

**HOUSE SUBSTITUTE FOR BILL No. 6**

By Committee on Corrections and Juvenile Justice

3-21

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

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

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17 dead or unconscious shall be deemed not to have withdrawn the person's  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

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

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

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

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

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

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

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

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

1 person authorized to withdraw blood and the medical care facility shall not  
2 be liable in any action alleging lack of consent or lack of informed  
3 consent.

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

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

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

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

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

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

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

43 (3) there is no constitutional right to consult with an attorney

1 regarding whether to submit to testing;

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

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

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

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

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

20 ~~(7) (6) if the person is less than 21 years of age at the time of the test~~  
21 ~~request and submits to and completes the tests and the test results show an~~  
22 ~~alcohol concentration of .08 or greater, the person's driving privileges will~~  
23 ~~be suspended for one year except the person's driving privileges will be~~  
24 ~~permanently revoked for a fifth or subsequent occurrence;~~

25 ~~(8) (7) refusal to submit to testing may be used against the person at~~  
26 ~~any trial on a charge arising out of the operation or attempted operation of~~  
27 ~~a vehicle while under the influence of alcohol or drugs, or both;~~

28 ~~(9) (8) the results of the testing may be used against the person at any~~  
29 ~~trial on a charge arising out of the operation or attempted operation of a~~  
30 ~~vehicle while under the influence of alcohol or drugs, or both; and~~

31 ~~(10) (9) after the completion of the testing, the person has the right to~~  
32 ~~consult with an attorney and may secure additional testing, which, if~~  
33 ~~desired, should be done as soon as possible and is customarily available~~  
34 ~~from medical care facilities willing to conduct such testing.~~

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

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

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

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

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

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

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

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

43 (s) No test results shall be suppressed because of technical

1 irregularities in the consent or notice required pursuant to this act.

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

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

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

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

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

15 (2) renders a person unconscious;

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

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

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

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

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

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

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

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

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

1 *only a motor vehicle equipped with an ignition interlock device.*

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

5 (A) On the person's first occurrence, suspend the person's driving  
6 privileges for 30 days *and at the end of the suspension, then* restrict the  
7 person's driving privileges as ~~provided by subsection (b) of K.S.A. 8-1015,~~  
8 ~~and amendments thereto,~~ for an additional 330 days **[to driving only a**  
9 **motor vehicle equipped with an ignition interlock device];**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 ~~(c)~~ [(c)] Upon expiration of the period of time for which  
 43 restrictions are imposed pursuant to this section, the licensee may apply to

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

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

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

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

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

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

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

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

43 (b) No person shall operate or attempt to operate any vehicle within

1 this state if the person is a habitual user of any narcotic, hypnotic,  
2 somnifacient or stimulating drug.

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

6 (d) (1) Upon a first conviction of a violation of this section, a person  
7 shall be guilty of a class B, nonperson misdemeanor and sentenced to not  
8 less than 48 consecutive hours nor more than six months' imprisonment, or  
9 in the court's discretion 100 hours of public service, and fined not less than  
10 \$500 nor more than \$1,000. The person convicted must serve at least 48  
11 consecutive hours' imprisonment or 100 hours of public service either  
12 before or as a condition of any grant of probation or suspension, reduction  
13 of sentence or parole. **[The court may place the person convicted under  
14 a house arrest program pursuant to section 249 of chapter 136 of the  
15 2010 Session Laws of Kansas, and amendments thereto, to serve the  
16 remainder of the minimum sentence only after such person has served  
17 48 consecutive hours' imprisonment.]**

18 (2) In addition, the court shall enter an order which requires that the  
19 person enroll in and successfully complete an alcohol and drug safety  
20 action education program or treatment program as provided in K.S.A. 8-  
21 1008, and amendments thereto, or both the education and treatment  
22 programs.

