Approved: May 6, 2011
Date

MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairman Pat Colloton at 1:30 p.m. on March 15, 2011 in Room 144-S of the Capitol.

All members were present.

Committee staff present:
Sean Ostrow, Office of the Revisor of Statutes
Jason Thompson, Office of the Revisor of Statutes
Lauren Douglass, Legislative Research
Robert Allison-Gallimore, Legislative Research
Jackie Lunn, Committee Assistant

Conferees appearing before the Committee:
Tim Madden, General Counsel, Kansas Department of Corrections
Stuart Little, Kansas Community Corrections Association

Others attending:
See attached.

HB 2277-Third and subsequent DUI offenders following county jail sentence shall serve under local supervision for one year; supervised by community corrections or court services

Chairperson Colloton called the meeting to order and opened the hearing on **HB 2277.** She called on Jason Thompson, Office of Revisor of Statutes, to explain the proposed Substitute for **HB 2277**. (Attachment 1)

Chairperson Colloton introduced Tim Madden, General Counsel, Kansas Department of Corrections, to testify as a proponent of the bill. Mr. Madden presented written copy of his testimony. (Attachment 2) He stated the Department of Corrections is in favor of **HB 2277** and also the proposed substitute for **HB 2277.**

Chairperson Colloton called the Committee's attention to the "written only" proponent testimony of Frank Harris, MAAD, (Attachment 3) and Matt Strausz, Kansas Ignition Interloc Association. (Attachment 4)

A discussion followed.

Chairperson Colloton introduced Stuart Little, Kansas Community Corrections Association, to give his testimony as an opponent of **HB 2277.** Mr. Little presented written testimony. (Attachment 5) He stated they are opposed to the bill because they believe there is some need to discuss the specific supervision of 3rd time DUI offenders and how that supervision will be carried out.

A discussion followed and Chairperson Colloton stated she would leave the hearing open for others to testify at another time.

Chairperson Colloton opened the floor for consideration of **SB 63-Amending the crime of exploitation of a child and SB 6-Criminal procedure; search incident to arrest.**
Representative Roth made a motion to pass SB 63 out favorably. Representative Kinzer seconded.

Chairperson Colloton called on Sean Ostrow, Office of Revisor of Statutes, to explain **SB 63** and **SB 6.**

Representative Kinzer made a substitute motion to add the following language to SB 63 "for the Constitution of the United States or the Constitution of Kansas". Representative Brookens seconded. Substitute motion carried.

Representative Kinzer made a motion to move the amended SB 6 into SB 63. Representative Roth seconded. Motion carried.

A discussion followed.

Representative Kinzer made a motion to pass SB 63 out favorably as amended. Representative Roth seconded. Motion carried.

HB 2217-Concerning authorized interception of wire, oral or electronic communications; issuance of order.

SB 55-Crimes, criminal procedure and punishment; relating to electronic communications; relating to harassment by telecommunications device; relating to warrants for interception and information.

Chairperson Colloton opened the floor for the consideration of **HB 2217.**
Representative Roth made a motion to pass SB 55 out favorable for passage. Representative Moxley seconded.

A discussion followed.
Representative Roth made a motion to amend HB 2217 into SB 55. Representative Wolf seconded.

Chairperson Colloton called on Sean Ostrow, Office of Revisor of Statutes, to explain the bill and the balloon on the bill. (Attachment 6)

A discussion followed on the balloon on the bill.
Representative Smith made a substitute motion to adopt the balloon offered on HB 2217. Representative Roth seconded. Motin carried.

A discussion followed.
Representative Pauls made a motion to put HB 2217 as amended into SB 55. Representative Smith seconded. Motion carried.

Chairperson Colloton called on Sean Ostrow, Office of Revisor of Statutes, to explain the original content of **SB 55.**

A discussion followed.
Representative Kinzer made a motion to pass SB 55 out favorably as amended. Representative McCray-Miller seconded. Motoin carried.

Chairperson Colloton adjourned the meeting at 2:50 pm with the next meeting scheduled for March 16, 2011 at 1:30 pm in room 144-S.

CORRECTIONS & JUVENILE JUSTICE
GUEST LIST

DATE: 3-15-11

NAME	REPRESENTING
Ed Klumpp	KACP/KPOA/KSA
Kevin Barone	KIDA
Matt Strausz	KIDA/Smart Start
Melissa Wangemann	KAC

(PROPOSED) SUBSTITUTE FOR HOUSE BILL NO. 2277

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

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

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

(b) A law enforcement officer shall request a person to submit to a test or tests deemed consented to under subsection (a): (1) If the officer has reasonable grounds to believe the person was operating or attempting to operate a vehicle while under the influence of alcohol or drugs, or both, or to believe that the person was driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system, or was under the age of 21 years while having alcohol or other drugs in such person's system; and one of the following conditions exists: (A) The person has been arrested or otherwise taken into custody for any offense involving operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both, or for a violation of K.S.A. 8-1567a, and amendments

thereto, or involving driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system, in violation of a state statute or a city ordinance; or (B) the person has been involved in a vehicle accident or collision resulting in property damage or personal injury other than serious injury; or (2) if the person was operating or attempting to operate a vehicle and such vehicle has been involved in an accident or collision resulting in serious injury or death of any person and the operator could be cited for any traffic offense, as defined in K.S.A. 8-2117, and amendments thereto. The traffic offense violation shall constitute probable cause for purposes of paragraph (2). The test or tests under paragraph (2) shall not be required if a law enforcement officer has reasonable grounds to believe the actions of the operator did not contribute to the accident or collision. The law enforcement officer directing administration of the test or tests may act on personal knowledge or on the basis of the collective information available to law enforcement officers involved in the accident investigation or arrest.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) if the person refuses to submit to and complete any test of breath, blood or urine hereafter requested by a law enforcement officer, the person's driving privileges will be suspended for ~~one year~~ 30 days for the first occurrence~~, two years~~ and one year for the second ~~occurrence, three years for the third occurrence, 10 years for the fourth occurrence and permanently revoked for a fifth~~ or subsequent occurrence;

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

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

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

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

~~occurrence;~~

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

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

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

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

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

person also shall be given the notices required by K.S.A. 8-1567a, and amendments thereto. Any failure to give the notices required by K.S.A. 8-1567a, and amendments thereto, shall not invalidate any action taken as a result of the requirements of this section.

