

Approved: August 25, 2011
(Date)

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The Chairman called the meeting to order at 9:40 A.M. on March 16, 2011, in Room 548-S of the Capitol.

All members were present, except Senator Donovan, who was excused

Committee staff present:

Lauren Douglass, Kansas Legislative Research Department
Robert Allison-Gallimore, Kansas Legislative Research Department
Jason Thompson, Office of Revisor of Statutes
Tamera Lawrence, Office of Revisor of Statutes
Theresa Kiernan, Committee Assistant

Others attending:

See attached list.

Committee Action:

The Chairman called the committee's attention to **HB 2071 -- Inheritance rights; automatically revoking ex-spouses inheritance rights upon divorce** and **HB 2371 -- Amending the provisions of community corrections grants and continuing such programs in certain counties.**

Jason Thompson, Staff Revisor, reviewed the bills.

The Chairman explained that the House Committee of the Whole had approved **HB 2371** on the previous day. He added that he would like to advance the policy contained in the bill to the full Senate as quickly as possible.

Senator King moved, Senator Lynn seconded, that **HB 2071** be amended as follows: Delete the current provisions of **HB 2071** and insert the provisions of **HB 2371** in lieu thereof. The motion was adopted.

Senator Kelly moved, Senator Schodorf seconded, that **HB 2071** be passed as amended. The motion was adopted.

The Chairman called the committee's attention to **SB 7 -- Driving under the influence.**

Senator King moved, Senator Kelly seconded, that **SB 7** be amended by introduction of a Substitute Bill as proposed and distributed by the Chairman on March 15, 2011 [See minutes of March 15, 2011, Attachment 1.]. The motion was adopted.

Senator Kelly moved, Senator Vratil seconded, to amend the proposed Substitute Bill by amending K.S.A. 8-1008 as suggested by the Kansas Chapter of the National Assn. of Social Workers (Attachment 1).

Senator Kelly explained that her amendment would add a definition of "licensed provider" to K.S.A. 8-1008. The amendment concerns the qualifications of persons who could provide evaluation services.

Senator Kelly's motion was adopted.

Senator Vratil moved, Senator Kelly seconded, to amend the proposed Substitute Bill by changing the look back period so that it applies only to convictions or diversions occurring on or after July 1, 2001 (Attachment 2). The motion was adopted.

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:40 A.M. on March 16, 2011, in Room 548-S of the Capitol.

Senator King moved, Senator Lynn seconded, to amend the proposed Substitute Bill, as follows: Treat a test refusal as a prior conviction for the purposes of determining the number of DUI offenses and imposing sentences for such offenses; lower the classification in the grid block for fourth and subsequent offenses and make this change wherever appropriate throughout the bill (Attachment 3).

Senator King explained his amendment would reduce the incentive to refuse to submit to BAC test, but it does not criminalize a test refusal. He noted that the balloon does not show every page on which the second part of his amendment needs to be made.

Senator Bruce asked, "Wouldn't there have to be proof of a test refusal? Would the complaint have to include a notation for a test refusal?"

Senator King responded, "It would not require proof that there actually was a test refusal. Proof that there was an administrative determination of a test refusal is sufficient."

Senator King noted that his amendment reduces the fiscal impact by 20%.

Senator King's motion was adopted.

Senator Kelly moved, Senator Vratil seconded, to amend the proposed Substitute Bill by amending K.S.A. 8-1567 so that during the look-back period, a "conviction" would not include a conviction, diversion or test refusal committed when the offender was less than 18 years of age (Attachment 4). The motion was adopted.

Senator Haley moved, Senator Kelly seconded, to amend the proposed Substitute Bill by amending K.S.A. 8-1015 so that in the case of the first time offender, use of the ignition interlock would not be a mandatory restriction (Attachment 5). The motion was adopted.

Senator Owens moved, Senator Kelly seconded, to amend the proposed Substitute Bill by deleting K.S.A. 41-501 (the gallonage tax) and amending K.S.A. 79-4108 to increase the rate of the tax from 8% to 9%; provide that \$3 million of the revenue derived from the increase would be expended for the implementation of the central repository and the balance of revenue from the increase would be deposited in the state general fund; and the increase would expire on June 30, 2014 (Attachment 6). The motion was adopted.

