probation or parole, or during the person's postrelease
9 supervision in paragraphs (3) through (5), the person shall be required to
10 participate in an inpatient or outpatient program for alcohol and drug
11 abuse, including, but not limited to, an approved aftercare plan or mental
12 health counseling, as determined by the secretary of corrections and
13 which satisfies conditions imposed by the Kansas parole board pursuant
14 to K.S.A. 22-3717, and amendments thereto. Any violation of the condi-
15 tions of such postrelease supervision may subject such person to revo-
16 cation of postrelease supervision pursuant to K.S.A. 75-5217 et seq., and
17 amendments thereto, and as otherwise provided by law.

18 (d) If a person has one prior conviction:

19 (1) A person convicted of aggravated driving under the influence, as
20 described in subsections (b)(1) through (b)(6), shall be guilty of a non-
21 person felony, sentenced to one years' imprisonment and fined not less
22 than \$1,500 nor more than \$2,500. The person convicted must serve at
23 least 90 consecutive days' imprisonment before the person is granted
24 probation, suspension or reduction of sentence or parole or is otherwise
25 released. Any imprisonment ordered by the court may be served in a
26 work release program only after such person has served 30 consecutive
27 days' imprisonment, provided such work release program requires such
28 person to return to confinement at the end of each day in the work release
29 program.

30 At the time of the filing of the judgment form or journal entry pursuant
31 to K.S.A. 21-4620 or 22-3426, and amendments thereto, the court shall
32 cause a certified copy to be sent to the officer having the offender in
33 charge. The law enforcement agency maintaining custody and control of
34 a defendant for imprisonment shall cause a certified copy of the judgment
35 form or journal entry to be sent to the secretary of corrections within
36 three business days of receipt of the judgment form or journal entry from
37 the court and notify the secretary when the term of imprisonment expires.
38 Upon expiration of the term of imprisonment, the law enforcement
39 agency shall deliver the defendant to a location designated by the secre-
40 tary. After the term of imprisonment imposed by the court, the person
41 shall be placed in the custody of the secretary for a mandatory one-year
42 period of postrelease supervision, which such period of postrelease su-
43 pervision shall not be reduced. During such postrelease supervision, the

1 person shall be required to participate in an inpatient or outpatient pro-
2 gram for alcohol and drug abuse, including, but not limited to, an ap-
3 proved aftercare plan or mental health counseling, as determined by the
4 secretary and which satisfies conditions imposed by the Kansas parole
5 board pursuant to K.S.A. 22-3717, and amendments thereto. Any viola-
6 tion of the conditions of such postrelease supervision may subject such
7 person to revocation of postrelease supervision pursuant to K.S.A. 75-
8 5217 et seq., and amendments thereto, and as otherwise provided by law;

9 (2) a person convicted of aggravated driving under the influence, as
10 described in subsection (b)(7) through (b)(9), shall be guilty of a person
11 felony, sentenced to 18 months' imprisonment in the custody of the sec-
12 retary and fined not less than \$1,500 nor more than \$2,500. The person
13 convicted shall not be eligible for release on parole until the person has
14 served at least 180 consecutive days' imprisonment in the county jail. Any
15 imprisonment ordered by the court may be served in a work release pro-
16 gram only after such person has served 90 consecutive days' imprison-
17 ment, provided such work release program requires such person to return
18 to confinement at the end of each day in the work release program.

19 At the time of the filing of the judgment form or journal entry pursuant
20 to K.S.A. 21-4620 or 22-3426, and amendments thereto, the court shall
21 cause a certified copy to be sent to the officer having the offender in
22 charge. The law enforcement agency maintaining custody and control of
23 a defendant for imprisonment shall cause a certified copy of the judgment
24 form or journal entry to be sent to the secretary within three business
25 days of receipt of the judgment form or journal entry from the court and
26 notify the secretary when the term of imprisonment expires. Upon ex-
27 piration of the term of imprisonment, the law enforcement agency shall
28 deliver the defendant to a location designated by the secretary. After the
29 term of imprisonment imposed by the court, the person shall be placed
30 in the custody of the secretary for a mandatory one-year period of post-
31 release supervision, which such period of postrelease supervision shall
32 not be reduced. As a condition of parole, the person shall be required to
33 participate in an inpatient or outpatient program for alcohol and drug
34 abuse, including, but not limited to, an approved aftercare plan or mental
35 health counseling, as determined by the secretary and which satisfies con-
36 ditions imposed by the Kansas parole board pursuant to K.S.A. 22-3717,
37 and amendments thereto. Any violation of the conditions of such post-
38 release supervision may subject such person to revocation of postrelease
39 supervision pursuant to K.S.A. 75-5217 et seq., and amendments thereto,
40 and as otherwise provided by law;

41 (3) a person convicted of aggravated driving under the influence, as
42 described in subsection (b)(10), shall be guilty of a severity level 7, person
43 felony. For the purposes of sentencing pursuant to this paragraph, any

1 prior felony convictions shall be counted as person felonies for purposes
2 of determining such person's criminal history classification. The person
3 convicted shall not be eligible for release on probation, suspension or
4 reduction of sentence or parole until the person has served at least 180
5 consecutive days' imprisonment;

6 (4) a person convicted of aggravated driving under the influence, as
7 described in subsection (b)(11), shall be guilty of a severity level 4, person
8 felony. For the purposes of sentencing pursuant to this paragraph, any
9 prior felony convictions shall be counted as person felonies for purposes
10 of determining such person's criminal history classification. The person
11 convicted shall not be eligible for release on probation, suspension or
12 reduction of sentence or parole until the person has served at least 60
13 consecutive days' imprisonment; and

14 (5) a person convicted of aggravated driving under the influence, as
15 described in subsection (b)(12), shall be guilty of a severity level 3, person
16 felony. For the purposes of sentencing pursuant to this paragraph, any
17 prior felony convictions shall be counted as person felonies for purposes
18 of determining such person's criminal history classification.

19 As a condition of probation or parole, or during the person's postrelease
20 supervision in paragraphs (3) through (5), the person shall be required to
21 participate in an inpatient or outpatient program for alcohol and drug
22 abuse, including, but not limited to, an approved aftercare plan or mental
23 health counseling, as determined by the secretary and which satisfies con-
24 ditions imposed by the Kansas parole board, pursuant to K.S.A. 22-3717,
25 and amendments thereto. Any violation of the conditions of such post-
26 release supervision may subject such person to revocation of postrelease
27 supervision pursuant to K.S.A. 75-5217 et seq., and amendments thereto,
28 and as otherwise provided by law.

29 (e) If such person has two or more prior convictions:

30 (1) A person convicted of aggravated driving under the influence, as
31 described in subsections (b)(1) through (b)(6), shall be guilty of a non-
32 person felony and sentenced to a term of imprisonment in the custody
33 of the secretary of corrections: (A) On the third conviction, 12 to 18
34 months' imprisonment; and (B) on the fourth or subsequent conviction,
35 24 to 60 months' imprisonment. The person convicted shall not be eligible
36 for release on parole until the person has served at least the minimum
37 term of imprisonment;

38 (2) a person convicted of aggravated driving under the influence, as
39 described in subsections (b)(7) through (b)(9), shall be guilty of a person
40 felony and sentenced to a term of imprisonment in the custody of the
41 secretary: (A) On the third conviction, 18 to 36 months' imprisonment;
42 and (B) on the fourth or subsequent conviction, 30 to 60 months' im-
43 prisonment. The person convicted shall not be eligible for release on

1 parole until the person has served at least the minimum term of
2 imprisonment;

3 (3) a person convicted of aggravated driving under the influence, as
4 described in subsection (b)(10), shall be guilty of a severity level 6, person
5 felony. For the purposes of sentencing pursuant to this paragraph, any
6 prior felony convictions shall be counted as person felonies for purposes
7 of determining such person's criminal history classification. The person
8 convicted shall not be eligible for release on probation, suspension or
9 reduction of sentence or parole until the person has served at least 365
10 consecutive days' imprisonment;

11 (4) a person convicted of aggravated driving under the influence, as
12 described in subsection (b)(11), shall be guilty of a severity level 3, person
13 felony. For the purposes of sentencing pursuant to this paragraph, any
14 prior felony convictions shall be counted as person felonies for purposes
15 of determining such person's criminal history classification. The person
16 convicted shall not be eligible for release on probation, suspension or
17 reduction of sentence or parole until the person has served at least 180
18 consecutive days' imprisonment;

19 (5) a person convicted of aggravated driving under the influence, as
20 described in subsection (b)(12), shall be guilty of a severity level 2, person
21 felony. For the purposes of sentencing pursuant to this paragraph, any
22 prior felony convictions shall be counted as person felonies for purposes
23 of determining such person's criminal history classification.

24 As a condition of probation or parole, or during the person's postrelease
25 supervision in paragraphs (1) through (5), the person shall be required to
26 participate in an inpatient or outpatient program for alcohol and drug
27 abuse, including, but not limited to, an approved aftercare plan or mental
28 health counseling, as determined by the secretary of corrections and
29 which satisfies conditions imposed by the Kansas parole board, pursuant
30 to K.S.A. 22-3717, and amendments thereto. Any violation of the condi-
31 tions of such postrelease supervision may subject such person to revo-
32 cation of postrelease supervision pursuant to K.S.A. 75-5217 et seq., and
33 amendments thereto, and as otherwise provided by law.

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

39 (g) In lieu of payment of a fine imposed pursuant to this section, the
40 court may order that the person perform community service specified by
41 the court. The person shall receive a credit on the fine imposed in an
42 amount equal to \$7 for each full hour spent by the person in the specified
43 community service. The community service ordered by the court shall be

1 required to be performed not later than one year after the fine is imposed
2 or by an earlier date specified by the court. If, by the required date, the
3 person performs an insufficient amount of community service to reduce
4 to zero the portion of the fine required to be paid by the person, the
5 remaining balance of the fine shall become due on that date.

6 (h) (1) Except as provided in paragraph (3), in addition to any other
7 penalty which may be imposed upon a conviction of a violation of this
8 section, the court shall order that each motor vehicle owned or leased by
9 the convicted person shall either be equipped with an ignition interlock
10 device or be impounded or immobilized for a period of two years. The
11 convicted person shall pay all costs associated with the installation, main-
12 tenance and removal of the ignition interlock device and all towing, im-
13 poundment and storage fees or other immobilization costs.

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

17 (3) As used in this subsection, the convicted person's motor vehicle
18 or vehicles shall include any vehicle leased by such person. If the lease
19 on the convicted person's motor vehicle subject to impoundment or im-
20 mobilization expires in less than two years from the date of the impound-
21 ment or immobilization, the time of impoundment or immobilization of
22 such vehicle shall be the amount of time remaining on the lease.

23 (i) The court shall report every conviction of a violation of this section
24 to the division of motor vehicles. Prior to sentencing under the provisions
25 of this section, the court shall request and shall receive from the division
26 a record of all prior convictions obtained against such person for any
27 violations of any of the motor vehicle laws of this state.

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

34 (k) No plea bargaining agreement shall be entered into nor shall any
35 judge approve a plea bargaining agreement entered into for the purpose
36 of permitting a person charged with a violation of this section, or a vio-
37 lation of any city ordinance or county resolution prohibiting the acts pro-
38 hibited by this section, to avoid the mandatory penalties established by
39 this section or by ordinance or resolution.