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

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

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

(p) An officer shall have probable cause to believe that the person operated a vehicle

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

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

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

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

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

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

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

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

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

(2) renders a person unconscious;

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

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

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

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

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

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

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

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

(5) on the person's fifth or subsequent occurrence, ~~revoke~~ suspend the person's driving privileges for one year and at the end of the suspension, restrict the person's driving privileges permanently to driving only a motor vehicle equipped with an ignition interlock device.

(b) (1) Except as provided by subsections (b)(2), (c) and (e) and K.S.A. 8-2,142, and

amendments thereto, if a person fails a test or has an alcohol or drug-related conviction in this state, the division shall:

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

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

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

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

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

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

(A) On the person's first occurrence, suspend the person's driving privileges for one

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

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

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

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

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

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

~~(4) Whenever a person's driving privileges have been suspended for one year on the second occurrence of an alcohol or drug-related conviction in this state as provided in subsection (b)(1), after 45 days of such suspension, such person may apply to the division for such person's~~

~~driving privileges to be restricted for the remainder of the one-year period to driving only a motor vehicle equipped with an ignition interlock and only for the purposes of getting to and from work, school, or an alcohol treatment program or to go to and from the ignition interlock provider for maintenance and downloading of data from the device. If such person violates the restrictions, such person's driving privileges shall be suspended for an additional year, in addition to any term of restriction as provided in subsection (b)(1).~~

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

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

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

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

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

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

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

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

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

~~(h) Except as provided further, any person whose license is restricted to operating only a motor vehicle with an ignition interlock device installed may operate an employer's vehicle without an ignition interlock device installed during normal business activities, provided that the~~

~~person does not partly or entirely own or control the employer's vehicle or business. The provisions of this subsection shall not apply to any person whose driving privileges have been restricted for the remainder of the one-year period on the second occurrence of an alcohol or drug-related conviction in this state as provided in subsection (b)(1).~~

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

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

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

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

(a) (1) Whenever a person's driving privileges have been suspended for one year as

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

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

(b) (1) When a person has completed the suspension pursuant to subsection (b)(1)(A) of K.S.A. 8-1014, and amendments thereto, the division shall restrict the person's driving privileges pursuant to subsection (b)(1)(A) of K.S.A. 8-1014, and amendments thereto, to driving only under the circumstances provided by subsections (a)(1), (2), (3) and (4) of K.S.A. 8-292, and amendments thereto. Except as provided in K.S.A. 8-1017, and amendments thereto, if such person is convicted of a violation of the restrictions, such person's driving privileges shall be

suspended for an additional year, in addition to any term of suspension or restriction as provided in subsection (b)(1)(A) of K.S.A. 8-1014, and amendments thereto.

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

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

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

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

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

(g) Any person who has had the person's driving privileges suspended or restricted pursuant to subsection (a), (b) or (c) of K.S.A. 8-1014 prior to the amendments by this act, may apply to the division to have the suspension and restriction penalties modified in conformity with the provisions of subsection (a), (b) or (c) of K.S.A. 8-1014, and amendments thereto. The division shall assess an application fee of $59 for a person to apply to modify the suspension and restriction penalties previously issued. The division shall remit all application fees to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of such remittance, the state treasurer shall deposit the entire amount in the state treasury and shall credit such moneys to the division of vehicles operating fund. The application fee established in this section shall be the only fee collected or moneys in the nature of a fee

collected for such application. Such fee shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee. The division shall modify the suspension and restriction penalties, unless such person's driving privileges have been restricted, suspended, revoked or disqualified pursuant to another action by the division or a court.

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

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

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

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

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

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

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

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

defense against the charge.

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

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

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

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

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

(2) The court may order that the term of imprisonment imposed pursuant to paragraph (1) be served in a state facility in the custody of the secretary of corrections in a facility designated by the secretary for the provision of substance abuse treatment pursuant to the provisions of K.S.A. 21-4704, and amendments thereto. The person shall remain imprisoned at the state facility only while participating in the substance abuse treatment program designated by the secretary and shall be returned to the custody of the sheriff for execution of the balance of the term of imprisonment upon completion of or the person's discharge from the substance abuse treatment program. Custody of the person shall be returned to the sheriff for execution of the

sentence imposed in the event the secretary of corrections determines: (A) That substance abuse treatment resources or the capacity of the facility designated by the secretary for the incarceration and treatment of the person is not available; (B) the person fails to meaningfully participate in the treatment program of the designated facility; (C) the person is disruptive to the security or operation of the designated facility; or (D) the medical or mental health condition of the person renders the person unsuitable for confinement at the designated facility. The determination by the secretary that the person either is not to be admitted into the designated facility or is to be transferred from the designated facility is not subject to review. The sheriff shall be responsible for all transportation expenses to and from the state correctional facility.

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

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

corrections supervision, which such period of community corrections supervision shall not be reduced. During such community corrections supervision, the person shall be required to participate in a multidisciplinary model of services for substance use disorders facilitated by a department of social and rehabilitation services designated care coordination agency to include assessment and, if appropriate, referral to a community based substance use disorder treatment including recovery management and mental health counseling as needed. The multidisciplinary team shall include the designated care coordination agency, the community corrections officer, the social and rehabilitation services department designated treatment provider and the offender. Any violation of the conditions of such community corrections supervision may subject such person to revocation of community corrections supervision pursuant to K.S.A. 75-5217 et seq., and amendments thereto and as otherwise provided by law.

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

(2) The court may order that the term of imprisonment imposed pursuant to paragraph (1) be served in a state facility in the custody of the secretary of corrections in a facility designated by the secretary for the provision of substance abuse treatment pursuant to the

provisions of K.S.A. 21-4704, and amendments thereto. The person shall remain imprisoned at the state facility only while participating in the substance abuse treatment program designated by the secretary and shall be returned to the custody of the sheriff for execution of the balance of the term of imprisonment upon completion of or the person's discharge from the substance abuse treatment program. Custody of the person shall be returned to the sheriff for execution of the sentence imposed in the event the secretary of corrections determines: (A) That substance abuse treatment resources or the capacity of the facility designated by the secretary for the incarceration and treatment of the person is not available; (B) the person fails to meaningfully participate in the treatment program of the designated facility; (C) the person is disruptive to the security or operation of the designated facility; or (D) the medical or mental health condition of the person renders the person unsuitable for confinement at the designated facility. The determination by the secretary that the person either is not to be admitted into the designated facility or is to be transferred from the designated facility is not subject to review. The sheriff shall be responsible for all transportation expenses to and from the state correctional facility.