Senator Schodorf moved, Senator Kelly seconded, that the proposed Substitute Bill, as amended by the committee, be introduced and the bill be passed. The motion was adopted.

Senators Lynn and Pilcher-Cook voted no on the motion and asked that their votes be so recorded.

Meeting adjourned at 10:29 A.M. The next meeting is scheduled for March 17, 2011.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: WED march 16, 2011

NAME	REPRESENTING
Megan Pinegar	KSAG
John Petersen	Capitol Strategies
Stuart Little	Little Government Relations
MIKE Taylor	UNIFIED GOVERNMENT
Pete Bodyk	KDOT
Dustin Bradley	KDOT - OCC
Deb Stidham	SRS
Tim Madden	KDOC
Heleen Realgo	Court
Chris Melchior	QJA
Kevin Berone	KIJA
Joe Mclinn	KS BAR ASSN
Sarah Fertig	KSC
Jennifer Roth	KACDL
Leslie Moore	KBI
T.D. Cahill	Senator Pyle
SEAN MILLER	CAPITOL STRATEGIES
Berend Koops	Hein Law Firm

Proposed version of KSA 8-1008 from Kansas Chapter, National Association of Social Workers

K.S.A. 8-1008 is hereby amended to read as follows: 8-1008. (a) As used in this section, "licensed provider" means a professional licensed by the behavioral sciences regulatory board to diagnose and treat mental disorders at the independent level, or a professional licensed by the behavioral sciences regulatory board under the supervision of a professional licensed to diagnose and treat mental disorders at the independent level, who can demonstrate an expertise in the field of addictions through addictions licensure, professional credential or continuing education.

~~(a) (b) Community-based alcohol and drug safety action programs certified in accordance with subsection (b)~~ A licensed provider shall provide:

(1) Presentence Alcohol and drug evaluations, prior to sentencing, of any person who is convicted of a violation of K.S.A. 8-2.144 or 8-1567, and amendments thereto, or the ordinance of a city or resolution of a county in this state which prohibits the acts prohibited by that statute; those statutes; and

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

~~(3) (2)~~ alcohol and drug evaluations of persons whom the prosecutor considers for eligibility or finds eligible to enter a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of K.S.A. 8-1567, and amendments thereto, or the ordinance of a city or resolution of a county in this state which prohibits the acts prohibited by that statute; those statutes.

~~(4) supervision and monitoring of persons required, under a diversion agreement in lieu of~~

~~further criminal proceedings on a complaint alleging a violation of K.S.A. 8-1567, and amendments thereto, or the ordinance of a city in this state which prohibits the acts prohibited by that statute, to complete an alcohol and drug safety action program, as provided in this section, or an alcohol and drug abuse treatment program, as provided in this section; or~~

~~(5) —any combination of (1), (2), (3) and (4);~~

~~(b) (c) The presentence alcohol and drug evaluation shall be conducted by a community-based alcohol and drug safety action program certified in accordance with the provisions of this subsection to provide evaluation and supervision services as described in subsections (c) and (d). A community-based alcohol and drug safety action program shall be certified either by the chief judge of the judicial district to be served by the program or by the secretary of social and rehabilitation services for judicial districts in which the chief judge declines to certify a program. In addition to any qualifications established by the secretary, the chief judge may establish qualifications for the certification of programs, which qualifications may include requirements for training, education and certification of personnel; supervision and monitoring of clients; fee reimbursement procedures; handling of conflicts of interest; delivery of services to clients unable to pay; and other matters relating to quality and delivery of services by the program. In establishing the qualifications for programs, the chief judge or the secretary shall give preference to those programs which have had practical experience prior to July 1, 1982, in diagnosis and referral in alcohol and drug abuse. Certification of a program by the chief judge shall be done with consultation and approval of a majority of the judges of the district court of the district and municipal judges of cities lying in whole or in part within the district. If within 60 days after the effective date of this act the chief judge declines to certify any program for the judicial district, the judge shall notify the secretary of social and rehabilitation services, and the secretary of social and rehabilitation services shall certify a community-based alcohol and drug safety action program for that judicial district. The certification shall be for a four-year period. Recertification of a program or~~