40 (l) No diversion agreement pursuant to K.S.A. 12-4413 et seq., or 22-
41 2906 et seq., and amendments thereto, shall be entered into nor shall any
42 judge approve a stay of prosecution based upon such diversion agreement
43 for a violation of this section.

1 (m) Upon every conviction of a person of a violation of this section,
2 the court shall order such person to submit to a pre-sentence alcohol and
3 drug abuse evaluation pursuant to K.S.A. 8-1008, and amendments
4 thereto. Such pre-sentence evaluation shall be made available and shall
5 be considered by the sentencing court.

6 Sec. 2. K.S.A. 2008 Supp. 8-1001 is hereby amended to read as fol-
7 lows: 8-1001. (a) Any person who operates or attempts to operate a vehicle
8 within this state is deemed to have given consent, subject to the provisions
9 of this act, to submit to one or more tests of the person's blood, breath,
10 urine or other bodily substance to determine the presence of alcohol or
11 drugs. The testing deemed consented to herein shall include all quanti-
12 tative and qualitative tests for alcohol and drugs. A person who is dead
13 or unconscious shall be deemed not to have withdrawn the person's con-
14 sent to such test or tests, which shall be administered in the manner
15 provided by this section.

16 (b) A law enforcement officer shall request a person to submit to a
17 test or tests deemed consented to under subsection (a): (1) If the officer
18 has reasonable grounds to believe the person was operating or attempting
19 to operate a vehicle while under the influence of alcohol or drugs, or
20 both, or to believe that the person was driving a commercial motor ve-
21 hicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having
22 alcohol or other drugs in such person's system, or was under the age of
23 21 years while having alcohol or other drugs in such person's system; and
24 one of the following conditions exists: (A) The person has been arrested
25 or otherwise taken into custody for any offense involving operation or
26 attempted operation of a vehicle while under the influence of alcohol or
27 drugs, or both, or for a violation of K.S.A. 8-1567a, and amendments
28 thereto, or involving driving a commercial motor vehicle, as defined in
29 K.S.A. 8-2,128, and amendments thereto, while having alcohol or other
30 drugs in such person's system, in violation of a state statute or a city
31 ordinance; or (B) the person has been involved in a vehicle accident or
32 collision resulting in property damage or personal injury other than se-
33 rious injury; or (2) if the person was operating or attempting to operate
34 a vehicle and such vehicle has been involved in an accident or collision
35 resulting in serious injury or death of any person and the operator could
36 be cited for any traffic offense, as defined in K.S.A. 8-2117, and amend-
37 ments thereto. The traffic offense violation shall constitute probable cause
38 for purposes of paragraph (2). The test or tests under paragraph (2) shall
39 not be required if a law enforcement officer has reasonable grounds to
40 believe the actions of the operator did not contribute to the accident or
41 collision. The law enforcement officer directing administration of the test
42 or tests may act on personal knowledge or on the basis of the collective
43 information available to law enforcement officers involved in the accident

1 investigation or arrest.

2 (c) If a law enforcement officer requests a person to submit to a test
3 of blood under this section, the withdrawal of blood at the direction of
4 the officer may be performed only by: (1) A person licensed to practice
5 medicine and surgery, licensed as a physician's assistant; or a person act-
6 ing under the direction of any such licensed person; (2) a registered nurse
7 or a licensed practical nurse; (3) any qualified medical technician, includ-
8 ing, but not limited to, an emergency medical technician-intermediate or
9 mobile intensive care technician, as those terms are defined in K.S.A. 65-
10 6112, and amendments thereto, authorized by medical protocol; or (4) a
11 phlebotomist.

12 (d) A law enforcement officer may direct a medical professional de-
13 scribed in this section to draw a sample of blood from a person:

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

16 (2) if medically unable to consent, if the person meets the require-
17 ments of paragraph (2) of subsection (b); or

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

20 (e) When so directed by a law enforcement officer through a written
21 statement, the medical professional shall withdraw the sample as soon as
22 practical and shall deliver the sample to the law enforcement officer or
23 another law enforcement officer as directed by the requesting law en-
24 forcement officer as soon as practical, provided the collection of the sam-
25 ple does not jeopardize the person's life, cause serious injury to the person
26 or seriously impede the person's medical assessment, care or treatment.
27 The medical professional authorized herein to withdraw the blood and
28 the medical care facility where the blood is drawn may act on good faith
29 that the requirements have been met for directing the withdrawing of
30 blood once presented with the written statement provided for under this
31 subsection. The medical professional shall not require the person to sign
32 any additional consent or waiver form. In such a case, the person au-
33 thorized to withdraw blood and the medical care facility shall not be liable
34 in any action alleging lack of consent or lack of informed consent.

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

39 (g) If a person must be restrained to collect the sample pursuant to
40 this section, law enforcement shall be responsible for applying any such
41 restraint utilizing acceptable law enforcement restraint practices. The re-
42 straint shall be effective in controlling the person in a manner not to
43 jeopardize the person's safety or that of the medical professional or at-

1 tending medical or health care staff during the drawing of the sample and
2 without interfering with medical treatment.

3 (h) A law enforcement officer may request a urine sample upon meet-
4 ing the requirements of paragraph (1) of subsection (b) and shall request
5 a urine sample upon meeting the requirements of paragraph (2) of sub-
6 section (b).

7 (i) If a law enforcement officer requests a person to submit to a test
8 of urine under this section, the collection of the urine sample shall be
9 supervised by persons of the same sex as the person being tested and
10 shall be conducted out of the view of any person other than the persons
11 supervising the collection of the sample and the person being tested,
12 unless the right to privacy is waived by the person being tested. When
13 possible, the supervising person shall be a law enforcement officer. The
14 results of qualitative testing for drug presence shall be admissible in ev-
15 idence and questions of accuracy or reliability shall go to the weight rather
16 than the admissibility of the evidence. If the person is medically unable
17 to provide a urine sample in such manner due to the injuries or treatment
18 of the injuries, the same authorization and procedure as used for the
19 collection of blood in subsections (d) and (e) shall apply to the collection
20 of a urine sample.

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

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

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

31 (3) there is no constitutional right to consult with an attorney regard-
32 ing whether to submit to testing;

33 (4) if the person refuses to submit to and complete any test of breath,
34 blood or urine hereafter requested by a law enforcement officer, the
35 person's driving privileges will be suspended for ~~one year~~ *two years* for
36 the first occurrence, ~~two~~ *five* years for the second occurrence, ~~three years~~
37 ~~for the third occurrence, 10 years for the fourth occurrence,~~ and perma-
38 nently revoked for a ~~fifth~~ *third* or subsequent occurrence;

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

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

43 (B) an alcohol concentration of .15 or greater, the person's driving

1 privileges will be suspended for one year;

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

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

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

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

18 (10) after the completion of the testing, the person has the right to
19 consult with an attorney and may secure additional testing, which, if de-
20 sired, should be done as soon as possible and is customarily available from
21 medical care facilities willing to conduct such testing.

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

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

43 (n) The person's refusal shall be admissible in evidence against the

1 person at any trial on a charge arising out of the alleged operation or
2 attempted operation of a vehicle while under the influence of alcohol or
3 drugs, or both.

4 (o) If a law enforcement officer had reasonable grounds to believe
5 the person had been driving a commercial motor vehicle, as defined in
6 K.S.A. 8-2,128, and amendments thereto, and the test results show a
7 blood or breath alcohol concentration of .04 or greater, the person shall
8 be disqualified from driving a commercial motor vehicle, pursuant to
9 K.S.A. 8-2,142, and amendments thereto. If a law enforcement officer
10 had reasonable grounds to believe the person had been driving a com-
11 mercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments
12 thereto, and the test results show a blood or breath alcohol concentration
13 of .08 or greater, or the person refuses a test, the person's driving privi-
14 leges shall be subject to suspension, or suspension and restriction, pur-
15 suant to this section, in addition to being disqualified from driving a com-
16 mercial motor vehicle pursuant to K.S.A. 8-2,142, and amendments
17 thereto.

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

25 (q) Failure of a person to provide an adequate breath sample or sam-
26 ples as directed shall constitute a refusal unless the person shows that the
27 failure was due to physical inability caused by a medical condition unre-
28 lated to any ingested alcohol or drugs.

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

31 (s) No test results shall be suppressed because of technical irregular-
32 ities in the consent or notice required pursuant to this act.

33 (t) Nothing in this section shall be construed to limit the admissibility
34 at any trial of alcohol or drug concentration testing results obtained pur-
35 suant to a search warrant.

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

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

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

- 1 (1) Disabling a person from the physical capacity to remove them-
- 2 selves from the scene;
- 3 (2) renders a person unconscious;
- 4 (3) the immediate loss of or absence of the normal use of at least one
- 5 limb;
- 6 (4) an injury determined by a physician to require surgery; or
- 7 (5) otherwise indicates the person may die or be permanently disa-
- 8 bled by the injury.

9 Sec. 3. K.S.A. 8-1005 is hereby amended to read as follows: 8-1005.
 10 Except as provided by K.S.A. 8-1012, and amendments thereto, in any
 11 criminal prosecution for violation of the laws of this state relating to op-
 12 erating or attempting to operate a vehicle while under the influence of
 13 alcohol or drugs, or both, or the commission of vehicular homicide or
 14 manslaughter while under the influence of alcohol or drugs, or both, or
 15 in any prosecution for a violation of a city ordinance relating to the op-
 16 eration or attempted operation of a vehicle while under the influence of
 17 alcohol or drugs, or both, evidence of the concentration of alcohol or
 18 drugs in the defendant's blood, urine, breath or other bodily substance
 19 may be admitted and shall give rise to the following:

20 (a) *If the alcohol concentration is less than .04, it shall be presumed*
 21 *that the defendant was not under the influence of alcohol to a degree that*
 22 *impaired the defendant's ability to operate a vehicle, except that this fact*
 23 *may be considered with other competent evidence to determine if the*
 24 *defendant was under the influence of both alcohol and drugs to a degree*
 25 *that impaired the defendant's ability to safely operate a vehicle.*

26 (b) If the alcohol concentration is .04 or more and less than .08, that
 27 fact may be considered with other competent evidence to determine if
 28 the defendant was under the influence of alcohol, or both alcohol and
 29 drugs.