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

~~the court, the person shall be placed in the custody of the secretary of corrections for a mandatory one-year period of postrelease supervision, which such period of postrelease supervision shall not be reduced. During such postrelease supervision, the person shall be required to participate in an inpatient or outpatient program for alcohol and drug abuse, including, but not limited to, an approved aftercare plan or mental health counseling, as determined by the secretary and satisfy conditions imposed by the Kansas parole board as provided by K.S.A. 22-3717, and amendments thereto. Any violation of the conditions of such postrelease supervision may subject such person to revocation of postrelease supervision pursuant to K.S.A. 75-5217 et seq., and amendments thereto and as otherwise provided by law.~~

(3) At the time of the filing of the judgment form or journal entry as required by K.S.A. 22-3426 or section 280 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, the court shall cause a certified copy to be sent to the officer having the offender in charge. The law enforcement agency maintaining custody and control of a defendant for imprisonment shall cause a certified copy of the judgment form or journal entry to be sent to the director of the community corrections program for the county of conviction when the term of imprisonment expires and upon expiration of the term of imprisonment shall deliver the defendant to a location designated by the director of the community corrections program. After the term of imprisonment imposed by the court, the person shall be placed in the custody of the community correctional services program for a mandatory one-year period of community corrections supervision, which such period of community corrections supervision shall not be reduced. During such community corrections supervision, the person shall be required to participate in a multidisciplinary model of services for substance use disorders facilitated by a

department of social and rehabilitation services designated care coordination agency to include assessment and, if appropriate, referral to a community based substance use disorder treatment including recovery management and mental health counseling as needed. The multidisciplinary team shall include the designated care coordination agency, the community corrections officer, the social and rehabilitation services department designated treatment provider and the offender. Any violation of the conditions of such community corrections supervision may subject such person to revocation of community corrections supervision pursuant to K.S.A. 75-5217 et seq., and amendments thereto and as otherwise provided by law.

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

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

(j) In lieu of payment of a fine imposed pursuant to this section, the court may order that the person perform community service specified by the court. The person shall receive a

credit on the fine imposed in an amount equal to $5 for each full hour spent by the person in the specified community service. The community service ordered by the court shall be required to be performed not later than one year after the fine is imposed or by an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance of the fine shall become due on that date.

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

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

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

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

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

(4) Any personal property in a vehicle impounded or immobilized pursuant to this

subsection may be retrieved prior to or during the period of such impoundment or immobilization.

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

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

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

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

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

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

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

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

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

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

(3) any convictions occurring during a person's lifetime shall be taken into account

when determining the sentence to be imposed for a first, second, third, fourth or subsequent offender;

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

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

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

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

(B) On and after July 1, 2007, and retroactive for ordinance violations committed on or after July 1, 2006, an ordinance may grant to a municipal court jurisdiction over a violation of such ordinance which is concurrent with the jurisdiction of the district court over a violation of this section, notwithstanding that the elements of such ordinance violation are the same as the

elements of a violation of this section that would constitute, and be punished as, a felony.

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

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

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

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

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

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

(5) As used in this subsection, the convicted person's motor vehicle or vehicles shall include any vehicle leased by such person. If the lease on the convicted person's motor vehicle

subject to impoundment or immobilization expires in less than one year from the date of the impoundment or immobilization, the time of impoundment or immobilization of such vehicle shall be the amount of time remaining on the lease.

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

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

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

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

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

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

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

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

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

(w) The amount of the increase in fines as specified in this section shall be remitted by the clerk of the district court to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of remittance of the increase provided in this act, the state treasurer shall deposit the entire amount in the state treasury and the state treasurer shall credit 50% to the community alcoholism and intoxication programs fund and 50% to the

department of corrections alcohol and drug abuse treatment fund, which is hereby created in the state treasury.

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

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

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

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

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

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

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

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

(b) The director shall develop procedures to permit and encourage the transfer of

criminal history record information among and between courts and affected agencies in the executive branch, and especially between courts and the central repository.

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

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

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

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

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

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

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

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

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

(e) Rules and regulations adopted by the director may not be inconsistent with the

provisions of this act.

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

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

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

(1) Issuance of an arrest warrant;

(2) an arrest;

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

(4) the filing of a charge;

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

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

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

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

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

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

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

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

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

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

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

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

(d) Reporting methods may include:

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

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

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

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

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

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

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

(A) Whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing

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

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

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

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

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

(F) placed in community correctional services programs as a condition of supervision

following the successful completion of a conservation camp program; ~~or~~

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

(H) who has been placed in community correctional services programs for supervision byt he court pursuant to K.S.A. 8-1567, and amendments thereto.

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

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

(5) The court may require an offender for whom a violation of conditions of release or assignment or a nonprison sanction has been established, as provided in K.S.A. 22-3716, and amendments thereto, to serve any time for the sentence imposed or which might originally have been imposed in a state facility in the custody of the secretary of corrections without a prior assignment to a community correctional services program if the court finds and sets forth with

particularity the reasons for finding that the safety of the members of the public will be jeopardized or that the welfare of the inmate will not be served by such assignment to a community correctional services program.

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

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

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

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

(A) Efficiencies in the delivery of field supervision services;

(B) effectiveness and enhancement of existing interventions;

(C) identification of new interventions; and

(D) statewide performance indicators.

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

(A) Goals and measurable objectives;

(B) projected costs;

(C) the impact on public safety; and

(D) the evaluation process.