~~certification of a different program shall be by the chief judge, with consultation and approval of a majority of the judges of the district court of the district and municipal judges of cities lying in whole or in part within the district. If upon expiration of certification of a program there will be no certified program for the district and the chief judge declines to recertify or certify any program in the district, the judge shall notify the secretary of social and rehabilitation services, at least six months prior to the expiration of certification, that the judge declines to recertify or certify a program under this subsection. Upon receipt of the notice and prior to the expiration of certification, the secretary shall recertify or certify a community-based alcohol and drug safety action program for the judicial district for the next four-year period. To be eligible for certification under this subsection, the chief judge or the secretary of social and rehabilitation services shall determine that a community-based alcohol and drug safety action program meets the qualifications established by the judge or secretary and is A licensed provider shall be capable of providing, within the judicial district: (1) The evaluations, supervision and monitoring required under subsection ~~(a)~~ (b); (2) the alcohol and drug evaluation report required under subsection ~~(e)~~ or (d) or (e); (3) the follow-up duties specified under subsection ~~(e)~~ or (d) or (e) for persons who prepare the alcohol and drug evaluation report; and (4) any other functions and duties specified by law. Community-based alcohol and drug safety action programs Each judicial district shall be provided with a list of licensed providers, and such list shall be used when selecting a licensed provider to be used as described in subsections (d) and (e). A licensed provider performing services in any judicial district under this section prior to the effective date of this act may continue to perform those services until a community-based alcohol and drug safety action program is certified for that judicial district January 1, 2012.~~

~~(e) (d)~~ A presentence Prior to sentencing, an alcohol and drug evaluation shall be conducted on any person who is convicted of a violation of K.S.A. 8-2,144 or 8-1567, and amendments thereto, or the ordinance of a city or resolution of a county in this state which prohibits the acts prohibited by ~~that~~

~~statute those statutes.~~ The presentence alcohol and drug evaluation report shall be made available to and shall be considered by the court prior to sentencing. ~~The presentence alcohol and drug evaluation report shall contain a history of the defendant's prior traffic record, characteristics and alcohol or drug problems, or both, and a recommendation concerning the amenability of the defendant to education and rehabilitation. The presentence alcohol and drug evaluation report shall include a recommendation concerning the alcohol and drug driving safety education and treatment for the defendant. The presentence alcohol and drug evaluation report shall be prepared by a program which has demonstrated practical experience in the diagnosis of alcohol and drug abuse. The duties of persons who prepare the presentence alcohol and drug evaluation report may also include appearing at sentencing and probation hearings in accordance with the orders of the court, monitoring defendants in the treatment programs, notifying the probation department and the court of any defendant failing to meet the conditions of probation or referrals to treatment, appearing at revocation hearings as may be required and providing assistance and data reporting and program evaluation.~~ The court shall order that the cost of any alcohol and drug education, rehabilitation and treatment programs evaluation for any person shall be paid by such person, and such costs shall include, but not be limited to, the assessments required by subsection (e). ~~If financial obligations are not met or cannot be met, the sentencing court shall be notified for the purpose of collection or review and further action on the defendant's sentence~~ to the provider at the time of service, and shall not exceed \$150.

~~(d)~~ (e) An alcohol and drug evaluation shall be conducted on any person whom the prosecutor considers for eligibility or finds eligible to enter a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of K.S.A. 8-1567, and amendments thereto, or the ordinance of a city or resolution of a county in this state which prohibits the acts prohibited by ~~that~~ ~~statute those statutes.~~ The alcohol and drug evaluation report shall be made available to the prosecuting attorney and shall be considered by the prosecuting attorney. ~~The alcohol and drug evaluation report~~

~~shall contain a history of the person's prior traffic record, characteristics and alcohol or drug problems, or both, and a recommendation concerning the amenability of the person to education and rehabilitation. The alcohol and drug evaluation report shall include a recommendation concerning the alcohol and drug driving safety education and treatment for the person. The alcohol and drug evaluation report shall be prepared by a program which has demonstrated practical experience in the diagnosis of alcohol and drug abuse. The duties of persons who prepare the alcohol and drug evaluation report may also include monitoring persons in the treatment programs, notifying the prosecutor and the court of any person failing to meet the conditions of diversion or referrals to treatment, and providing assistance and data reporting and program evaluation. The cost of any alcohol and drug education, rehabilitation and treatment programs evaluation for any person shall be paid by such person, and such costs shall include, but not be limited to, the assessments required by subsection (e) to the provider at the time of service, and shall not exceed \$150.~~