30 ~~(b)~~ (c) If the alcohol concentration is .08 or more, it shall be prima
 31 facie evidence that the defendant was under the influence of alcohol to
 32 a degree that ~~renders the person incapable of driving safely~~ *impaired the*
 33 *defendant's ability to safely operate a vehicle.*

34 ~~(c)~~ (d) If there was present in the defendant's bodily substance any
 35 narcotic, hypnotic, somnifacient, stimulating or other drug which has the
 36 capacity to ~~render~~ *impair* the ~~defendant incapable of safely driving~~ *de-*
 37 *fendant's ability to safely operate* a vehicle, that fact may be considered
 38 to determine if the defendant was under the influence of drugs, or both
 39 alcohol and drugs, to a degree that ~~renders the defendant incapable of~~
 40 ~~driving safely~~ *impaired the defendant's ability to safely operate a vehicle*
 41 *to the slightest degree.*

42 (e) *If there was present in the defendant's blood any drug defined in*
 43 *K.S.A. 65-4105, 65-4107, 65-4109 and 65-4111, and amendments thereto,*

1 *or any metabolite of such drug, it shall be prima facie evidence that the*
2 *defendant was under the influence of drugs to a degree that impaired the*
3 *defendant's ability to safely operate a vehicle.*

4 Sec. 4. K.S.A. 8-1008 is hereby amended to read as follows: 8-1008.

5 (a) Community-based alcohol and drug safety action programs certified
6 in accordance with subsection (b) shall provide:

7 (1) Presentence alcohol and drug evaluations of any person who is
8 convicted of a violation of K.S.A. 8-1567 *or section 1*, and amendments
9 thereto, or the ordinance of a city in this state which prohibits the acts
10 prohibited by that statute;

11 (2) supervision and monitoring of all persons who are convicted of a
12 violation of K.S.A. 8-1567 *or section 1*, and amendments thereto, or the
13 ordinance of a city in this state which prohibits the acts prohibited by that
14 statute, and whose sentences or terms of probation require completion
15 of an alcohol and drug safety action program, as provided in this section,
16 or an alcohol and drug abuse treatment program, as provided in this
17 section;

18 (3) alcohol and drug evaluations of persons whom the prosecutor con-
19 siders for eligibility or finds eligible to enter a diversion agreement in lieu
20 of further criminal proceedings on a complaint alleging a violation of
21 K.S.A. 8-1567, and amendments thereto, or the ordinance of a city in this
22 state which prohibits the acts prohibited by that statute;

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

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

31 (b) The presentence alcohol and drug evaluation shall be conducted
32 by a community-based alcohol and drug safety action program certified
33 in accordance with the provisions of this subsection to provide evaluation
34 and supervision services as described in subsections (c) and (d). A com-
35 munity-based alcohol and drug safety action program shall be certified
36 either by the chief judge of the judicial district to be served by the pro-
37 gram or by the secretary of social and rehabilitation services for judicial
38 districts in which the chief judge declines to certify a program. In addition
39 to any qualifications established by the secretary, the chief judge may
40 establish qualifications for the certification of programs, which qualifi-
41 cations may include requirements for training, education and certification
42 of personnel; supervision and monitoring of clients; fee reimbursement
43 procedures; handling of conflicts of interest; delivery of services to clients

1 unable to pay; and other matters relating to quality and delivery of services
2 by the program. In establishing the qualifications for programs, the chief
3 judge or the secretary shall give preference to those programs which have
4 had practical experience prior to July 1, 1982, in diagnosis and referral in
5 alcohol and drug abuse. Certification of a program by the chief judge
6 shall be done with consultation and approval of a majority of the judges
7 of the district court of the district and municipal judges of cities lying in
8 whole or in part within the district. If within 60 days after the effective
9 date of this act the chief judge declines to certify any program for the
10 judicial district, the judge shall notify the secretary of social and rehabil-
11 itation services, and the secretary of social and rehabilitation services shall
12 certify a community-based alcohol and drug safety action program for
13 that judicial district. The certification shall be for a four-year period. Re-
14 certification of a program or certification of a different program shall be
15 by the chief judge, with consultation and approval of a majority of the
16 judges of the district court of the district and municipal judges of cities
17 lying in whole or in part within the district. If upon expiration of certifi-
18 cation of a program there will be no certified program for the district and
19 the chief judge declines to recertify or certify any program in the district,
20 the judge shall notify the secretary of social and rehabilitation services, at
21 least six months prior to the expiration of certification, that the judge
22 declines to recertify or certify a program under this subsection. Upon
23 receipt of the notice and prior to the expiration of certification, the sec-
24 retary shall recertify or certify a community-based alcohol and drug safety
25 action program for the judicial district for the next four-year period. To
26 be eligible for certification under this subsection, the chief judge or the
27 secretary of social and rehabilitation services shall determine that a com-
28 munity-based alcohol and drug safety action program meets the qualifi-
29 cations established by the judge or secretary and is capable of providing,
30 within the judicial district: (1) The evaluations, supervision and monitor-
31 ing required under subsection (a); (2) the alcohol and drug evaluation
32 report required under subsection (c) or (d); (3) the follow-up duties spec-
33 ified under subsection (c) or (d) for persons who prepare the alcohol and
34 drug evaluation report; and (4) any other functions and duties specified
35 by law. Community-based alcohol and drug safety action programs per-
36 forming services in any judicial district under this section prior to the
37 effective date of this act may continue to perform those services until a
38 community-based alcohol and drug safety action program is certified for
39 that judicial district.

40 (c) A presentence alcohol and drug evaluation shall be conducted on
41 any person who is convicted of a violation of K.S.A. 8-1567 or *section 1*,
42 and amendments thereto, or the ordinance of a city in this state which
43 prohibits the acts prohibited by that statute. The presentence alcohol and

1 drug evaluation report shall be made available to and shall be considered
2 by the court prior to sentencing. The presentence alcohol and drug eval-
3 uation report shall contain a history of the defendant's prior traffic record,
4 characteristics and alcohol or drug problems, or both, and a recommen-
5 dation concerning the amenability of the defendant to education and re-
6 habilitation. The presentence alcohol and drug evaluation report shall
7 include a recommendation concerning the alcohol and drug driving safety
8 education and treatment for the defendant. The presentence alcohol and
9 drug evaluation report shall be prepared by a program which has dem-
10 onstrated practical experience in the diagnosis of alcohol and drug abuse.
11 The duties of persons who prepare the presentence alcohol and drug
12 evaluation report may also include appearing at sentencing and probation
13 hearings in accordance with the orders of the court, monitoring defen-
14 dants in the treatment programs, notifying the probation department and
15 the court of any defendant failing to meet the conditions of probation or
16 referrals to treatment, appearing at revocation hearings as may be re-
17 quired and providing assistance and data reporting and program evalua-
18 tion. The cost of any alcohol and drug education, rehabilitation and treat-
19 ment programs for any person shall be paid by such person, and such
20 costs shall include, but not be limited to, the assessments required by
21 subsection (e). If financial obligations are not met or cannot be met, the
22 sentencing court shall be notified for the purpose of collection or review
23 and further action on the defendant's sentence.

24 (d) An alcohol and drug evaluation shall be conducted on any person
25 whom the prosecutor considers for eligibility or finds eligible to enter a
26 diversion agreement in lieu of further criminal proceedings on a com-
27 plaint alleging a violation of K.S.A. 8-1567, and amendments thereto, or
28 the ordinance of a city in this state which prohibits the acts prohibited by
29 that statute. The alcohol and drug evaluation report shall be made avail-
30 able to the prosecuting attorney and shall be considered by the prose-
31 cuting attorney. The alcohol and drug evaluation report shall contain a
32 history of the person's prior traffic record, characteristics and alcohol or
33 drug problems, or both, and a recommendation concerning the amena-
34 bility of the person to education and rehabilitation. The alcohol and drug
35 evaluation report shall include a recommendation concerning the alcohol
36 and drug driving safety education and treatment for the person. The al-
37 colol and drug evaluation report shall be prepared by a program which
38 has demonstrated practical experience in the diagnosis of alcohol and
39 drug abuse. The duties of persons who prepare the alcohol and drug
40 evaluation report may also include monitoring persons in the treatment
41 programs, notifying the prosecutor and the court of any person failing to
42 meet the conditions of diversion or referrals to treatment, and providing
43 assistance and data reporting and program evaluation. The cost of any

1 alcohol and drug education, rehabilitation and treatment programs for
2 any person shall be paid by such person, and such costs shall include, but
3 not be limited to, the assessments required by subsection (e).

4 (e) In addition to any fines, fees, penalties or costs levied against a
5 person who is convicted of a violation of K.S.A. 8-1567, and amendments
6 thereto, or the ordinance of a city in this state which prohibits the acts
7 prohibited by that statute, or who enters a diversion agreement in lieu of
8 further criminal proceedings on a complaint alleging a violation of that
9 statute or such an ordinance, \$150 shall be assessed against the person
10 by the sentencing court or under the diversion agreement. The \$150
11 assessment may be waived by the court, in whole or in part, or, in the
12 case of diversion of criminal proceedings, by the prosecuting attorney, if
13 the court or prosecuting attorney finds that the defendant is an indigent
14 person. Except as otherwise provided in this subsection, the clerk of the
15 court shall deposit all assessments received under this section in the al-
16 cohol and drug safety action fund of the court, which fund shall be subject
17 to the administration of the judge having administrative authority over
18 that court. If the secretary of social and rehabilitation services certifies
19 the community-based alcohol and drug safety action program for the ju-
20 dicial district in which the court is located, the clerk of the court shall
21 remit, during the four-year period for which the program is certified, 15%
22 of all assessments received under this section to the secretary of social
23 and rehabilitation services. Moneys credited to the alcohol and drug safety
24 action fund shall be expended by the court, pursuant to vouchers signed
25 by the judge having administrative authority over that court, only for costs
26 of the services specified by subsection (a) or otherwise required or au-
27 thorized by law and provided by community-based alcohol and drug safety
28 action programs, except that not more than 10% of the money credited
29 to the fund may be expended to cover the expenses of the court involved
30 in administering the provisions of this section. In the provision of these
31 services the court shall contract as may be necessary to carry out the
32 provisions of this section. The district or municipal judge having admin-
33 istrative authority over that court shall compile a report and send such
34 report to the office of the state judicial administrator on or before January
35 20 of each year, beginning January 20, 1991. Such report shall include,
36 but not be limited to:

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

39 (2) the assessments deposited into the fund during the 12-month pe-
40 riod ending the preceding December 31; and

41 (3) the dollar amounts expended from the fund during the 12-month
42 period ending the preceding December 31.

43 The office of the state judicial administrator shall compile such reports

1 into a statewide report and submit such statewide report to the legislature
2 on or before March 1 of each year.

3 (f) The secretary of social and rehabilitation services shall remit all
4 moneys received by the secretary under this section to the state treasurer
5 in accordance with the provisions of K.S.A. 75-4215, and amendments
6 thereto. Upon receipt of each such remittance, the state treasurer shall
7 deposit the entire amount in the state treasury to the credit of the cer-
8 tification of community-based alcohol and drug safety action programs
9 fee fund, which is hereby created. All expenditures from such fund shall
10 be made in accordance with appropriation acts upon warrants issued pur-
11 suant to vouchers approved by the secretary of social and rehabilitation
12 services or a person designated by the secretary.

13 Sec. 5. K.S.A. 8-1009 is hereby amended to read as follows: 8-1009.

14 (a) Upon the filing of a first complaint, indictment or information alleging
15 a person has violated K.S.A. 8-1567, and amendments thereto, when the
16 acts prohibited by K.S.A. 8-1567, and amendments thereto, occur con-
17 currently with any such alleged violation, and prior to conviction thereof,
18 the district attorney or county attorney shall determine whether the de-
19 fendant shall be allowed to enter into a diversion agreement in accordance
20 with this act.

21 (b) Upon the filing of a first complaint, citation or notice to appear
22 alleging a person has violated a city ordinance which prohibits the acts
23 prohibited by K.S.A. 8-1567, and amendments thereto, and prior to con-
24 viction thereof, the city attorney shall determine whether the defendant
25 shall be allowed to enter into a diversion agreement in accordance with
26 this act.