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

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

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

Landon State Office Building
900 SW Jackson, 4th Floor
Topeka, KS 66612

Kansas

phone: (785) 296-3317
fax: (785) 296-0014
kdocpub@doc.ks.gov
www.doc.ks.gov

Ray Roberts, Secretary of Corrections

Department of Corrections

Sam Brownback, Governor

House Corrections and Juvenile Justice
Committee
2011 Session
Date 3-15-11
Attachment # 2-1

Testimony on HB 2277
to
The House Committee on Corrections and Juvenile Justice

By Ray Roberts
Secretary
Kansas Department of Corrections
February 18, 2011

The Department of Corrections supports HB 2277. HB 2277 addresses an omission contained in K.S.A. 8-1567 scheduled to become effective July 1, 2011 in regard to the release supervision to be imposed after the DUI offender serves his or her sentence in jail for a 4th or subsequent offense. The omission was that the length of that supervision period was not set out. HB 2277 remedies that error by specifying that the length of the release supervision is a mandatory one year.

Current law and the DUI law scheduled to become effective July 1, both provide for imprisonment in jail for repeat DUI offenders. The offender after serving a minimum period of time in jail, is eligible for work release from the jail so that the offender could retain his or her current employment and return to the jail when not working. However, current law provides that once the offender has served his or her term of imprisonment in jail, the release supervision over the offender is conducted by the department's parole officers. Violations of the release supervision result in the incarceration of the offender in a state correctional facility for a minimum of 6 months with the possibility of up to 3 months of good time.

The department believes that offenders whose incarceration is in a local jail, a more efficient and effective method of achieving a measured response to public safety would be for those offenders to be supervised upon their release from the jail by court services or community corrections rather than state parole officers. The rationale for having release supervision for locally incarcerated offenders conducted by court services or community corrections entities is:

- Public safety is best achieved by addressing both the imposition of adverse consequences to suppress criminal behavior as well as the retention or reinforcement of the offender's positive social behavior.

HB 2277, as well as current law, recognizes the benefit of seeking to impose a penalty for criminal behavior while attempting to retain the positive social attributes of the offender relative to aspects of his or her incarceration. This is achieved by both HB 2277 and current law through a mandatory minimum period of local incarceration before the offender is eligible for work release. The length of the mandatory period of consecutive local imprisonment before the offender is eligible for work release is sufficiently long to serve as a penalty but is short enough so that the offender's current housing and

employment is not automatically lost. However, the measured response attributable to local incarceration is lost under current law which provides for local imprisonment but state (KDOC) release supervision.

The use of KDOC postrelease supervision for offenders who were incarcerated locally with work release opportunities would be inconsistent with the goal of retaining any positive social behavior of the offender and not serve the public safety.

Since these offenders would have the meaningful opportunity to remain employed during imprisonment, release supervision by KDOC would not be the most effective or efficient method of release supervision.

- Local courts can hold revocation hearings more quickly then the Kansas Parole Board. Additionally, the Department of Corrections must provide the offender with a preliminary revocation hearing pending a final hearing before the KPB.
- Incarceration for supervision violations would be locally rather than at a state correctional facility thus allowing the offender to engage in work release with his or her current employer.
- Current law allows for jail incarceration for up to sixty days per probation violation. In contrast, incarceration for postrelease supervision violations is for 6 months with up to 3 months of good time.
- Inappropriate incarceration within state correctional facilities may increase an inmate's risk to reoffend.

HB 2277 provides for the release supervision of those offender's who were incarcerated in local jails to be conducted by court services or community corrections as determined by the court based upon the offender's risks and needs. The department urges favorable consideration of HB 2277.

MADD® | CAMPAIGN TO ELIMINATE DRUNK DRIVING

Please Support Amending HB 2277 to Require Ignition Interlocks for All Convicted Drunk Drivers

- **Revoking drivers' licenses is not enough.** Fifty to 75 percent of drunk drivers whose licenses are suspended continue to drive. Interlocks allow offenders to continue their jobs and contributing to society.
- **Interlocks save lives, reduce DUI recidivism.** Ignition interlocks reduce repeat drunk driving on average by 67 percent. Since New Mexico's all offender interlock law was implemented in 2005, drunk driving fatalities are down by nearly 36 percent. In Arizona, drunk driving deaths decreased by 46 percent.
- **Thirteen States require all first time convicted DUI offenders to use interlocks**. Alaska, Arizona, Arkansas, Colorado, Hawaii Illinois, Louisiana, Nebraska, New Mexico, New York, Oregon, Utah and Washington.
- **Interlocks save taxpayers money.** The DUI offender pays for the installation and monitoring of the interlock. A study of New Mexico's interlock law found the cost of an interlock was $2.25 a day for the user but for every dollar invested in an interlock for a first time offender the public saves three dollars.
- **Drunk driving offenders will repeat.** About one-third of all drivers arrested for drunk driving each year are repeat drunk driving offenders.
- **Nature of first time offender.** A first time offender on average has driven drunk 87 times prior to being arrested. Studies show that first offender patterns of recidivism closely parallel those of repeat offenders.
- **How many drinks does it take to get to a .08 BAC?** The National Institute on Alcohol Abuse and Alcoholism notes that to get to a .08 BAC, men must typically consume 5 or more drinks, and women must typically consume 4 or more drinks, in about 2 hours.

Kansas Drunk Driving Facts

- ✓ In 2009, 154 people were killed in drunk driving crashes (NHTSA)
- ✓ Drunk driving crashes accounted for 40 percent of all total traffic fatalities in 2009 (NHTSA)
- ✓ In 2008, there were 3,292 alcohol related traffic crashes (KS DOT)
- ✓ In 2008, alcohol impaired crashes cost the state and taxpayers over $649 million (KS DOT)

Please Contact:
Frank Harris
MADD
frank.harris@madd.org
800-438-6233

For more information, please visit: www.madd.org/interlock

MADD® | CAMPAIGN TO ELIMINATE DRUNK DRIVING

Frank Harris
State Legislative Affairs Manager
Mothers Against Drunk Driving
Before the House Committee on Corrections and Juvenile Justice
Testimony in Support of an Amendment to HB 2277 to Require
Ignition Interlocks for All Convicted Drunk Drivers
15 March 2011

Thank you Chairwoman Colloton and members of the committee for allowing me the opportunity to submit written testimony in support of amending House Bill 2277 to require ignition interlocks for all convicted drunk drivers. My name is Frank Harris, State Legislative Affairs Manager, with Mothers Against Drunk Driving.