~~(e) In addition to any fines, fees, penalties or costs levied against a person who is convicted of a violation of K.S.A. 8-1567, and amendments thereto, or the ordinance of a city in this state which prohibits the acts prohibited by that statute, or who enters a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of that statute or such an ordinance, \$150 shall be assessed against the person by the sentencing court or under the diversion agreement. The \$150 assessment may be waived by the court, in whole or in part, or, in the case of diversion of criminal proceedings, by the prosecuting attorney, if the court or prosecuting attorney finds that the defendant is an indigent person. Except as otherwise provided in this subsection, the clerk of the court shall deposit all assessments received under this section in the alcohol and drug safety action fund of the court, which fund shall be subject to the administration of the judge having administrative authority over that court. If the secretary of social and rehabilitation services certifies the community-based alcohol and drug safety action program for the judicial district in which the court is located, the clerk of the court~~

~~shall remit during the four-year period for which the program is certified, 15% of all assessments received under this section to the secretary of social and rehabilitation services. Moneys credited to the alcohol and drug safety action fund shall be expended by the court, pursuant to vouchers signed by the judge having administrative authority over that court, only for costs of the services specified by subsection (a) or otherwise required or authorized by law and provided by community-based alcohol and drug safety action programs, except that not more than 10% of the money credited to the fund may be expended to cover the expenses of the court involved in administering the provisions of this section. In the provision of these services the court shall contract as may be necessary to carry out the provisions of this section. The district or municipal judge having administrative authority over that court shall compile a report and send such report to the office of the state judicial administrator on or before January 20 of each year, beginning January 20, 1991. Such report shall include, but not be limited to:~~

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

~~(2) the assessments deposited into the fund during the 12-month period ending the preceding December 31; and~~

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

~~The office of the state judicial administrator shall compile such reports into a statewide report and submit such statewide report to the legislature on or before March 1 of each year.~~

~~(f) The secretary of social and rehabilitation services shall remit all moneys received by the secretary under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the certification of community-based alcohol and~~

~~drug safety action programs fee fund, which is hereby created. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants issued pursuant to vouchers approved by the secretary of social and rehabilitation services or a person designated by the secretary.~~

(f) All alcohol and drug evaluations conducted pursuant to this section shall utilize a standardized substance abuse evaluation approved by the secretary of social and rehabilitation services and be submitted in a format approved by the secretary of social and rehabilitation services. On or before July 1, 2012, the secretary of social and rehabilitation services shall promulgate rules and regulations to implement this section.

(1) Convictions for a violation of K.S.A. 8-1567, and amendments thereto, or a violation of an ordinance of any city or resolution of any county which prohibits the acts that such section prohibits, or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging any such violations, shall be taken into account, but only convictions or diversions occurring on or after July 1, 1996. Nothing in this provision shall be construed as preventing any court from considering any convictions or diversions occurring during the person's lifetime in determining the sentence to be imposed within the limits provided for a first, second, third or subsequent offender.

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(2) any convictions for a violation of the following sections occurring during a person's lifetime shall be taken into account: (A) This section; (B) K.S.A. 8-2,144, and amendments thereto; (C) K.S.A. 32-1131, and amendments thereto; (D) subsection (a)(3) of section 40 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; (E) subsection (g) of section 48 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; and (F) aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was committed while committing a violation of K.S.A. 8-1567, and amendments thereto;

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

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

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

New Sec. 3. (a) (1) Within a reasonable amount of time after a person is committed to the custody of the secretary of corrections for service of a sentence for a violation of K.S.A. 8-2,144 or 8-1567 or section 2, and amendments thereto, the secretary of corrections shall enter into a written agreement with the inmate specifying treatment programs and other programs which the secretary determines the inmate shall satisfactorily complete in order to be prepared for early release pursuant to this section and K.S.A. 22-3717, and amendments thereto.

void, regardless of when such ordinance was enacted, unless such city meets the requirements specified in subsection (k).

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

(2) 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. The county or district attorney shall accept such referral and pursue a disposition of such violation, and shall not refer any such violation back to the city attorney.

(n) 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 or resolution.

(o) 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 may, but shall not be required to, elect one or two of the three prior to submission of the case to the fact finder.