27 (c) *No diversion agreement shall be entered into for a violation of*
28 *section 1, and amendments thereto, or for a city ordinance which prohibits*
29 *the acts prohibited by section 1, and amendments thereto.*

30 Sec. 6. K.S.A. 2008 Supp. 8-1012 is hereby amended to read as fol-
31 lows: 8-1012. (a) Any person who operates or attempts to operate a vehicle
32 within this state is deemed to have given consent to submit to a prelim-
33 inary screening test of the person's breath subject to the provisions set
34 out in subsection (b).

35 (b) A law enforcement officer may request a person who is operating
36 or attempting to operate a vehicle within this state to submit to a prelim-
37 inary screening test of the person's breath to determine the alcohol con-
38 centration of the person's breath if the officer has reasonable suspicion
39 to believe the person has been operating or attempting to operate a ve-
40 hicle while under the influence of alcohol or drugs or both alcohol and
41 drugs.

42 (c) At the time the test is requested, the person shall be given oral
43 notice that: (1) There is no right to consult with an attorney regarding

1 whether to submit to testing; (2) refusal to submit to testing is a traffic
2 infraction; ~~and~~ (3) *refusal to submit to testing may be used against the*
3 *person in court; and* (4) further testing may be required after the prelim-
4 inary screening test. Failure to provide the notice shall not be an issue or
5 defense in any action. The law enforcement officer then shall request the
6 person to submit to the test.

7 (d) Refusal to take and complete the test as requested is a traffic
8 infraction. *A person convicted of a violation of this section shall be fined*
9 *not less than \$250 nor more than \$500.* If the person submits to the test,
10 the results shall be used for the purpose of assisting law enforcement
11 officers in determining whether an arrest should be made and whether
12 to request the tests authorized by K.S.A. 8-1001, and amendments
13 thereto. *Refusing to submit to the test may be used against a person at*
14 *any trial on a charge arising out of the operation or attempted operation*
15 *of a vehicle while under the influence of alcohol or drugs, or both.* A law
16 enforcement officer may arrest a person based in whole or in part upon
17 the results of a preliminary screening test. Such results shall not be ad-
18 missible in any civil or criminal action concerning the operation of or
19 attempted operation of a vehicle except to aid the court or hearing officer
20 in determining a challenge to the validity of the arrest or the validity of
21 the request to submit to a test pursuant to K.S.A. 8-1001, and amend-
22 ments thereto. Following the preliminary screening test, additional tests
23 may be requested pursuant to K.S.A. 8-1001, and amendments thereto.

24 Sec. 7. K.S.A. 2008 Supp. 8-1013 is hereby amended to read as fol-
25 lows: 8-1013. As used in K.S.A. 8-1001 through 8-1010, 8-1011, 8-1012,
26 8-1014, 8-1015, 8-1016, 8-1017 and 8-1018, and amendments thereto,
27 and this section:

28 (a) “Alcohol concentration” means the number of grams of alcohol
29 per 100 milliliters of blood or per 210 liters of breath.

30 (b) (1) “Alcohol or drug-related conviction” means any of the follow-
31 ing: (A) Conviction of vehicular battery or aggravated vehicular homicide,
32 if the crime is committed while committing a violation of K.S.A. 8-1567
33 *or section 1*, and amendments thereto, or the ordinance of a city or res-
34 olution of a county in this state which prohibits any acts prohibited by
35 that statute, or conviction of a violation of K.S.A. 8-1567 *or section 1*, and
36 amendments thereto; (B) conviction of a violation of a law of another
37 state which would constitute a crime described in subsection (b)(1)(A) if
38 committed in this state; (C) conviction of a violation of an ordinance of a
39 city in this state or a resolution of a county in this state which would
40 constitute a crime described in subsection (b)(1)(A), whether or not such
41 conviction is in a court of record; or (D) conviction of an act which was
42 committed on a military reservation and which would constitute a viola-
43 tion of K.S.A. 8-1567 *or section 1*, and amendments thereto, or would

1 constitute a crime described in subsection (b)(1)(A) if committed off a
2 military reservation in this state.

3 (2) For the purpose of determining whether an occurrence is a first,
4 second or subsequent occurrence: (A) "Alcohol or drug-related convic-
5 tion" also includes entering into a diversion agreement in lieu of further
6 criminal proceedings on a complaint alleging commission of a crime de-
7 scribed in subsection (b)(1), including a diversion agreement entered into
8 prior to the effective date of this act; and (B) it is irrelevant whether an
9 offense occurred before or after conviction or diversion for a previous
10 offense.

11 (c) "Division" means the division of vehicles of the department of
12 revenue.

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

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

19 (f) "Other competent evidence" includes: (1) Alcohol concentration
20 tests obtained from samples taken two hours or more after the operation
21 or attempted operation of a vehicle; and (2) readings obtained from a
22 partial alcohol concentration test on a breath testing machine.

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

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

30 (i) "Test refusal" or "refuses a test" refers to a person's failure to
31 submit to or complete any test, other than a preliminary screening test,
32 in accordance with this act, and includes refusal of any such test on a
33 military reservation.

34 (j) "Law enforcement officer" has the meaning provided by K.S.A.
35 21-3110, and amendments thereto, and includes any person authorized
36 by law to make an arrest on a military reservation for an act which would
37 constitute a violation of K.S.A. 8-1567, and amendments thereto, if com-
38 mitted off a military reservation in this state.

39 Sec. 8. K.S.A. 2008 Supp. 8-1014 is hereby amended to read as fol-
40 lows: 8-1014. (a) Except as provided by subsection (e) and K.S.A. 8-2,142,
41 and amendments thereto, if a person refuses a test, the division, pursuant
42 to K.S.A. 8-1002, and amendments thereto, shall:

43 (1) On the person's first occurrence, suspend the person's driving

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

4 (2) on the person's second occurrence, suspend the person's driving
 5 privileges for ~~two~~ *five* years; *and*

6 (3) ~~the person's third occurrence, suspend the person's driving priv-~~
 7 ~~ileges for three years;~~

8 ~~(4) on the person's fourth occurrence, suspend the person's driving~~
 9 ~~privileges for 10 years; and~~

10 ~~(5) on the person's fifth~~ *third* or subsequent occurrence, revoke the
 11 person's driving privileges permanently.

12 (b) (1) Except as provided by subsections (c) and (e) and K.S.A. 8-
 13 2,142, and amendments thereto, if a person fails a test or has an alcohol
 14 or drug-related conviction in this state, the division shall:

15 (A) On the person's first occurrence, suspend the person's driving
 16 privileges for 30 days, then restrict the person's driving privileges as pro-
 17 vided by K.S.A. 8-1015, and amendments thereto, for an additional 330
 18 days;

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

23 (C) *on the person's third occurrence, suspend the person's driving*
 24 *privileges for three years and at the end of the suspension, restrict the*
 25 *person's driving privileges for two years to driving only a motor vehicle*
 26 *with an ignition interlock device; and*

27 (D) on the person's ~~fifth~~ *fourth* or subsequent occurrence, the per-
 28 son's driving privileges shall be permanently revoked.

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

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

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

41 (C) on the person's third occurrence, suspend the person's driving
 42 privileges for ~~one year~~ *three years* and at the end of the suspension restrict
 43 the person's driving privileges for three years to driving only a motor

1 vehicle equipped with an ignition interlock device; *and*
2 ~~(D) the person's fourth occurrence, suspend the person's driving~~
3 ~~privileges for one year and at the end of the suspension, restrict the~~
4 ~~person's driving privileges for four years to driving only a motor vehicle~~
5 ~~equipped with an ignition interlock device; and~~
6 ~~(E) on the person's fifth~~ *fourth* or subsequent occurrence, the per-
7 son's driving privileges shall be permanently revoked.
8 (3) Whenever a person's driving privileges have been restricted to
9 driving only a motor vehicle equipped with an ignition interlock device,
10 proof of the installation of such device, for the entire restriction period,
11 shall be provided to the division before the person's driving privileges are
12 fully reinstated.
13 (c) Except as provided by subsection (e) and K.S.A. 8-2,142, and
14 amendments thereto, if a person who is less than 21 years of age fails a
15 test or has an alcohol or drug-related conviction in this state, the division
16 shall:
17 (1) On the person's first occurrence, suspend the person's driving
18 privileges for one year. If the person's blood or breath alcohol concen-
19 tration is .15 or greater, the division shall at the end of the suspension,
20 restrict the person's driving privileges for one year to driving only a motor
21 vehicle equipped with an ignition interlock device;
22 (2) on the person's second and subsequent occurrences, penalties
23 shall be imposed pursuant to subsection (b).
24 (d) Whenever the division is notified by an alcohol and drug safety
25 action program that a person has failed to complete any alcohol and drug
26 safety action education or treatment program ordered by a court for a
27 conviction of a violation of K.S.A. 8-1567, and amendments thereto, the
28 division shall suspend the person's driving privileges until the division
29 receives notice of the person's completion of such program.
30 (e) Except as provided in K.S.A. 8-2,142, and amendments thereto,
31 if a person's driving privileges are subject to suspension pursuant to this
32 section for a test refusal, test failure or alcohol or drug-related conviction
33 arising from the same arrest, the period of such suspension shall not
34 exceed the longest applicable period authorized by subsection (a), (b) or
35 (c), and such suspension periods shall not be added together or otherwise
36 imposed consecutively. In addition, in determining the period of such
37 suspension as authorized by subsection (a), (b) or (c), such person shall
38 receive credit for any period of time for which such person's driving
39 privileges were suspended while awaiting any hearing or final order au-
40 thorized by this act.
41 If a person's driving privileges are subject to restriction pursuant to
42 this section for a test failure or alcohol or drug-related conviction arising
43 from the same arrest, the restriction periods shall not be added together

1 or otherwise imposed consecutively. In addition, in determining the pe-
2 riod of restriction, the person shall receive credit for any period of sus-
3 pension imposed for a test refusal arising from the same arrest.

4 (f) If the division has taken action under subsection (a) for a test
5 refusal or under subsection (b) or (c) for a test failure and such action is
6 stayed pursuant to K.S.A. 8-259, and amendments thereto, or if tempo-
7 rary driving privileges are issued pursuant to K.S.A. 8-1020, and amend-
8 ments thereto, the stay or temporary driving privileges shall not prevent
9 the division from taking the action required by subsection (b) or (c) for
10 an alcohol or drug-related conviction.

11 (g) Upon restricting a person's driving privileges pursuant to this sec-
12 tion, the division shall issue a copy of the order imposing the restrictions
13 which is required to be carried by the person at any time the person is
14 operating a motor vehicle on the highways of this state.