MADD's support of ignition interlocks for all convicted drunk drivers is simple—it is about saving lives. Ignition interlocks for all convicted DUI offenders is more effective than license suspension alone as the technology teaches the offender to drive sober. Unlike license suspension, interlocks allow convicted drunk drivers mobility to continue working and contributing to society and while doing so driving sober. MADD urges this Committee to amend House Bill 2277 with interlocks for all convicted drunk drivers as doing so will better protect the public, save lives through proven technology that stops repeat drunk driving offenses.

Countless studies show that ignition interlock devices for all convicted DUI offenders is the most highly effective tool available to stop drunk driving. The Centers for Disease Control (CDC) endorsed interlocks for all convicted offenders last month after reviewing various studies on ignition interlocks. The CDC found that these devices reduce repeat drunk driving offenses on average of 67 percent.

As you probably know, an ignition interlock is a breath test device linked to a vehicle's ignition system. When a convicted drunk driving offender wishes to start his or her vehicle, he or she must first blow into the device. The vehicle will not start unless the driver's BAC is below a pre-set standard. A data recorder logs the driver's BAC for each attempt to start the vehicle. Interlocks are calibrated to have "rolling retests," which require a driver to provide breath tests at

regular intervals, preventing drivers from asking a sober friend to start the car, drink while driving, or leaving the car idling in a bar parking lot.

Drunk driving related crashes and deaths remain a problem in Kansas. While nationally drunk driving deaths have decreased, Kansas has seen a significant increase in drunk driving fatalities from 2008 to 2009. Clearly, a more proactive approach must be taken to stop drunk driving in Kansas. With requiring to ignition interlocks, this Committee and the Legislature has the opportunity to reverse that trend.

Ignition interlocks for all convicted drunk drivers will save lives. In New Mexico, drunk driving re-arrests are down statewide by 37 percent, alcohol involved crashes down by 31 percent, alcohol related injuries down by 41 percent and alcohol related fatalities down by nearly 36 percent. In Arizona, drunk driving fatalities have dropped by 46 percent since their interlock law.

In November 2006, MADD launched its national Campaign to Eliminate Drunk Driving, which includes support for all-offender ignition interlock laws. Prior to the Campaign launching in 2006, only one state, New Mexico, had a law requiring ignition interlocks for all first time convicted drunk drivers. Now, thirteen states and a pilot program in California have laws requiring or highly incentivizing interlock usage by all first time convicted DUI offenders.[i]

Drunk driving is a violent crime that is 100 percent preventable. Currently, 84 million Americans are protected from repeat drunk drivers thanks to states which have begun to rely on this technology. Unfortunately, Kansans don't fall into this category.

By requiring interlocks for all convicted drunk drivers in HB 2277, the Committee can send a clear message to drunk drivers: if they violate the public's trust by driving drunk, they will receive an ignition interlock on their vehicle.

Such an amendment is also an economically sound public safety measure. Every life saved or injury prevented by the device translates to millions of taxpayer dollars no longer spent subsidizing drunk drivers. A study of New Mexico's interlock program found the cost of an

interlock was $2.25 a day for the offender, but for every dollar invested on first offender interlock laws the public saves three dollars.[ii]

The interlock acts as a virtual probation officer riding in the front seat. It should be noted that the convicted drunk driver pays for the device so that the taxpayer is not further burdened with subsidizing drunk drivers.

Some may argue that requiring ignition interlocks for first time offenders is too harsh. This is not the case. We know that the average first time offender has driven drunk before—the most conservative study showed drunk drivers getting on the road an average of 87 times before the first arrest.[iii]

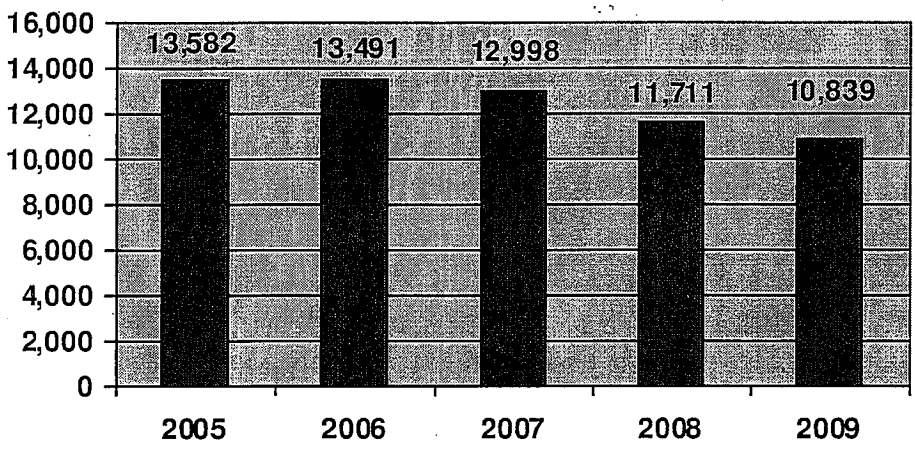
We know it is not enough to simply revoke the license of a convicted drunk driver. Studies show that 50 to 75 percent of convicted drunk drivers continue to drive even while their license is suspended. This is the reason that interlocks are so critical to protecting the public. The offender is going to drive anyway, so lets make sure that we allow them to do so in a manner that protects the public. Requiring interlocks for all convicted drunk drivers will protect the public, better rehabilitate the offender to teach them to drive sober, and help save lives.

You will also hear talk about punishing those who are one sip over the legal limit. The illegal limit in Kansas is a .08 blood alcohol concentration. The National Institute on Alcohol Abuse and Alcoholism notes that to get to a .08 BAC, men must typically consume 5 or more drinks, and women must typically consume 4 or more drinks, in about 2 hours.[iv] This dispels the myth that someone can be arrested for DUI after a beer at a ball game or a glass of champagne at a wedding.

In conclusion, amending House Bill 2277 to require interlocks for all convicted drunk drivers will change the status quo in Kansas and help to reduce drunk driving. For this reason, Mothers Against Drunk Driving urges this committee to support this legislation. By doing so, you will help end the taxpayer subsidy of the 100 percent preventable violent crime of drunk driving.