(p) When determining whether a conviction is a first, second, third or subsequent conviction of a violation of this section:

(1) Convictions for a violation of K.S.A. 8-1567, and amendments thereto, or a violation of an ordinance of any city or resolution of any county which prohibits the acts that such section prohibits, or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging any such violations, shall be taken into account, but only convictions or diversions occurring on or after July 1, 1996. Nothing in this provision shall be construed as preventing any court from considering any convictions or diversions occurring during the person's lifetime in determining the sentence to be imposed within the limits provided for a first, second, third or subsequent offender;

(2) any convictions for a violation of the following sections occurring during a person's lifetime shall be taken into account: (A) This section; (B) section 2, and amendments thereto; (C) K.S.A. 32-1131, and

shall not be required to, ~~may~~ elect one or two of the three prior to submission of the case to the fact finder.

(u) (s) Upon a third 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. 2009 Supp. 21-36a12, and amendments thereto.~~

(w) (t) 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.~~

(u) *When determining whether a conviction is a first, second, third, fourth or subsequent conviction of a violation of this section:*

(1) *Convictions for a violation of this section, or a violation of 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 on a complaint alleging any such violations, shall be taken into account, but only convictions or diversions occurring on or after July 1, 1996. Nothing in this provision shall be construed as preventing any court from considering any convictions or diversions occurring during the person's lifetime in determining the sentence to be imposed within the limits provided for a first, second, third*

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or subsequent offender:

(2) any convictions for a violation of the following sections occurring during a person's lifetime shall be taken into account: (A) Section 2, and amendments thereto; (B) K.S.A. 8-2,144, and amendments thereto; (C) K.S.A. 32-1131, and amendments thereto; (D) subsection (a) (3) of section 40 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; (E) subsection (g) of section 48 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; and (F) aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was committed while committing a violation of K.S.A. 8-1567, and amendments thereto;

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

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

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

(v) As used in 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; and

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

Sec. 26. K.S.A. 2010 Supp. 12-4104 is hereby amended to read as follows: 12-4104. (a) The municipal court of each city shall have jurisdiction to hear and determine cases involving violations of the ordinances of the city, including concurrent jurisdiction to hear and determine a violation of an ordinance when the elements of such ordinance violation are the same as the elements of a violation of one of the following state statutes and would constitute, and be punished as, a

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Attachment 3

all not be required to, ~~may~~ elect one or two of the three prior to submission of the case to the fact finder.

(~~tt~~) (s) Upon a third 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. 2009 Supp. 21-36a12, and amendments thereto.~~

(~~w~~) (t) 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.

(u) When determining whether a conviction is a first, second, third, fourth or subsequent conviction of a violation of this section: ←

(1) Convictions for a violation of this section, or a violation of 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 on a complaint alleging any such violations, shall be taken into account, but only convictions or diversions occurring on or after July 1, 1996. Nothing in this provision shall be construed as preventing any court from considering any convictions or diversions occurring during the person's lifetime in determining the sentence to be imposed within the limits provided for a first, second, third

(1) Any test refusal, as defined in K.S.A. 8-1013, and amendments thereto, occurring during a person's lifetime shall be taken into account;
Redesignate paragraphs accordingly

1 or subsequent offender;

2 (2) any convictions for a violation of the following sections
3 occurring during a person's lifetime shall be taken into account: (A)
4 Section 2, and amendments thereto; (B) K.S.A. 8-2,144, and amendments
5 thereto; (C) K.S.A. 32-1131, and amendments thereto; (D) subsection (a)
6 (3) of section 40 of chapter 136 of the 2010 Session Laws of Kansas, and
7 amendments thereto; (E) subsection (g) of section 48 of chapter 136 of
8 the 2010 Session Laws of Kansas, and amendments thereto; and (F)
9 aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or
10 vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was
11 committed while committing a violation of K.S.A. 8-1567, and
12 amendments thereto;

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

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

25 (5) multiple convictions of any crime described in subsection (u)(1)
26 or (u)(2) arising from the same arrest shall only be counted as one
27 conviction.