15 ~~(h) Any person whose license is restricted to operating only a motor
16 vehicle with an ignition interlock device installed may operate an em-
17 ployer's vehicle without an ignition interlock device installed during nor-
18 mal business activities, provided that the person does not partly or entirely
19 own or control the employer's vehicle or business.~~

20 Sec. 9. K.S.A. 8-1017 is hereby amended to read as follows: 8-1017.

21 (a) No person shall:

22 (1) Tamper with an ignition interlock device for the purpose of cir-
23 cumventing it or rendering it inaccurate or inoperative;

24 (2) request or solicit another to blow into an ignition interlock device,
25 or start a motor vehicle equipped with such device, for the purpose of
26 providing an operable motor vehicle to a person whose driving privileges
27 have been restricted to driving a motor vehicle equipped with such
28 device;

29 (3) blow into or start a motor vehicle equipped with an ignition in-
30 terlock device for the purpose of providing an operable motor vehicle to
31 a person whose driving privileges have been restricted to driving a motor
32 vehicle equipped with such device; or

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

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

36 (c) *Upon a first conviction of a violation of this section, a person shall*
37 *be sentenced to at least 90 days' imprisonment and fined at least \$500*
38 *and shall not be eligible for parole until completion of five consecutive*
39 *days' imprisonment.* In addition to any other penalties provided by law,
40 upon receipt of a *first* conviction for a violation of this section, the division
41 shall suspend the person's driving privileges for a period of two years
42 *consecutive to any existing suspension or revocation.*

43 (d) *Upon a second or subsequent conviction of a violation of this sec-*

1 *tion, a person shall be sentenced to at least 180 days' imprisonment and*
2 *fined at least \$1,000 and shall not be eligible for parole until completion*
3 *of 180 consecutive days' imprisonment. Any imprisonment ordered by the*
4 *court may be served in a work release program only after such person*
5 *has served 10 consecutive days' imprisonment, provided such work release*
6 *program requires such person to return to confinement at the end of each*
7 *day in the work release program. The court may place the person con-*
8 *victed under a house arrest program pursuant to K.S.A. 21-4603b, and*
9 *amendments thereto, to serve the remainder of any sentence only after*
10 *such person has served 10 consecutive days' imprisonment. In addition*
11 *to any other penalties provided by law, upon receipt of a second or sub-*
12 *sequent conviction for a violation of this section, the division shall per-*
13 *manently revoke the person's driving privileges.*

14 Sec. 10. K.S.A. 8-1019 is hereby amended to read as follows: 8-1019.

15 (a) As used in this section, "alcohol or drug-related offense" means: (1)
16 A violation of K.S.A. 8-1567 or section 1, and amendments thereto, or
17 any ordinance of a city or resolution of a county prohibiting the acts
18 prohibited by that statute; or (2) any other offense arising out of the
19 operation or attempted operation of a motor vehicle while under the
20 influence of alcohol or drugs, or both.

21 (b) Prior to the sentencing of a person convicted of an alcohol or
22 drug-related offense which resulted in serious bodily injury to a person
23 or the death of a person, the court shall cause reasonable attempts to be
24 made to notify the victim or the victim's family, who shall be given an
25 opportunity to make a victim impact statement as to the impact of the
26 offense on the victim's life or the lives of the victim's family members.

27 (c) Any court sentencing a person convicted of an alcohol or drug-
28 related offense which resulted in personal injury to a person, the death
29 of a person or injury to a person's property may require, in addition to
30 any other penalty provided by law, that the convicted person pay resti-
31 tution as a condition of probation or parole.

32 Sec. 11. K.S.A. 2008 Supp. 8-1022 is hereby amended to read as
33 follows: 8-1022. (a) It shall be unlawful for the owner of a motor vehicle
34 to allow a person to drive such vehicle when such owner knows or rea-
35 sonably should have known such person was driving in violation of K.S.A.
36 8-1014, and amendments thereto.

37 (b) Violation of this section is an unclassified misdemeanor punisha-
38 ble by a fine of not less than \$500 nor more than \$1,000. In addition to
39 the fine imposed upon a person convicted of a violation of this section,
40 the court may order that the convicted person's motor vehicle or vehicles
41 be impounded or immobilized for a period not to exceed one year and
42 that the convicted person pay all towing, impoundment and storage fees
43 or other immobilization costs. Prior to ordering the impoundment or im-

1 mobilization of any such motor vehicle, the court shall consider the factors
 2 established in subsection ~~(4)(3)~~ (i)(3) of K.S.A. 8-1567, and amendments
 3 thereto. Any personal property in a vehicle impounded or immobilized
 4 pursuant to this section may be retrieved prior to or during the period of
 5 such impoundment or immobilization.

6 Sec. 12. K.S.A. 2008 Supp. 8-1567 is hereby amended to read as
 7 follows: 8-1567. (a) No person shall operate or attempt to operate any
 8 vehicle within this state while:

9 (1) The alcohol concentration in the person's blood or breath as
 10 shown by any competent evidence, including other competent evidence,
 11 as defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and amend-
 12 ments thereto, is .08 or more;

13 (2) the alcohol concentration in the person's blood or breath, as meas-
 14 ured within two hours of the time of operating or attempting to operate
 15 a vehicle, is .08 or more;

16 (3) under the influence of alcohol to a degree that ~~renders the person~~
 17 ~~incapable of safely driving a vehicle~~ *impairs the person's ability to safely*
 18 *operate a vehicle to the slightest degree;*

19 (4) under the influence of any drug or combination of drugs to a
 20 degree that ~~renders the person incapable of safely driving a vehicle~~ *im-*
 21 *pairs the person's ability to safely operate a vehicle to the slightest degree;*

22 ~~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~~ *impairs the person's ability to safely operate a vehicle to the*
 26 *slightest degree; or*

27 (6) *there is any drug defined in K.S.A. 65-4105, 65-4107, 65-4109 or*
 28 *65-4111, and amendments thereto, or any metabolite of such drug in the*
 29 *person's body.*

30 (b) ~~No person shall operate or attempt to operate any vehicle within~~
 31 ~~this state if the person is a habitual user of any narcotic, hypnotic, som-~~
 32 ~~nifacient or stimulating drug.~~

33 ~~—(e)~~ If a person is charged with a violation of this section involving
 34 drugs, the fact that the person is or has been entitled to use the drug
 35 under the laws of this state shall not constitute a defense against the
 36 charge, *except that a person using a drug prescribed by a person licensed*
 37 *to practice medicine, surgery, dentistry or podiatry shall not be guilty of*
 38 *a violation of subsection (a)(6) for the use of a prescribed drug.*

39 ~~(d)~~ (c) Upon a first conviction of a violation of this section, a person
 40 shall be guilty of a class B, nonperson misdemeanor and sentenced to not
 41 less than ~~48 consecutive hours~~ *30 days* nor more than six months' im-
 42 prisonment, ~~or in the court's discretion 100 hours of public service,~~ and
 43 fined not less than \$500 nor more than \$1,000. The person convicted

1 must serve at least 48 consecutive hours' imprisonment ~~or 100 hours of~~
 2 ~~public service~~ either before or as a condition of any grant of probation or
 3 suspension, reduction of sentence or parole.

4 In addition, the court shall enter an order which requires that the
 5 person enroll in and successfully complete an alcohol and drug safety
 6 action education program or treatment program as provided in K.S.A. 8-
 7 1008, and amendments thereto, or both the education and treatment
 8 programs.

9 ~~(c)~~ (d) On a second conviction of a violation of this section, a person
 10 shall be guilty of a class A, nonperson misdemeanor and sentenced to not
 11 less than ~~90~~ 180 days nor more than one year's imprisonment and fined
 12 not less than \$1,000 nor more than \$1,500. The person convicted must
 13 serve at least ~~five~~ 10 consecutive days' imprisonment before the person
 14 is granted probation, suspension or reduction of sentence or parole or is
 15 otherwise released. ~~The five days' Any~~ imprisonment ~~mandated by this~~
 16 ~~subsection ordered by the court~~ may be served in a work release program
 17 only after such person has served ~~48 five~~ consecutive ~~hours' days'~~ im-
 18 prisonment, provided such work release program requires such person to
 19 return to confinement at the end of each day in the work release program.
 20 The court may place the person convicted under a house arrest program
 21 pursuant to K.S.A. 21-4603b, and amendments thereto, to serve the re-
 22 mainder of ~~the minimum any~~ sentence only after such person has served
 23 ~~48 five~~ consecutive ~~hours' days'~~ imprisonment.

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

28 ~~(f)~~ (1) (e) On the third conviction of a violation of this section, a
 29 person shall be guilty of a nonperson felony and sentenced to ~~not less~~
 30 ~~than 90 days nor more than~~ one year's imprisonment and fined not less
 31 than \$1,500 nor more than \$2,500. The person convicted shall not be
 32 eligible for release on probation, suspension or reduction of sentence or
 33 parole until the person has served at least 90 days' imprisonment. The 90
 34 days' imprisonment mandated by this paragraph may be served in a work
 35 release program only after such person has served ~~48~~ 10 consecutive
 36 ~~hours' days'~~ imprisonment, provided such work release program requires
 37 such person to return to confinement at the end of each day in the work
 38 release program. The court may place the person convicted under a house
 39 arrest program pursuant to K.S.A. 21-4603b, and amendments thereto,
 40 to serve the remainder of the minimum sentence only after such person
 41 has served ~~48~~ 10 consecutive ~~hours' days'~~ imprisonment.

42 (2) ~~The court may order that the term of imprisonment imposed pur-~~
 43 ~~suant to paragraph (1) be served in a state facility in the custody of the~~

1 ~~secretary of corrections in a facility designated by the secretary for the~~
2 ~~provision of substance abuse treatment pursuant to the provisions of~~
3 ~~K.S.A. 21-4704, and amendments thereto. The person shall remain im-~~
4 ~~prisoned at the state facility only while participating in the substance~~
5 ~~abuse treatment program designated by the secretary and shall be re-~~
6 ~~tained to the custody of the sheriff for execution of the balance of the~~
7 ~~term of imprisonment upon completion of or the person's discharge from~~
8 ~~the substance abuse treatment program. Custody of the person shall be~~
9 ~~returned to the sheriff for execution of the sentence imposed in the event~~
10 ~~the secretary of corrections determines. (A) That substance abuse treat-~~
11 ~~ment resources or the capacity of the facility designated by the secretary~~
12 ~~for the incarceration and treatment of the person is not available; (B) the~~
13 ~~person fails to meaningfully participate in the treatment program of the~~
14 ~~designated facility; (C) the person is disruptive to the security or operation~~
15 ~~of the designated facility; or (D) the medical or mental health condition~~
16 ~~of the person renders the person unsuitable for confinement at the des-~~
17 ~~ignated facility. The determination by the secretary that the person either~~
18 ~~is not to be admitted into the designated facility or is to be transferred~~
19 ~~from the designated facility is not subject to review. The sheriff shall be~~
20 ~~responsible for all transportation expenses to and from the state correc-~~
21 ~~tional facility. The court shall also require as a condition of parole that~~
22 ~~such person enter into and complete a treatment program for alcohol and~~
23 ~~drug abuse as provided by K.S.A. 8-1008, and amendments thereto.~~
24 ~~(g)~~ (f) (1) On the fourth or subsequent conviction of a violation of
25 this section, a person shall be guilty of a nonperson felony ~~and sentenced~~
26 ~~to not less than 90 days nor more than one year's imprisonment and, fined~~
27 ~~\$2,500 and sentenced to a term of imprisonment in the custody of the~~
28 ~~secretary of corrections: (A) On the fourth conviction, six to 18 months'~~
29 ~~imprisonment; (B) on the fifth conviction, 12 to 24 months' imprison-~~
30 ~~ment; (C) on the sixth conviction, 18 to 36 months' imprisonment; and (D) on~~
31 ~~the seventh or subsequent conviction, 24 to 60 months' imprisonment.~~
32 The person convicted shall not be eligible for release on ~~probation, sus-~~
33 ~~pension or reduction of sentence or~~ parole until the person has served at
34 least ~~90 days' the minimum term of imprisonment. The 90 days' impris-~~
35 ~~onment mandated by this paragraph may be served in a work release~~
36 ~~program only after such person has served 72 consecutive hours' impris-~~
37 ~~onment, provided such work release program requires such person to~~
38 ~~return to confinement at the end of each day in the work release program.~~
39 (2) The court may order that the term of imprisonment imposed pur-
40 suant to paragraph (1) be served in a state facility in the custody of the
41 secretary of corrections in a facility designated by the secretary for the
42 provision of substance abuse treatment pursuant to the provisions of
43 K.S.A. 21-4704, and amendments thereto. The person shall remain im-