23 (e) (1) On a second conviction of a violation of this section, a person  
24 shall be guilty of a class A, nonperson misdemeanor and sentenced to not  
25 less than 90 days nor more than one year's imprisonment and fined not less  
26 than \$1,000 nor more than \$1,500. The person convicted must serve at  
27 least five consecutive days' imprisonment before the person is granted  
28 probation, suspension or reduction of sentence or parole or is otherwise  
29 released. The five days' imprisonment mandated by this subsection may be  
30 served in a work release program only after such person has served 48  
31 consecutive hours' imprisonment, provided such work release program  
32 requires such person to return to confinement at the end of each day in the  
33 work release program. The court may place the person convicted under a  
34 house arrest program pursuant to ~~K.S.A. 21-4603b~~ *section 249 of chapter*  
35 *136 of the 2010 Session Laws of Kansas*, and amendments thereto, to serve  
36 the remainder of the minimum sentence only after such person has served  
37 48 consecutive hours' imprisonment.

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

42 (f) (1) On the third conviction of a violation of this section, a person  
43 shall be guilty of a nonperson felony and sentenced to not less than 90

1 days nor more than one year's imprisonment and fined not less than \$1,500  
2 nor more than \$2,500. The person convicted shall not be eligible for  
3 release on probation, suspension or reduction of sentence or parole until  
4 the person has served at least 90 days' imprisonment. The 90 days'  
5 imprisonment mandated by this paragraph may be served in a work release  
6 program only after such person has served 48 consecutive hours'  
7 imprisonment, provided such work release program requires such person  
8 to return to confinement at the end of each day in the work release  
9 program. The court may place the person convicted under a house arrest  
10 program pursuant to ~~K.S.A. 21-4603b~~ *section 249 of chapter 136 of the*  
11 *2010 Session Laws of Kansas*, and amendments thereto, to serve the  
12 remainder of the minimum sentence only after such person has served 48  
13 consecutive hours' imprisonment.

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

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

40 (3) *At the time of the filing of the judgment form or journal entry as*  
41 *required by K.S.A. 22-3426 or section 280 of chapter 136 of the 2010*  
42 *Session Laws of Kansas, and amendments thereto, the court shall cause a*  
43 *certified copy to be sent to the officer having the offender in charge. The*

1 law enforcement agency maintaining custody and control of a defendant  
2 for imprisonment shall cause a certified copy of the judgment form or  
3 journal entry to be sent to the director of the community corrections  
4 program for the county of conviction when the term of imprisonment  
5 expires and upon expiration of the term of imprisonment shall deliver the  
6 defendant to a location designated by the director of the community  
7 corrections program. After the term of imprisonment imposed by the court,  
8 the person shall be placed in the custody of the community correctional  
9 services program for a mandatory one-year period of community  
10 corrections supervision, which such period of community corrections  
11 supervision shall not be reduced. During such community corrections  
12 supervision, the person shall be required to participate in a  
13 multidisciplinary model of services for substance use disorders facilitated  
14 by a department of social and rehabilitation services designated care  
15 coordination agency to include assessment and, if appropriate, referral to  
16 a community based substance use disorder treatment including recovery  
17 management and mental health counseling as needed. The  
18 multidisciplinary team shall include the designated care coordination  
19 agency, the community corrections officer, the social and rehabilitation  
20 services department designated treatment provider and the offender. Any  
21 violation of the conditions of such community corrections supervision may  
22 subject such person to revocation of community corrections supervision  
23 and imprisonment in jail for the remainder of the period of imprisonment,  
24 the remainder of the community corrections supervision period, or any  
25 combination or portion thereof.

26 (g) (1) On the fourth or subsequent conviction of a violation of this  
27 section, a person shall be guilty of a nonperson felony and sentenced to not  
28 less than 90 days nor more than one year's imprisonment and fined \$2,500.  
29 The person convicted shall not be eligible for release on probation,  
30 suspension or reduction of sentence or parole until the person has served at  
31 least 90 days' imprisonment. The 90 days' imprisonment mandated by this  
32 paragraph may be served in a work release program only after such person  
33 has served 72 consecutive hours' imprisonment, provided such work  
34 release program requires such person to return to confinement at the end of  
35 each day in the work release program. **[The court may place the person  
36 convicted under a house arrest program pursuant to section 249 of  
37 chapter 136 of the 2010 Session Laws of Kansas, and amendments  
38 thereto, to serve the remainder of the minimum sentence only after  
39 such person has served 72 consecutive hours' imprisonment.]**