28 (v) As used in this section:

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

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

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

37 Sec. 26. K.S.A. 2010 Supp. 12-4104 is hereby amended to read as
38 follows: 12-4104. (a) The municipal court of each city shall have
39 jurisdiction to hear and determine cases involving violations of the
40 ordinances of the city, including concurrent jurisdiction to hear and
41 determine a violation of an ordinance when the elements of such
42 ordinance violation are the same as the elements of a violation of one of
43 the following state statutes and would constitute, and be punished as, a

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1 appeal.

2 (s) The sentence for a violation of section 76 of chapter 136 of the
3 2010 Session Laws of Kansas, and amendments thereto, shall be
4 presumptive imprisonment. Such sentence shall not be considered a
5 departure and shall not be subject to appeal.

6 (t) (1) If the trier of fact makes a finding that an offender wore or
7 used ballistic resistant material in the commission of, or attempt to
8 commit, or flight from any felony, in addition to the sentence imposed
9 pursuant to the Kansas sentencing guidelines act, the offender shall be
10 sentenced to an additional 30 months' imprisonment.

11 (2) The sentence imposed pursuant to paragraph (1) shall be
12 presumptive imprisonment and shall be served consecutively to any other
13 term or terms of imprisonment imposed. Such sentence shall not be
14 considered a departure and shall not be subject to appeal.

15 (3) As used in this subsection, "ballistic resistant material" means:

16 (A) Any commercially produced material designed with the purpose of
17 providing ballistic and trauma protection, including, but not limited to,
18 bulletproof vests and kevlar vests; and (B) any homemade or fabricated
19 substance or item designed with the purpose of providing ballistic and
20 trauma protection.

21 (u) The sentence for a violation of subsection (b)(1)(C) of K.S.A. 8-
22 2,144 or a violation of subsection (b)(1)(C) of section 2, and amendments
23 thereto, shall be presumptive imprisonment. Such sentence shall not be
24 considered a departure and shall not be subject to appeal.
25 Notwithstanding the provisions of any other section, an offense under
26 subsection (b)(1)(C) of K.S.A. 8-2,144 or an offense under subsection (b)
27 (1)(C) of section 2, and amendments thereto, shall be classified in the
28 following grid block, except when, because of the offender's criminal
29 history classification, the offense is classified in a grid block which
30 exceeds the grid block specified:

31 (1) A 3rd conviction shall be classified in grid block 7-G;

32 (2) a 4th conviction shall be classified in grid block 7-F;

33 (3) a 5th conviction shall be classified in grid block 7-E;

34 (4) a 6th conviction shall be classified in grid block 7-D;

35 (5) a 7th conviction shall be classified in grid block 7-C;

36 (6) an 8th conviction shall be classified in grid block 7-B; and

37 (7) a 9th or subsequent conviction shall be classified in grid block
38 7-A.

39 (v) The sentence for a violation of subsection (b)(1)(F) of K.S.A. 8-
40 1567, and amendments thereto, shall be presumptive imprisonment. Such
41 sentence shall not be considered a departure and shall not be subject to
42 appeal. Notwithstanding the provisions of any other section, an offense
43 under subsection (b)(1)(F) of K.S.A. 8-1567, and amendments thereto,

shall be classified in the following grid block, except when, because of the offender's criminal history classification, the offense is classified in a grid block which exceeds the grid block specified:

- (1) A 4th conviction shall be classified in grid block ~~7-G~~;
- (2) a 5th conviction shall be classified in grid block ~~7-F~~;
- (3) a 6th conviction shall be classified in grid block ~~7-E~~;
- (4) a 7th conviction shall be classified in grid block ~~7-D~~;
- (5) an 8th conviction shall be classified in grid block ~~7-C~~;
- (6) a 9th conviction shall be classified in grid block ~~7-B~~; and
- (7) a 10th or subsequent conviction shall be classified in grid block ~~7-A~~.

7-H

7-G

7-F

7-E

7-D

7-C

7-B; and

(8) an 11th or subsequent conviction shall be classified in grid block 7-A.

Sec. 50. Section 292 of chapter 136 of the 2010 Session Laws of Kansas, is hereby amended to read as follows: Sec. 292. In addition to the provisions of section 291 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, the following shall apply in determining an offender's criminal history classification as contained in the presumptive sentencing guidelines grids:

(a) Every three prior adult convictions or juvenile adjudications of class A and class B person misdemeanors in the offender's criminal history, or any combination thereof, shall be rated as one adult conviction or one juvenile adjudication of a person felony for criminal history purposes. Every three prior adult convictions or juvenile adjudications of assault as defined in subsection (a) of section 47 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, occurring within a period commencing three years prior to the date of conviction for the current crime of conviction shall be rated as one adult conviction or one juvenile adjudication of a person felony for criminal history purposes.