1 ~~prisoned at the state facility only while participating in the substance~~
2 ~~abuse treatment program designated by the secretary and shall be re-~~
3 ~~turned to the custody of the sheriff for execution of the balance of the~~
4 ~~term of imprisonment upon completion of or the person's discharge from~~
5 ~~the substance abuse treatment program. Custody of the person shall be~~
6 ~~returned to the sheriff for execution of the sentence imposed in the event~~
7 ~~the secretary of corrections determines: (A) That substance abuse treat-~~
8 ~~ment resources or the capacity of the facility designated by the secretary~~
9 ~~for the incarceration and treatment of the person is not available; (B) the~~
10 ~~person fails to meaningfully participate in the treatment program of the~~
11 ~~designated facility; (C) the person is disruptive to the security or operation~~
12 ~~of the designated facility; or (D) the medical or mental health condition~~
13 ~~of the person renders the person unsuitable for confinement at the des-~~
14 ~~ignated facility. The determination by the secretary that the person either~~
15 ~~is not to be admitted into the designated facility or is to be transferred~~
16 ~~from the designated facility is not subject to review. The sheriff shall be~~
17 ~~responsible for all transportation expenses to and from the state correc-~~
18 ~~tional facility. At the time of the filing of the judgment form or journal~~
19 ~~entry as required by K.S.A. 21-4620 or 22-3426, and amendments thereto,~~
20 ~~the court shall cause a certified copy to be sent to the officer having the~~
21 ~~offender in charge. The law enforcement agency maintaining custody and~~
22 ~~control of a defendant for imprisonment shall cause a certified copy of~~
23 ~~the judgment form or journal entry to be sent to the secretary of correc-~~
24 ~~tions within three business days of receipt of the judgment form or journal~~
25 ~~entry from the court and notify the secretary of corrections when the~~
26 ~~term of imprisonment expires and upon expiration of the term of impris-~~
27 ~~onment shall deliver the defendant to a location designated by the sec-~~
28 ~~retary. After the term of imprisonment imposed by the court, the person~~
29 ~~shall be placed in the custody of the secretary of corrections for a man-~~
30 ~~datory one-year period of postrelease supervision, which such period of~~
31 ~~postrelease supervision shall not be reduced. ~~During such postrelease~~~~
32 ~~supervision As a condition of parole, the person shall be required to par-~~
33 ~~ticipate in an inpatient or outpatient program for alcohol and drug abuse,~~
34 ~~including, but not limited to, an approved aftercare plan or mental health~~
35 ~~counseling, as determined by the secretary and satisfy conditions imposed~~
36 ~~by the Kansas parole board as provided by K.S.A. 22-3717, and amend-~~
37 ~~ments thereto. Any violation of the conditions of such postrelease super-~~
38 ~~vision may subject such person to revocation of postrelease supervision~~
39 ~~pursuant to K.S.A. 75-5217 et seq., and amendments thereto and as oth-~~
40 ~~erwise provided by law.~~

41 ~~(h) Any person convicted of violating this section or an ordinance~~
42 ~~which prohibits the acts that this section prohibits who had one or more~~
43 ~~children under the age of 14 years in the vehicle at the time of the offense~~

1 ~~shall have such person's punishment enhanced by one month of impris-~~
2 ~~onment. This imprisonment must be served consecutively to any other~~
3 ~~minimum mandatory penalty imposed for a violation of this section or an~~
4 ~~ordinance which prohibits the acts that this section prohibits. Any en-~~
5 ~~hanced penalty imposed shall not exceed the maximum sentence allow-~~
6 ~~able by law. During the service of the enhanced penalty, the judge may~~
7 ~~order the person on house arrest, work release or other conditional re-~~
8 ~~lease.~~

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

14 ~~(j)~~ (h) In lieu of payment of a fine imposed pursuant to this section,
15 the court may order that the person perform community service specified
16 by the court. The person shall receive a credit on the fine imposed in an
17 amount equal to ~~\$5~~ \$7 for each full hour spent by the person in the
18 specified community service. The community service ordered by the
19 court shall be required to be performed not later than one year after the
20 fine is imposed or by an earlier date specified by the court. If by the
21 required date the person performs an insufficient amount of community
22 service to reduce to zero the portion of the fine required to be paid by
23 the person, the remaining balance of the fine shall become due on that
24 date.

25 ~~(k)~~ (i) (1) Except as provided in paragraph (5), in addition to any
26 other penalty which may be imposed upon a first conviction of a violation
27 of this section, the court may order that the convicted person's motor
28 vehicle or vehicles be impounded or immobilized for a period not to
29 exceed one year and that the convicted person pay all towing, impound-
30 ment and storage fees or other immobilization costs.

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

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

38 (A) Whether the impoundment or immobilization of the motor ve-
39 hicle would result in the loss of employment by the convicted person or
40 a member of such person's family; and

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

43 (4) Any personal property in a vehicle impounded or immobilized

1 pursuant to this subsection may be retrieved prior to or during the period
2 of such impoundment or immobilization.

3 (5) As used in this subsection, the convicted person's motor vehicle
4 or vehicles shall include any vehicle leased by such person. If the lease
5 on the convicted person's motor vehicle subject to impoundment or im-
6 mobilization expires in less than one year from the date of the impound-
7 ment or immobilization, the time of impoundment or immobilization of
8 such vehicle shall be the amount of time remaining on the lease.

9 ~~(j)~~ (1) Except as provided in paragraph (3), in addition to any other
10 penalty which may be imposed upon a second or subsequent conviction
11 of a violation of this section, the court shall order that each motor vehicle
12 owned or leased by the convicted person shall either be equipped with
13 an ignition interlock device or be impounded or immobilized for a period
14 of two years. The convicted person shall pay all costs associated with the
15 installation, maintenance and removal of the ignition interlock device and
16 all towing, impoundment and storage fees or other immobilization costs.
17 (2) Any personal property in a vehicle impounded or immobilized
18 pursuant to this subsection may be retrieved prior to or during the period
19 of such impoundment or immobilization.

20 (3) As used in this subsection, the convicted person's motor vehicle
21 or vehicles shall include any vehicle leased by such person. If the lease
22 on the convicted person's motor vehicle subject to impoundment or im-
23 mobilization expires in less than two years from the date of the impound-
24 ment or immobilization, the time of impoundment or immobilization of
25 such vehicle shall be the amount of time remaining on the lease.

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

33 ~~(n)~~ (l) For the purpose of determining whether a conviction is a first,
34 second, third, fourth or subsequent conviction in sentencing under this
35 section:

36 (1) "Conviction" includes being convicted of a violation of this section
37 or entering into a diversion agreement in lieu of further criminal pro-
38 ceedings on a complaint alleging a violation of this section;

39 (2) "conviction" includes being convicted of a violation of a law of
40 another state or an ordinance of any city, or resolution of any county,
41 which prohibits the acts that this section prohibits or entering into a di-
42 version agreement in lieu of further criminal proceedings in a case alleg-
43 ing a violation of such law, ordinance or resolution;

1 (3) “conviction” includes being convicted of a violation of section 1,
2 and amendments thereto;

3 (4) “conviction” includes being convicted of a violation of a law of
4 another state or a city ordinance or county resolution which prohibits the
5 acts that section 1, and amendments thereto, prohibits, or entering into a
6 diversion agreement in lieu of further criminal proceedings in a case al-
7 leging a violation of such law, ordinance or resolution;

8 (5) any convictions occurring during a person’s lifetime shall be taken
9 into account when determining the sentence to be imposed for a first,
10 second, third, fourth or subsequent offender;

11 ~~(4)~~ (6) it is irrelevant whether an offense occurred before or after
12 conviction for a previous offense; and

13 ~~(5)~~ (7) a person may enter into a diversion agreement in lieu of fur-
14 ther criminal proceedings for a violation of this section, and amendments
15 thereto, or an ordinance which prohibits the acts of this section, and
16 amendments thereto, only once during the person’s lifetime.

17 ~~(6)~~ (m) Upon conviction of a person of a violation of this section or
18 a violation of a city ordinance or county resolution prohibiting the acts
19 prohibited by this section, the division, upon receiving a report of con-
20 viction, shall suspend, restrict or suspend and restrict the person’s driving
21 privileges as provided by K.S.A. 8-1014, and amendments thereto.

22 ~~(7)~~ (n) (1) Nothing contained in this section shall be construed as
23 preventing any city from enacting ordinances, or any county from adopt-
24 ing resolutions, declaring acts prohibited or made unlawful by this act as
25 unlawful or prohibited in such city or county and prescribing penalties
26 for violation thereof. Except as specifically provided by this subsection,
27 the minimum penalty prescribed by any such ordinance or resolution shall
28 not be less than the minimum penalty prescribed by this act for the same
29 violation, and the maximum penalty in any such ordinance or resolution
30 shall not exceed the maximum penalty prescribed for the same violation.
31 On and after July 1, 2007, and retroactive for ordinance violations com-
32 mitted on or after July 1, 2006, an ordinance may grant to a municipal
33 court jurisdiction over a violation of such ordinance which is concurrent
34 with the jurisdiction of the district court over a violation of this section,
35 notwithstanding that the elements of such ordinance violation are the
36 same as the elements of a violation of this section that would constitute,
37 and be punished as, a felony.

38 Any such ordinance or resolution shall authorize the court to order that
39 the convicted person pay restitution to any victim who suffered loss due
40 to the violation for which the person was convicted. Except as provided
41 in paragraph (5), any such ordinance or resolution may require or au-
42 thorize the court to order that the convicted person’s motor vehicle or
43 vehicles be impounded or immobilized for a period not to exceed one

1 year and that the convicted person pay all towing, impoundment and
2 storage fees or other immobilization costs.

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

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

10 (A) Whether the impoundment or immobilization of the motor ve-
11 hicle would result in the loss of employment by the convicted person or
12 a member of such person's family; and

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

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

18 (5) As used in this subsection, the convicted person's motor vehicle
19 or vehicles shall include any vehicle leased by such person. If the lease
20 on the convicted person's motor vehicle subject to impoundment or im-
21 mobilization expires in less than one year from the date of the impound-
22 ment or immobilization, the time of impoundment or immobilization of
23 such vehicle shall be the amount of time remaining on the lease.

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

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

37 ~~(q)~~ Upon a fourth or subsequent conviction, the judge of any court
38 in which any person is convicted of violating this section, may revoke the
39 person's license plate or temporary registration certificate of the motor
40 vehicle driven during the violation of this section for a period of one year.
41 Upon revoking any license plate or temporary registration certificate pur-
42 suant to this subsection, the court shall require that such license plate or
43 temporary registration certificate be surrendered to the court.