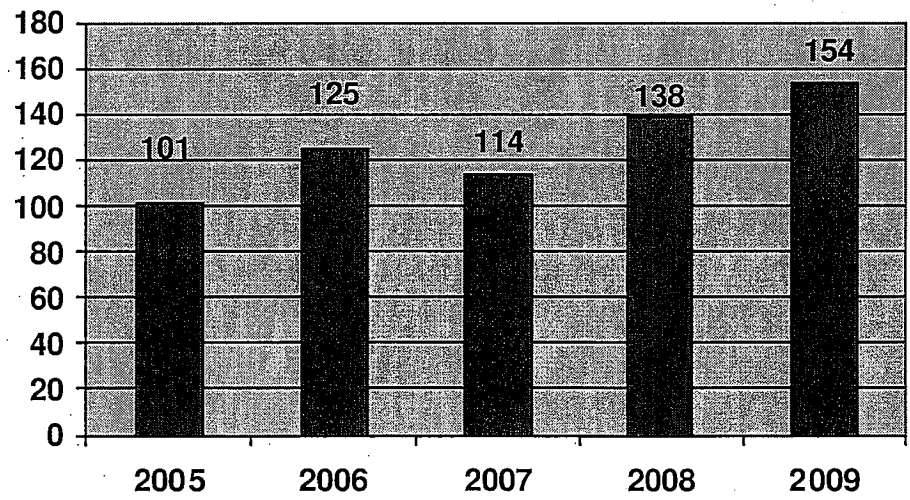
Enclosed is more information on ignition interlocks. Thank you.

Drunk Driving Fatalities in the United States



In the United States, drunk driving fatalities decreased by 20 percent since 2005

Drunk Driving Fatalities in Kansas



In Kansas, drunk driving fatalities increased from 101 in 2005 to 154 in 2009

Source: National Highway Traffic Safety Administration (www.nhtsa.gov)

3-5

Alcohol Ignition Interlock Fact Sheet

Alcohol ignition interlocks save lives

- The breath alcohol ignition interlock prevents a vehicle from being driven by a drunk driver. If used correctly, the device can substantially reduce repeat offenses. [i]
- If properly administered, alcohol ignition interlocks can save thousands of lives and give offenders the ability to drive without endangering the public. [ii]
- The Centers for Disease Control (CDC) found that states requiring ignition interlocks for everyone convicted of DWI can reduce alcohol-impaired driving crashes and save lives.[iii]

Studies clearly show alcohol ignition interlocks are effective

- Multiple studies on interlocks for both first-time and repeat offenders show that interlocks reduce repeat drunk driving offenses by an average of 67 percent. [iv]
- Most of the failures of interlocks are legal system failures, where mandatory interlock laws are not enforced and offenders who are sentenced to receive interlocks either do not have them installed or receive little oversight. MADD's proposed model interlock law will alleviate many of these issues. [v]

The public supports the implementation of alcohol ignition interlocks

- 88 percent of the public supports the mandatory installation of alcohol ignition interlocks for all convicted drunk drivers. [vi]

First offenders are likely to become repeat offenders

- First-time arrestees have driven drunk an average of 87 times before they are arrested. [vii]
- First-time arrestees are likely to have committed the crime before and will commit the crime again unless significant intervention is taken.

Current sanctions alone are not effective in stopping repeat offenses

- Currently, the most common sanctions for first-time offenders in the United States are fines, license suspensions and assessment and treatment for problems with alcohol. [viii]
- Studies estimate that 50 to 75 percent of drunk drivers whose licenses are suspended continue to drive anyway. A strong alcohol ignition interlock program will prevent the suspended offender from driving.[ix,x]

How interlock technology works

- An alcohol ignition interlock is a breath test device linked to a vehicle's ignition system. When a convicted drunk driver wishes to start his or her vehicle, he or she must first blow into the device. The vehicle will not start unless the driver's Blood Alcohol Content (BAC) is below a preset level. [xi]

Expanding interlocks for all convicted drunk drivers

- MADD is undertaking an aggressive state legislative strategy to push for new state laws to require interlock use by all drunk driving offenders, including their first conviction.
- MADD's model state legislation includes a compliance revision. An interlock should remain installed in a vehicle until an offender can adequately demonstrate sober driving

through an interlock or electronic monitoring. If an offender fails a test, the offender's interlock installation should be extended to match the initial interlock period (e.g., 150 days for a first offense).

- As of October 2010, the total number of currently installed interlocks in the U.S. is approximately 212,000. This estimate is based on data supplied by 14 ignition interlock distributors and 42 independent state estimates. That number represents an increase of 18% from the estimate of 180,000 in 2009.
- There are approximately 1,400,000 drunk driving arrests each year in the U.S. Not everyone arrested for DUI is convicted for drunk driving. There are most likely between 1 to 1.2 million DUI convictions per year.
- As of October 2010, there are approximately 700 currently installed interlocks per million residents in the U.S. (212,000 interlocks divided by 306 million residents).

###

[i] MADD, *Stopping Drunk Driving Before It Starts: A Technological Solution.*
[ii] MADD, *Stopping Drunk Driving Before It Starts: A Technological Solution.*
[iii] Centers for Disease Control. Injury Prevention and Control.
http://www.cdc.gov/Motorvehiclesafety/alcoholbrief/index.html
[iv] Guide to Community Preventive Services. Reducing alcohol-impaired driving: ignition interlocks.
www.thecommunityguide.org/mvoi/AID/ignitioninterlocks.html
[v] MADD, *Stopping Drunk Driving Before It Starts: A Technological Solution.*
[vi] Center for Excellence in Rural Safety at the University of Minnesota. Survey March 23-May 6, 2010, of 1,205 registered voters who drive at least once a week. Margin of error +/-3 percentage points.
[vii] Zador, Paul, Sheila Drawchuk, and B. Moore. (1997) "Drinking and Driving Trips, Stops by Police, and Arrests: Analysis of the 1995 National Survey of Drinking and Driving Attitudes and Behavior," Rockville, MD: Estat, Inc, 1997.
[viii] MADD, *Stopping Drunk Driving Before It Starts: A Technological Solution.*
[ix] Nichols, James, and H. Lawrence Ross. "The Effectiveness of Legal Sanctions in Dealing with Drinking Drivers." *Alcohol, Drugs and Driving* 6(2) (1990): 33-55.
[x] Peck, Raymond, R. Jean Wilson, and Lawrence Sutton. "Driver License Strategies for Controlling the Persistent DUI Offender," *Strategies for Dealing with the Persistent Drinking Driver. Transportation Research Board, Transportation*
Research Circular No. 437. Washington, D.C.: National Research Council, 1995.
[xi] MADD, *International Technology Symposium: A Nation without Drunk Driving Summary Report.* November, 2006: pg 4.