(b) A conviction of criminal use of weapons as defined in subsection (a)(8) or (a)(13) of section 186 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or possession of a firearm on the grounds or in the state capitol building as defined in section 194 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, will be scored as a select class B nonperson misdemeanor conviction or adjudication and shall not be scored as a person misdemeanor for criminal history purposes.

(c) (1) If the current crime of conviction was committed before July 1, 1996, and is for subsection (b) of K.S.A. 21-3404, as in effect on June 30, 1996, involuntary manslaughter in the commission of driving under the influence, then, each prior adult conviction or juvenile adjudication for K.S.A. 8-1567, and amendments thereto, shall count as one person felony for criminal history purposes.

(2) If the current crime of conviction was committed on or after July 1, 1996, and prior to July 1, 2011, and is for a violation of subsection (a)

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all not be required to, ~~may~~ elect one or two of the three prior to submission of the case to the fact finder.

~~(u)~~ (s) Upon a third 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. 2009 Supp. 21-36a12, and amendments thereto.

~~(w)~~ (t) 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.

(u) When determining whether a conviction is a first, second, third, fourth or subsequent conviction of a violation of this section:

(1) Convictions for a violation of this section, or a violation of 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 on a complaint alleging any such violations, shall be taken into account, but only convictions or diversions occurring on or after July 1, 1996. Nothing in this provision shall be construed as preventing any court from considering any convictions or diversions occurring during the person's lifetime in determining the sentence to be imposed within the limits provided for a first, second, third

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1 or subsequent offender;

2 (2) any convictions for a violation of the following sections
3 occurring during a person's lifetime shall be taken into account: (A)
4 Section 2, and amendments thereto; (B) K.S.A. 8-2,144, and amendments
5 thereto; (C) K.S.A. 32-1131, and amendments thereto; (D) subsection (a)
6 (3) of section 40 of chapter 136 of the 2010 Session Laws of Kansas, and
7 amendments thereto; (E) subsection (g) of section 48 of chapter 136 of
8 the 2010 Session Laws of Kansas, and amendments thereto; and (F)
9 aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or
10 vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was
11 committed while committing a violation of K.S.A. 8-1567, and
12 amendments thereto;

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

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

25 (5) multiple convictions of any crime described in subsection (u)(1)
26 or (u)(2) arising from the same arrest shall only be counted as one
27 conviction.

28 (v) As used in this section:

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

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

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

37 Sec. 26. K.S.A. 2010 Supp. 12-4104 is hereby amended to read as
38 follows: 12-4104. (a) The municipal court of each city shall have
39 jurisdiction to hear and determine cases involving violations of the
40 ordinances of the city, including concurrent jurisdiction to hear and
41 determine a violation of an ordinance when the elements of such
42 ordinance violation are the same as the elements of a violation of one of
43 the following state statutes and would constitute, and be punished as, a

(4) "conviction" does not include: (A) Any conviction, including any conviction as defined in subsection (u)(3), for a crime described in subsection (u)(1) or (u)(2) committed when the offender was under 18 years of age; and (B) any adjudications as a juvenile offender because of an act which if committed by an adult would constitute a crime described in subsection (u)(1) or (u)(2).

Redesignate paragraphs accordingly

2 restrictions which is required to be carried by the person at any time the
3 person is operating a motor vehicle on the highways of this state.

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

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

19 *(g) (1) If a person's driving privileges are suspended or restricted*
20 *pursuant to this section and such person is incarcerated with the*
21 *department of corrections for an alcohol or drug-related conviction, any*
22 *period of incarceration shall not count toward the person's suspension or*
23 *restriction period. Any period of time the person's driving privileges are*
24 *suspended or restricted before incarceration begins shall be counted. For*
25 *the purpose of this section, the date of release from incarceration shall be*
26 *deemed the date the suspension or restriction period resumes.*

27 *(2) The secretary of corrections shall notify the division of the date*
28 *when incarceration began and the date of release from incarceration for*
29 *any person incarcerated for an alcohol or drug-related conviction. The*
30 *notification shall be in a format approved by the division.*