- 1 ~~(r)~~ (r) For the purpose of this section: (1) “Alcohol concentration”
2 means the number of grams of alcohol per 100 milliliters of blood or per
3 210 liters of breath.
- 4 (2) “Imprisonment” shall include any restrained environment in
5 which the court and law enforcement agency intend to retain custody and
6 control of a defendant and such environment has been approved by the
7 board of county commissioners or the governing body of a city.
- 8 (3) “Drug” includes toxic vapors as such term is defined in K.S.A. 65-
9 4165, and amendments thereto.
- 10 ~~(s)~~ (s) The amount of the increase in fines as specified in this section
11 shall be remitted by the clerk of the district court to the state treasurer
12 in accordance with the provisions of K.S.A. 75-4215, and amendments
13 thereto. Upon receipt of remittance of the increase provided in this act,
14 the state treasurer shall deposit the entire amount in the state treasury
15 and the state treasurer shall credit 50% to the community alcoholism and
16 intoxication programs fund and 50% to the department of corrections
17 alcohol and drug abuse treatment fund, which is hereby created in the
18 state treasury.
- 19 ~~(t)~~ (t) Upon every conviction of a violation of this section, the court
20 shall order such person to submit to a pre-sentence alcohol and drug
21 abuse evaluation pursuant to K.S.A. 8-1008, and amendments thereto.
22 Such pre-sentence evaluation shall be made available, and shall be con-
23 sidered by the sentencing court.
- 24 Sec. 13. K.S.A. 8-1567a is hereby amended to read as follows: 8-
25 1567a. (a) It shall be unlawful for any person less than 21 years of age to
26 operate or attempt to operate a vehicle in this state with a breath or blood
27 alcohol content of .02 or greater. *A person convicted of a violation of this*
28 *section shall be guilty of a traffic infraction and shall be fined not less*
29 *than \$200 and not more than \$500.*
- 30 (b) Whenever a law enforcement officer determines that a breath or
31 blood alcohol test is to be required of a person less than 21 years of age
32 pursuant to K.S.A. 8-1001 or K.S.A. 8-2,142, and amendments thereto,
33 in addition to any other notices required by law, the law enforcement
34 officer shall provide written and oral notice that: (1) It is unlawful for any
35 person less than 21 years of age to operate or attempt to operate a vehicle
36 in this state with a breath or blood alcohol content of .02 or greater; and
37 (2) if the person is less than 21 years of age at the time of the test request
38 and submits to and completes the test or tests and the test results show
39 an alcohol concentration of .02 or greater, but less than .08, on the per-
40 son’s first occurrence, the person’s driving privileges will be suspended
41 for 30 days and on the person’s second or subsequent occurrence, the
42 person’s driving privileges shall be suspended for one year.
- 43 (c) Any suspension and restriction of driving privileges pursuant to

1 this section shall be in addition to any disqualification from driving a
2 commercial motor vehicle pursuant to K.S.A. 8-2,142, and amendments
3 thereto.

4 (d) Whenever a breath or blood alcohol test is requested pursuant to
5 K.S.A. 8-1001, and amendments thereto, from a person less than 21 years
6 of age, and results in a test result of .02 or greater, but less than .08, a
7 law enforcement officer's certification under this section shall be pre-
8 pared. The certification required by this section shall be signed by one
9 or more officers to certify that:

10 (1) (A) There existed reasonable grounds to believe the person was
11 operating a vehicle while under the influence of alcohol or drugs, or both,
12 or to believe that the person had been driving a commercial motor ve-
13 hicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having
14 alcohol or other drugs in such person's system; (B) the person had been
15 placed under arrest, was in custody or had been involved in a vehicle
16 accident or collision; (C) a law enforcement officer had presented the
17 person with the oral and written notice required by K.S.A. 8-1001, and
18 amendments thereto, and the oral and written notice required by this
19 section; (D) that the person was less than 21 years of age at the time of
20 the test request; and (E) the result of the test showed that the person
21 had an alcohol concentration of .02 or greater in such person's blood or
22 breath.

23 (2) With regard to a breath test, in addition to those matters required
24 to be certified under subsection (d)(1), that: (A) The testing equipment
25 used was certified by the Kansas department of health and environment;
26 (B) the testing procedures used were in accordance with the require-
27 ments set out by the Kansas department of health and environment; and
28 (C) the person who operated the testing equipment was certified by the
29 Kansas department of health and environment to operate such
30 equipment.

31 (e) If a hearing is requested as a result of a law enforcement officer's
32 certification under this section, the scope of the hearing shall be limited
33 to whether: (1) A law enforcement officer had reasonable grounds to
34 believe the person was operating a vehicle while under the influence of
35 alcohol or drugs, or both, or to believe that the person had been driving
36 a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amend-
37 ments thereto, while having alcohol or other drugs in such person's sys-
38 tem; (2) the person was in custody or arrested for an alcohol or drug
39 related offense or was involved in a motor vehicle accident or collision
40 resulting in property damage, personal injury or death; (3) a law enforce-
41 ment officer had presented the person with the oral and written notice
42 required by K.S.A. 8-1001, and amendments thereto, and the oral and
43 written notice required by this section; (4) the testing equipment used

1 was reliable; (5) the person who operated the testing equipment was
2 qualified; (6) the testing procedures used were reliable; (7) the test result
3 determined that the person had an alcohol concentration of .02 or greater
4 in such person's blood or breath; (8) the person was operating a vehicle;
5 and (9) the person was less than 21 years of age at the time a test was
6 requested.

7 (f) If a person less than 21 years of age submits to a breath or blood
8 alcohol test requested pursuant to K.S.A. 8-1001 or K.S.A. 8-2,142, and
9 amendments thereto, and produces a test result of .02 or greater, but less
10 than .08, on the person's first occurrence, the person's driving privileges
11 shall be suspended for 30 days and then restricted as provided by K.S.A.
12 8-1015, and amendments thereto, for an additional 330 days, and on the
13 person's second or subsequent occurrence, the person's driving privileges
14 shall be suspended for one year.

15 (g) Except where there is a conflict between this section and K.S.A.
16 8-1001 and 8-1002, and amendments thereto, the provisions of K.S.A. 8-
17 1001 and 8-1002, and amendments thereto, shall be applicable to pro-
18 ceedings under this section.

19 (h) Any *conviction under this section or any* determination under this
20 section that a person less than 21 years of age had a test result of .02 or
21 greater, but less than .08, and any resulting administrative action upon
22 the person's driving privileges, upon the first occurrence of such test
23 result and administrative action *or first conviction under this section*, shall
24 not be considered by any insurance company in determining the rate
25 charged for any automobile liability insurance policy or whether to cancel
26 any such policy under the provisions of subsection (4)(a) of K.S.A. 40-
27 277, and amendments thereto.

28 Sec. 14. K.S.A. 2008 Supp. 21-4704 is hereby amended to read as
29 follows: 21-4704. (a) For purposes of sentencing, the following sentencing
30 guidelines grid for nondrug crimes shall be applied in felony cases for
31 crimes committed on or after July 1, 1993:
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SENTENCING RANGE - NONDRUG OFFENSES

| Category Severity Level | A 3+ Person Felonies | B 2 Person Felonies | C 1 Person & 1 Nonperson Felonies | D 1 Person Felony | E 3+ Nonperson Felonies | F 2 Nonperson Felonies | G 1 Nonperson Felony | H 2+ Misdemeanors | I 1 Misdemeanor No Record |
|-------------------------------|-------------------------------|------------------------------|--|----------------------------|----------------------------------|---------------------------------|-------------------------------|-------------------------|------------------------------------|
| I | 653 620 592 | 618 586 554 | 285 272 258 | 267 253 240 | 246 234 221 | 226 214 203 | 203 195 184 | 186 176 166 | 165 155 147 |
| II | 493 467 442 | 460 438 416 | 216 205 194 | 200 190 181 | 184 174 165 | 168 160 152 | 154 146 138 | 138 131 123 | 123 117 109 |
| III | 247 233 221 | 228 216 206 | 107 102 96 | 100 94 89 | 92 88 82 | 83 79 74 | 77 72 68 | 71 66 61 | 61 59 55 |
| IV | 172 162 154 | 162 154 144 | 75 71 68 | 69 66 62 | 64 60 57 | 59 56 52 | 52 50 47 | 48 45 42 | 43 41 38 |
| V | 136 130 122 | 128 120 114 | 60 57 53 | 55 52 50 | 51 49 46 | 47 44 41 | 43 41 38 | 38 36 34 | 34 33 31 |
| VI | 46 43 40 | 41 39 37 | 38 36 34 | 36 34 32 | 32 30 28 | 29 27 25 | 26 24 22 | 21 20 19 | 19 18 17 |
| VII | 34 32 30 | 31 29 27 | 29 27 25 | 26 24 22 | 23 21 19 | 19 18 17 | 17 16 15 | 14 13 12 | 13 12 11 |
| VIII | 23 21 19 | 20 19 18 | 19 18 17 | 17 16 15 | 15 14 13 | 13 12 11 | 11 10 9 | 11 10 9 | 9 8 7 |
| IX | 17 16 15 | 15 14 13 | 13 12 11 | 13 12 11 | 11 10 9 | 10 9 8 | 9 8 7 | 8 7 6 | 7 6 5 |
| X | 13 12 11 | 12 11 10 | 11 10 9 | 10 9 8 | 9 8 7 | 8 7 6 | 7 6 5 | 7 6 5 | 7 6 5 |

LEGEND

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|--------------------------|
| Presumptive Probation |
| Probation |
| Presumptive Imprisonment |

- 1 (b) The provisions of this section shall be applicable to the sentencing
2 guidelines grid for nondrug crimes. Sentences expressed in such grid
3 represent months of imprisonment.
- 4 (c) The sentencing guidelines grid is a two-dimensional crime severity
5 and criminal history classification tool. The grid's vertical axis is the crime
6 severity scale which classifies current crimes of conviction. The grid's
7 horizontal axis is the criminal history scale which classifies criminal
8 histories.
- 9 (d) The sentencing guidelines grid for nondrug crimes as provided in
10 this section defines presumptive punishments for felony convictions, sub-
11 ject to judicial discretion to deviate for substantial and compelling reasons
12 and impose a different sentence in recognition of aggravating and miti-
13 gating factors as provided in this act. The appropriate punishment for a
14 felony conviction should depend on the severity of the crime of conviction
15 when compared to all other crimes and the offender's criminal history.
- 16 (e) (1) The sentencing court has discretion to sentence at any place
17 within the sentencing range. The sentencing judge shall select the center
18 of the range in the usual case and reserve the upper and lower limits for
19 aggravating and mitigating factors insufficient to warrant a departure.
- 20 (2) In presumptive imprisonment cases, the sentencing court shall
21 pronounce the complete sentence which shall include the prison sen-
22 tence, the maximum potential reduction to such sentence as a result of
23 good time and the period of postrelease supervision at the sentencing
24 hearing. Failure to pronounce the period of postrelease supervision shall
25 not negate the existence of such period of postrelease supervision.
- 26 (3) In presumptive nonprison cases, the sentencing court shall pro-
27 nounce the prison sentence as well as the duration of the nonprison sanc-
28 tion at the sentencing hearing.
- 29 (f) Each grid block states the presumptive sentencing range for an
30 offender whose crime of conviction and criminal history place such of-
31 fender in that grid block. If an offense is classified in a grid block below
32 the dispositional line, the presumptive disposition shall be nonimprison-
33 ment. If an offense is classified in a grid block above the dispositional
34 line, the presumptive disposition shall be imprisonment. If an offense is
35 classified in grid blocks 5-H, 5-I or 6-G, the court may impose an optional
36 nonprison sentence upon making the following findings on the record:
- 37 (1) An appropriate treatment program exists which is likely to be
38 more effective than the presumptive prison term in reducing the risk of
39 offender recidivism; and
- 40 (2) the recommended treatment program is available and the of-
41 fender can be admitted to such program within a reasonable period of
42 time; or
- 43 (3) the nonprison sanction will serve community safety interests by

1 promoting offender reformation.