Status of State Ignition Interlock Laws

Mandatory .08 Conviction	Mandatory with a BAC of at least .15.	Mandatory with 2nd Conviction	Discretionary	No Interlock Law at All
Alaska (1/09)	Delaware (7/09)	Georgia****	All other states	Alabama
Arizona (9/07)	Florida (10/08)	Massachusetts		South Dakota
Arkansas (4/09)	Kansas (7/07)	Missouri		
California Pilot Program* (7/10)	New Jersey (1/10)	Montana (5/09)		
Colorado** (1/09)	North Carolina (12/07)	Oklahoma (11/09)		
Hawaii (1/11)	Tennessee (1/11)	Pennsylvania		
Illinois** (1/09)	Texas**** (9/05)	South Carolina (1/09)		
Louisiana (7/07)	Virginia (10/04)			
Nebraska (1/09)	West Virginia (7/08)			
New Mexico (6/05)	Wisconsin (7/10)			
New York (8/10)	Wyoming (07/09)			
Oregon*** (1/08)				
Utah (7/09)				
Washington (1/09)				

(Months listed note laws effective date)

* California's pilot program covers the counties of Los Angeles, Alameda, Sacramento, and Tulare. These counties combined have a population of over 14 million.

** Interlocks are highly incentivized in that, if the offender chooses not to use the device, he or she has a year long license suspension and any violation is a felony.

*** Mandatory upon license reinstatement

**** Mandatory as a condition of probation

[i] New Mexico, Arizona, Louisiana, Illinois, Washington, Nebraska, Alaska, Colorado, Arkansas, Utah, Hawaii, New York, Oregon

[ii] Roth, Richard, Voas, Robert and Marques, Paul (2007) 'Interlocks for First Offenders: Effective?', Traffic Injury Prevention; 8:4, 346 – 352 URL: http://dx.doi.org/10.1080/15389580701598559

[iii] Zador, Paul, Sheila Krawchuk, and B. Moore (1997) "Drinking and Driving Trips, Stops by Police, and Arrests: Analysis of the 1995 National Survey of Drinking and Driving Attitudes and Behavior," Rockville, MD: Estat, Inc. 1997.

[iv] A standard drink is defined as 12 ounces of beer, 5 ounces of wine, or 1.5 ounces of 72-proof distilled spirits, all of which contain the same amount of alcohol – about .54 ounces. National Highway Traffic Safety Administration. "Alcohol Screening and Brief Intervention in the Medical Setting." DOT HS 809 467. Washington, DC: National Highway Traffic Safety Administration, July 2002.

KANSAS IGNITION INTERLOCK ASSN.

Date: March 15th, 2011

To: Chairwoman Colloton and Members of House Corrections and Juv. Justice Com.

From: Matt Strausz, President Kansas Ignition Interlock Association

RE: Support of HB2277

Thank you, Chairman and members of the committee for the opportunity to provide written testimony in support of HB2277 and the inclusion of the ignition interlock language that the House has overwhelmingly passed the last three years. The proposed language will strengthen Kansas DUI laws.

As an association for the Ignition Interlock industry we support the language purposed for inclusion in HB2277, as it pertains to the ignition interlock requirements. As data from other states has shown, requiring ignition interlock on all DUI offenses saves lives. Ignition Interlock for all offenses has been credited with reducing alcohol related fatalities up to 37% in other states. If enacted, we feel this language will show similar results in Kansas.

Members of our association have locations statewide. There is currently no area of the state where service is not available within a reasonable distance. There are currently over 100 service centers throughout the state to install and service ignition interlock devices. Service is currently available to all residents of the state.

Ignition Interlock technology has evolved incredibly over the past few years. Interlock devices are currently able to accurate accounting of its use, provide picture verification of who is taking the test, communicate results wirelessly relating to violations, set curfew limits and prevent the vehicle from starting for any period after an alcohol related test. Most Ignition Interlock devices are alcohol specific, fuel cell devices. This technology is the same technology, and accuracy, being used in breath testing equipment by our law enforcement. This allows for evidentiary quality testing, with photo identification to back it up.

Ignition Interlock devices can be installed on any year, make and model of vehicle. Gas, Hybrid and Electric vehicles can all be installed on safely. There is no vehicle that we have run into as an industry that we have not been able to properly install upon. While cost of the Ignition Interlock devices is quite low, at just over $2.00/day, this bill also addresses the indigent funding. The ignition interlock indigent fund has been in place for many years, and we feel that increasing the knowledge of the program as prescribed will benefit all in need.

Thank you for the opportunity to present this testimony to your committee. We ask that you include the purposed language in HB2277 and pass the bill out favorably. I will be happy to stand for any questions, at the appropriate time.

Matt Strausz
President Kansas Ignition Interlock Association

House Corrections and Juvenile Justice
Committee
2011 Session
Date 3-15-11
Attachment # 4

STUART J. LITTLE, Ph.D.
Little Government Relations, LLC

March 15, 2011

House Corrections and Juvenile Justice Committee
Testimony in Opposition to House Bill 2277

Chairwoman Colloton and Members of the Committee,

I am here today on behalf of the Kansas Community Corrections Association (KCCA) to offer some comments regarding House Bill 2277.

Overview

Community corrections agencies are thirty-one statutorily mandated programs in each part of the state, governed by county commissions and community advisory boards for both adult and juvenile offenders. They provide cost-effective community-based supervision instead of prison for adult and juvenile offenders with lower severity level offenses (although the offenders are increasingly more severe and high-risk). The courts and sentencing guidelines determine whether an adult offender is assigned to regular probation (through the courts) or intensive supervise probation with graduated sanctions in a community corrections program. Juveniles are also sent to community corrections by district courts through the juvenile offender placement matrix and after they leave the juvenile correctional facilities.

Kansas Community Corrections Association is the voluntary association comprised of twenty-eight community corrections agencies and seven affiliated groups. I am here today representing these thirty-five member agencies.