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

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

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

42 (3) *At the time of the filing of the judgment form or journal entry as*  
43 *required by K.S.A. 22-3426 or section 280 of chapter 136 of the 2010*



1 *Session Laws of Kansas, and amendments thereto, the court shall cause a*  
2 *certified copy to be sent to the officer having the offender in charge. The*  
3 *law enforcement agency maintaining custody and control of a defendant*  
4 *for imprisonment shall cause a certified copy of the judgment form or*  
5 *journal entry to be sent to the director of the community corrections*  
6 *program for the county of conviction when the term of imprisonment*  
7 *expires and upon expiration of the term of imprisonment shall deliver the*  
8 *defendant to a location designated by the director of the community*  
9 *corrections program. After the term of imprisonment imposed by the court,*  
10 *the person shall be placed in the custody of the community correctional*  
11 *services program for a mandatory one-year period of community*  
12 *corrections supervision, which such period of community corrections*  
13 *supervision shall not be reduced. During such community corrections*  
14 *supervision, the person shall be required to participate in a*  
15 *multidisciplinary model of services for substance use disorders facilitated*  
16 *by a department of social and rehabilitation services designated care*  
17 *coordination agency to include assessment and, if appropriate, referral to*  
18 *a community based substance use disorder treatment including recovery*  
19 *management and mental health counseling as needed. The*  
20 *multidisciplinary team shall include the designated care coordination*  
21 *agency, the community corrections officer, the social and rehabilitation*  
22 *services department designated treatment provider and the offender. Any*  
23 *violation of the conditions of such community corrections supervision may*  
24 *subject such person to revocation of community corrections supervision*  
25 *and imprisonment in jail for the remainder of the period of imprisonment,*  
26 *the remainder of the community corrections supervision period, or any*  
27 *combination or portion thereof.*

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

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

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

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

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

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

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

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

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

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

39 (l) (1) Except as provided in paragraph (3), in addition to any other  
40 penalty which may be imposed upon a second or subsequent conviction of  
41 a violation of this section, the court shall order that each motor vehicle  
42 owned or leased by the convicted person shall either be equipped with an  
43 ignition interlock device or be impounded or immobilized for a period of

1 two years. The convicted person shall pay all costs associated with the  
2 installation, maintenance and removal of the ignition interlock device and  
3 all towing, impoundment and storage fees or other immobilization costs.

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

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

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

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

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

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

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

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

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

43 (4) it is irrelevant whether an offense occurred before or after

1 conviction for a previous offense; and

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

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

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

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

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

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

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

42 (A) Whether the impoundment or immobilization of the motor  
43 vehicle would result in the loss of employment by the convicted person or

1 a member of such person's family; and

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

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

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

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

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

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

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

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

43 (u) Upon a fourth or subsequent conviction, the judge of any court in

1 which any person is convicted of violating this section, may revoke the  
2 person's license plate or temporary registration certificate of the motor  
3 vehicle driven during the violation of this section for a period of one year.  
4 Upon revoking any license plate or temporary registration certificate  
5 pursuant to this subsection, the court shall require that such license plate or  
6 temporary registration certificate be surrendered to the court.

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

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

14 (3) "Drug" includes toxic vapors as such term is defined in K.S.A.  
15 2010 Supp. 21-36a12, and amendments thereto.

16 (w) The amount of the increase in fines as specified in this section  
17 shall be remitted by the clerk of the district court to the state treasurer in  
18 accordance with the provisions of K.S.A. 75-4215, and amendments  
19 thereto. Upon receipt of remittance of the increase provided in this act, the  
20 state treasurer shall deposit the entire amount in the state treasury and the  
21 state treasurer shall credit 50% to the community alcoholism and  
22 intoxication programs fund and 50% to the department of corrections  
23 alcohol and drug abuse treatment fund, which is hereby created in the state  
24 treasury.