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

34 Sec. 17. K.S.A. 2010 Supp. 8-1015 is hereby amended to read as
35 follows: 8-1015. ~~(a) When subsection (b)(1) of K.S.A. 8-1014, and~~
36 ~~amendments thereto, requires or authorizes the division to place~~
37 ~~restrictions on a person's driving privileges, the division shall restrict the~~
38 ~~person's driving privileges to driving only under the circumstances~~
39 ~~provided by subsections (a)(1), (2), (3) and (4) of K.S.A. 8-292 and~~
40 ~~amendments thereto.~~

41 ~~(b) In lieu of the restrictions set out in subsection (a), the division,~~
42 ~~upon request of the person whose driving privileges are to be restricted,~~
43 ~~may restrict the person's driving privileges to driving only a motor~~
44 ~~vehicle equipped with an ignition interlock device, approved by the~~

1 ~~division and obtained, installed and maintained at the person's expense.~~
2 ~~Prior to issuing such restricted license, the division shall receive proof of~~
3 ~~the installation of such device. (a) (1) Whenever a person's driving~~
4 ~~privileges have been suspended for one year as provided in subsection~~
5 ~~(a), (b) or (c) of K.S.A. 8-1014, and amendments thereto, after 45 days of~~
6 ~~such suspension, such person may apply to the division for such person's~~
7 ~~driving privileges to be restricted for the remainder of the one-year~~
8 ~~suspension period to driving only a motor vehicle equipped with an~~
9 ~~ignition interlock and only for the purposes of getting to and from: Work,~~
10 ~~school or an alcohol treatment program; and the ignition interlock~~
11 ~~provider for maintenance and downloading of data from the device.~~

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

25 (b) ~~When a person has completed the suspension pursuant to~~
26 ~~subsection (b)(1)(A) of K.S.A. 8-1014, and amendments thereto, the~~
27 ~~division shall restrict the person's driving privileges pursuant to~~
28 ~~subsection (b)(1)(A) of K.S.A. 8-1014, and amendments thereto, to~~
29 ~~driving only a motor vehicle equipped with an ignition interlock and only~~
30 ~~in the course of the person's employment and for the purposes of getting~~
31 ~~to and from: Work, school or an alcohol treatment program; the ignition~~
32 ~~interlock provider for maintenance and downloading of data from the~~
33 ~~device; and court or court-ordered supervision. Except as provided in~~
34 ~~K.S.A. 8-1017, and amendments thereto, if such person is convicted of a~~
35 ~~violation of the restrictions, such person's driving privileges shall be~~
36 ~~suspended for an additional year, in addition to any term of suspension~~
37 ~~or restriction as provided in subsection (b)(1)(A) of K.S.A. 8-1014, and~~
38 ~~amendments thereto.~~

39 (c) (1) Any person whose driving privileges have been restricted
40 as provided in subsection (a) or (b) shall carry documentation, as
41 provided in rules and regulations promulgated by the division, of
42 scheduled events the person is allowed to drive to and from under such
43 restrictions at any time the person is operating a motor vehicle on the

under the circumstances provided by subsections (a)(1),
(2), (3) and (4) of K.S.A. 8-292, and amendments thereto.
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.

(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 pursuant to subsection (b)(1)(A) of
K.S.A. 8-1014, and amendments thereto, to driving only a
motor vehicle equipped with an ignition interlock. 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.

(3)

THOMAS C. (TIM) OWENS
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JOINT COMMITTEE ON KANSAS SECURITY
JOINT COMMITTEE ON CORRECTIONS
AND JUVENILE JUSTICE OVERSIGHT

TO: Senate Committee on Judiciary
FROM: Senator Tim Owens
DATE: March 16, 2011
RE: Senate Bill No. 7

According to information provided by the Kansas Department of Revenue, a 1% increase in the liquor enforcement tax (from 8% to 9%) would generate the following:

FY 2012	\$6.25 million
FY 2013	\$6.38 million
FY 2014	\$6.49 million

3-year total \$19.12 million*

*The estimate assumes an annual increase of 1.7% in receipts.

Information provided by:
Kansas Department of Revenue
Steven Brunkan
785-291-3580

Senate Judiciary

3-16-11
Attachment 6