House Bill 2277

I am able to provide some brief comments urging the House Corrections and Juvenile Justice Committee to pause in your discussion of HB 2277. The bill has been explained and we believe there is some need to discuss the specific supervision of 3rd time DUI offenders and how that supervision will be carried out.

On Wednesday, February 16, the Kansas Department of Corrections informed the Community Corrections Directors that there are currently 740 active cases in parole for 4th time DUI and 290 pending release from prison. The proposed change in HB 2277 will shift these offenders to court services and community corrections. The current number of offenders under supervision by Community Corrections is 7,910. The addition of these offenders will result in at least a 10 percent increase in offenders under supervision beginning July 1.

800 SW JACKSON, SUITE 914 • TOPEKA, KANSAS 66612
OFFICE 785.235.8187 • MOBILE 785.845.7265 • FAX 785.435.3390

The Governor's recommended budget for adult community corrections supervision in FY 2012 includes a $2.0 million budget cut. The total grant will be reduced from $16.4 million to $14.4 million. The reduction has been approved by the Senate Ways and Means Subcommittee and a cut of $1.5 million is the position of the House Appropriations Budget Committee.

It appears the Legislature is moving in opposing directions: A 10 percent funding cut combined with a 10 percent increase in the offender population. HB 2277, combined with anticipated budget cuts, will put the integrity of the system and the public safety at risk. We have the utmost empathy as the KDOC attempts to address its budget shortfall but that problem cannot in good conscience or as a matter of sound public policy simply be pushed down to local government.

I would suggest HB 2277 be referred to the interim Corrections and Juvenile Justice Oversight Committee for review.

I would be happy to stand for questions at the appropriate time.

HOUSE BILL No. 2217

By Representative Sloan

2-8

AN ACT concerning authorized interception of wire, oral or electronic communications; issuance of order; amending K.S.A. 2010 Supp. 22-2502 and 22-2516 and repealing the existing sections.

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

Section 1. K.S.A. 2010 Supp. 22-2502 is hereby amended to read as follows: 22-2502. (a) A search warrant shall be issued only upon the oral or written statement, including those conveyed or received by electronic communication, of any person under oath or affirmation which states facts sufficient to show probable cause that a crime has been or is being committed and which particularly describes a person, place or means of conveyance to be searched and things to be seized. Any statement which is made orally shall be either taken down by a certified shorthand reporter, sworn to under oath and made part of the application for a search warrant, or recorded before the magistrate from whom the search warrant is requested and sworn to under oath. Any statement orally made shall be reduced to writing as soon thereafter as possible. If the magistrate is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, the magistrate may issue a search warrant for the seizure of the following:

(1) Any things which have been used in the commission of a crime, or any contraband or any property which constitutes or may be considered a part of the evidence, fruits or instrumentalities of a crime under the laws of this state, any other state or of the United States. The term "fruits" as used in this act shall be interpreted to include any property into which the thing or things unlawfully taken or possessed may have been converted.

(2) Any person who has been kidnapped in violation of the laws of this state or who has been kidnapped in another jurisdiction and is now concealed within this state.

(3) Any human fetus or human corpse.

(4) Any person for whom a valid felony arrest warrant has been issued in this state or in another jurisdiction.

(5) (A) Any information concerning the user of an electronic communication service; any information concerning the location of electronic communications systems, including, but not limited to, towers

extends jurisdiction as much as possible

House Corrections and Juvenile Justice
Committee
2011 Session
Date 3-15-11
Attachment # 6-1

...mitting cellular signals involved in any wire communication; and any other information made through an electronic communications system.

(B) The jurisdiction granted in this paragraph shall extend to information held by entities primarily located outside the state of Kansas if the jurisdiction in which the entity is primarily located recognizes the authority of the magistrate to issue the search warrant.

registered to do business in the state of Kansas, submitting to the jurisdiction thereof, and entities

clean up?

(b) Before ruling on a request for a search warrant, the magistrate may require the affiant to appear personally and may examine under oath the affiant and any witnesses that the affiant may produce. Such proceeding shall be taken down by a certified shorthand reporter or recording equipment and made part of the application for a search warrant.

(c) Affidavits or sworn testimony in support of the probable cause requirement of this section shall not be made available for examination without a written order of the court, except that such affidavits or testimony when requested shall be made available to the defendant or the defendant's counsel for such disposition as either may desire.

(d) As used in this section,: *(1)* "Electronic communication" means the use of electronic equipment to send or transfer a copy of an original document.; *and*

(2) "electronic communication service" and "electronic communication system" have the meaning as defined in K.S.A. 22-2514, and amendments thereto.

(e) Nothing in this section shall be construed as requiring a search warrant for cellular location information in an emergency situation pursuant to K.S.A. 22-4615, and amendments thereto.

GH (also w/o search warrant

Sec. 2. K.S.A. 2010 Supp. 22-2516 is hereby amended to read as follows: 22-2516. (1) Each application for an order authorizing the interception of a wire, oral or electronic communication shall be made in writing, upon oath or affirmation, to a judge of competent jurisdiction, and shall state the applicant's authority to make such application. Each application shall include the following information:

(a) The identity of the prosecuting attorney making the application, and the identity of the investigative or law enforcement officer requesting such application to be made;

(b) A full and complete statement of the facts and circumstances relied upon by the applicant to justify such applicant's belief that an order should be issued, including (i) details as to the particular offense that has been, is being or is about to be committed, (ii) except as provided in subsection (10), a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted, (iii) a particular description of the type of communications sought to be intercepted, and (iv) the identity of the person, if known, committing the offense and whose communications are to be intercepted;

(c) A full and complete statement as to whether or not other

6-2

respect to the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the government, shall decide such a motion expeditiously.

~~(c) [(12)]~~*(12)* The remedies and sanctions described in this chapter with respect to the interception of electronic communications are the only judicial remedies and sanctions for nonconstitutional violations of this act involving such communications.

(13) Nothing in this section shall be construed as requiring a search warrant for cellular location information in an emergency situation pursuant to K.S.A. 22-4615, and amendments thereto.

Sec. 3. K.S.A. 2010 Supp. 22-2502 and 22-2516 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

6-3