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

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

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

43 (c) The municipal judge shall maintain a docket in which every cause

1 commenced before such municipal judge shall be entered. Such docket  
2 shall contain the names of the accused persons and complainant, the nature  
3 or character of the offense, the date of trial, the names of all witnesses  
4 sworn and examined, the finding of the court, the judgment and sentence,  
5 the date of payment, the date of issuing commitment, if any, and every  
6 other fact necessary to show the full proceedings in each case.

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

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

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

27 Sec. 6. K.S.A. 22-4704 is hereby amended to read as follows: 22-  
28 4704. (a) In accordance with the provisions of K.S.A. 77-415 *et seq.*, and  
29 amendments thereto, the director shall adopt appropriate rules and  
30 regulations for agencies in the executive branch of government and for  
31 criminal justice agencies other than those that are part of the judicial  
32 branch of government to implement the provisions of this act.

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

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

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

43 (3) necessary for the coordination of all criminal justice data and

1 information processing activities as they relate to criminal history record  
2 information;

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

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

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

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

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

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

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

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

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

29 Sec. 7. K.S.A. 22-4705 is hereby amended to read as follows: 22-  
30 4705. (a) The following events are reportable events under this act:

31 (1) Issuance of an arrest warrant;

32 (2) an arrest;

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

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

35 ~~(4)~~ (5) dismissal or quashing of an indictment or criminal  
36 information;

37 ~~(5)~~ (6) an acquittal, conviction or other disposition at or following  
38 trial, including a finding of probation before judgment;

39 ~~(6)~~ (7) imposition of a sentence;

40 ~~(7)~~ (8) commitment to a correctional facility, whether state or locally  
41 operated;

42 ~~(8)~~ (9) release from detention or confinement;

43 ~~(9)~~ (10) an escape from confinement;



1       ~~(10)~~ (11) a pardon, reprieve, commutation of sentence or other change  
2 in a sentence, including a change ordered by a court;

3       ~~(11)~~ (12) judgment of an appellate court that modifies or reverses the  
4 lower court decision;

5       ~~(12)~~ (13) order of a court in a collateral proceeding that affects a  
6 person's conviction, sentence or confinement, including any expungement  
7 or annulment of arrests or convictions pursuant to state statute; and

8       ~~(13)~~ (14) any other event arising out of or occurring during the course  
9 of criminal justice proceedings declared to be reportable by rule or  
10 regulation of the director.

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

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

24       (d) Reporting methods may include:

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

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

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

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

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

40       Sec. 8. K.S.A. 2010 Supp. 75-5291 is hereby amended to read as  
41 follows: 75-5291. (a) (1) The secretary of corrections may make grants to  
42 counties for the development, implementation, operation and improvement  
43 of community correctional services that address the criminogenic needs of

1 felony offenders including, but not limited to, adult intensive supervision,  
2 substance abuse and mental health services, employment and residential  
3 services, and facilities for the detention or confinement, care or treatment  
4 of offenders as provided in this section except that no community  
5 corrections funds shall be expended by the secretary for the purpose of  
6 establishing or operating a conservation camp as provided by K.S.A. 75-  
7 52,127 and amendments thereto.

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

11 (A) Whose offense is classified in grid blocks 5-H, 5-I or 6-G of the  
12 sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-  
13 G, 3-H or 3-I of the sentencing guidelines grid for drug crimes. In  
14 addition, the court may place in a community correctional services  
15 program adult offenders, convicted of a felony offense, whose offense is  
16 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  
17 sentencing guidelines grid for nondrug crimes;

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

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

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

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

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

40 (G) who has been sentenced to community corrections supervision  
41 pursuant to K.S.A. 21-4729, *prior to its repeal, or section 305 of chapter*  
42 *136 of the 2010 Session Laws of Kansas*, and amendments thereto; *or*

43 (H) *who has been placed in community correctional services*

1 *programs for supervision by the court pursuant to K.S.A. 8-1567, and*  
2 *amendments thereto.*

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

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

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

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

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

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

1 shall be eligible for reappointment.

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

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

6 (B) effectiveness and enhancement of existing interventions;

7 (C) identification of new interventions; and

8 (D) statewide performance indicators.

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

11 (A) Goals and measurable objectives;

12 (B) projected costs;

13 (C) the impact on public safety; and

14 (D) the evaluation process.

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

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

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

26