2 Any decision made by the court regarding the imposition of an optional
3 nonprison sentence if the offense is classified in grid blocks 5-H, 5-I or
4 6-G shall not be considered a departure and shall not be subject to appeal.

5 (g) The sentence for the violation of K.S.A. 21-3415, and amend-
6 ments thereto, aggravated battery against a law enforcement officer com-
7 mitted prior to July 1, 2006, or K.S.A. 21-3411, and amendments thereto,
8 aggravated assault against a law enforcement officer, which places the
9 defendant's sentence in grid block 6-H or 6-I shall be presumed impris-
10 onment. The court may impose an optional nonprison sentence upon
11 making a finding on the record that the nonprison sanction will serve
12 community safety interests by promoting offender reformation. Any deci-
13 sion made by the court regarding the imposition of the optional non-
14 prison sentence, if the offense is classified in grid block 6-H or 6-I, shall
15 not be considered departure and shall not be subject to appeal.

16 (h) When a firearm is used to commit any person felony, the of-
17 fender's sentence shall be presumed imprisonment. The court may im-
18 pose an optional nonprison sentence upon making a finding on the record
19 that the nonprison sanction will serve community safety interests by pro-
20 moting offender reformation. Any decision made by the court regarding
21 the imposition of the optional nonprison sentence shall not be considered
22 a departure and shall not be subject to appeal.

23 (i) The sentence for the violation of the felony provision of *subsec-*
24 *tions (d)(1), (d)(2), (e)(1) and (e)(2) of section 1, subsection (e) of K.S.A.*
25 *8-1567, subsection (b)(3) of K.S.A. 21-3412a, subsections (b)(3) and (b)(4)*
26 *of K.S.A. 21-3710, K.S.A. 21-4310 and K.S.A. 21-4318, and amendments*
27 *thereto, shall be as provided by the specific mandatory sentencing*
28 *requirements of that section and shall not be subject to the provisions of*
29 *this section or K.S.A. 21-4707 and amendments thereto. If because of the*
30 *offender's criminal history classification the offender is subject to pre-*
31 *sumptive imprisonment or if the judge departs from a presumptive pro-*
32 *bation sentence and the offender is subject to imprisonment, the provi-*
33 *sions of this section and K.S.A. 21-4707, and amendments thereto, shall*
34 *apply and the offender shall not be subject to the mandatory sentence as*
35 *provided in subsections (c)(3), (c)(4), (d)(3), (d)(4), (e)(3) and (e)(4) of*
36 *section 1, or K.S.A. 21-3710, and amendments thereto. Notwithstanding*
37 *the provisions of any other section, the term of imprisonment imposed*
38 *for the violation of the felony provision of subsections (d)(1), (d)(2), (e)(1)*
39 *and (e)(2) of section 1, subsection (e) of K.S.A. 8-1567, subsection (b)(3)*
40 *of K.S.A. 21-3412a, subsections (b)(3) and (b)(4) of K.S.A. 21-3710,*
41 *K.S.A. 21-4310 and K.S.A. 21-4318, and amendments thereto, shall not*
42 *be served in a state facility in the custody of the secretary of corrections,*
43 *except that the term of imprisonment for felony violations of K.S.A. 8-*

1 1567, and amendments thereto, may be served in a state correctional
2 facility designated by the secretary of corrections if the secretary deter-
3 mines that substance abuse treatment resources and facility capacity is
4 available. The secretary's determination regarding the availability of treat-
5 ment resources and facility capacity shall not be subject to review.

6 (j) (1) The sentence for any persistent sex offender whose current
7 convicted crime carries a presumptive term of imprisonment shall be
8 double the maximum duration of the presumptive imprisonment term.
9 The sentence for any persistent sex offender whose current conviction
10 carries a presumptive nonprison term shall be presumed imprisonment
11 and shall be double the maximum duration of the presumptive impris-
12 onment term.

13 (2) Except as otherwise provided in this subsection, as used in this
14 subsection, "persistent sex offender" means a person who: (A) (i) Has
15 been convicted in this state of a sexually violent crime, as defined in K.S.A.
16 22-3717 and amendments thereto; and (ii) at the time of the conviction
17 under paragraph (A) (i) has at least one conviction for a sexually violent
18 crime, as defined in K.S.A. 22-3717 and amendments thereto in this state
19 or comparable felony under the laws of another state, the federal gov-
20 ernment or a foreign government; or (B) (i) has been convicted of rape,
21 K.S.A. 21-3502, and amendments thereto; and (ii) at the time of the
22 conviction under paragraph (B) (i) has at least one conviction for rape in
23 this state or comparable felony under the laws of another state, the federal
24 government or a foreign government.

25 (3) Except as provided in paragraph (2)(B), the provisions of this sub-
26 section shall not apply to any person whose current convicted crime is a
27 severity level 1 or 2 felony.

28 (k) If it is shown at sentencing that the offender committed any felony
29 violation for the benefit of, at the direction of, or in association with any
30 criminal street gang, with the specific intent to promote, further or assist
31 in any criminal conduct by gang members, the offender's sentence shall
32 be presumed imprisonment. Any decision made by the court regarding
33 the imposition of the optional nonprison sentence shall not be considered
34 a departure and shall not be subject to appeal. As used in this subsection,
35 "criminal street gang" means any organization, association or group of
36 three or more persons, whether formal or informal, having as one of its
37 primary activities the commission of one or more person felonies or felony
38 violations of the uniform controlled substances act, K.S.A. 65-4101 et seq.,
39 and amendments thereto, which has a common name or common iden-
40 tifying sign or symbol, whose members, individually or collectively engage
41 in or have engaged in the commission, attempted commission, conspiracy
42 to commit or solicitation of two or more person felonies or felony viola-
43 tions of the uniform controlled substances act, K.S.A. 65-4101 et seq.,

1 and amendments thereto, or any substantially similar offense from an-
2 other jurisdiction.

3 (l) Except as provided in subsection (o), the sentence for a violation
4 of subsection (a) of K.S.A. 21-3715 and amendments thereto when such
5 person being sentenced has a prior conviction for a violation of subsection
6 (a) or (b) of K.S.A. 21-3715 or 21-3716 and amendments thereto shall be
7 presumed imprisonment.

8 (m) The sentence for a violation of K.S.A. 22-4903 or subsection (d)
9 of K.S.A. 21-3812, and amendments thereto, shall be presumptive im-
10 prisonment. If an offense under such sections is classified in grid blocks
11 5-E, 5-F, 5-G, 5-H or 5-I, the court may impose an optional nonprison
12 sentence upon making the following findings on the record:

13 (1) An appropriate treatment program exists which is likely to be
14 more effective than the presumptive prison term in reducing the risk of
15 offender recidivism, such program is available and the offender can be
16 admitted to such program within a reasonable period of time; or

17 (2) the nonprison sanction will serve community safety interests by
18 promoting offender reformation.

19 Any decision made by the court regarding the imposition of an optional
20 nonprison sentence pursuant to this section shall not be considered a
21 departure and shall not be subject to appeal.

22 (n) The sentence for a third or subsequent violation of subsection (b)
23 of K.S.A. 21-3705, and amendments thereto, shall be presumptive im-
24 prisonment. Such sentence shall not be considered a departure and shall
25 not be subject to appeal.

26 (o) The sentence for a felony violation of K.S.A. 21-3701 or 21-3715,
27 and amendments thereto, when such person being sentenced has no prior
28 convictions for a violation of K.S.A. 21-3701 or 21-3715, and amendments
29 thereto; or the sentence for a felony violation of K.S.A. 21-3701, and
30 amendments thereto, when such person being sentenced has one or two
31 prior felony convictions for a violation of K.S.A. 21-3701, 21-3715 or 21-
32 3716, and amendments thereto; or the sentence for a felony violation of
33 K.S.A. 21-3715, and amendments thereto, when such person being sen-
34 tenced has one prior felony conviction for a violation of K.S.A. 21-3701,
35 21-3715 or 21-3716, and amendments thereto, shall be the sentence as
36 provided by this section, except that the court may order an optional
37 nonprison sentence for a defendant to participate in a drug treatment
38 program, including, but not limited to, an approved after-care plan, if the
39 court makes the following findings on the record:

40 (1) Substance abuse was an underlying factor in the commission of
41 the crime;

42 (2) substance abuse treatment in the community is likely to be more
43 effective than a prison term in reducing the risk of offender recidivism;

1 and

2 (3) participation in an intensive substance abuse treatment program
3 will serve community safety interests.

4 A defendant sentenced to an optional nonprison sentence under this
5 subsection shall be supervised by community correctional services. The
6 provisions of subsection (f)(1) of K.S.A. 21-4729, and amendments
7 thereto, shall apply to a defendant sentenced under this subsection.

8 The sentence under this subsection shall not be considered a departure
9 and shall not be subject to appeal.

10 (p) The sentence for a felony violation of K.S.A. 21-3701, and amend-
11 ments thereto, when such person being sentenced has any combination
12 of three or more prior felony convictions for violations of K.S.A. 21-3701,
13 21-3715 or 21-3716 and amendments thereto, or the sentence for a vio-
14 lation of K.S.A. 21-3715, and amendments thereto, when such person
15 being sentenced has any combination of two or more prior convictions
16 for violations of K.S.A. 21-3701, 21-3715 and 21-3716, and amendments
17 thereto, shall be presumed imprisonment and the defendant shall be sen-
18 tenced to prison as provided by this section, except that the court may
19 recommend that an offender be placed in the custody of the secretary of
20 corrections, in a facility designated by the secretary to participate in an
21 intensive substance abuse treatment program, upon making the following
22 findings on the record:

23 (1) Substance abuse was an underlying factor in the commission of
24 the crime;

25 (2) substance abuse treatment with a possibility of an early release
26 from imprisonment is likely to be more effective than a prison term in
27 reducing the risk of offender recidivism; and

28 (3) participation in an intensive substance abuse treatment program
29 with the possibility of an early release from imprisonment will serve com-
30 munity safety interests by promoting offender reformation.

31 The intensive substance abuse treatment program shall be determined
32 by the secretary of corrections, but shall be for a period of at least four
33 months. Upon the successful completion of such intensive treatment pro-
34 gram, the offender shall be returned to the court and the court may
35 modify the sentence by directing that a less severe penalty be imposed
36 in lieu of that originally adjudged within statutory limits. If the offender's
37 term of imprisonment expires, the offender shall be placed under the
38 applicable period of postrelease supervision.

39 The sentence under this subsection shall not be considered a departure
40 and shall not be subject to appeal.

41 Sec. 15. K.S.A. 8-1005, 8-1008, 8-1009, 8-1017, 8-1019, 8-1567a and
42 21-3442 and K.S.A. 2008 Supp. 8-1001, 8-1012, 8-1013, 8-1014, 8-1022,
43 8-1567 and 21-4704 are hereby repealed.

1 Sec. 16. This act shall take effect and be in force from and after its
2 publication in the statute book.