

SENATE BILL No. 374

By Committee on Judiciary

2-5

1 AN ACT concerning driving under the influence; relating to testing;
2 administrative penalties; crimes, punishment and criminal procedure;
3 amending K.S.A. 8-2,137 and 8-2,145 and K.S.A. 2017 Supp. 8-2,142,
4 8-2,144, 8-1001, 8-1002, 8-1012, 8-1013, 8-1020, 8-1024, 8-1025, 8-
5 1567, 65-1,107 and 75-712h and repealing the existing sections.

6
7 *Be it enacted by the Legislature of the State of Kansas:*

8 New Section 1. The following shall be taken into account by the court
9 for the purpose of determining whether a conviction is a first, second,
10 third, fourth or subsequent conviction in sentencing under K.S.A. 8-2,144
11 or 8-1567 or K.S.A. 2017 Supp. 8-1025, and amendments thereto:

12 (a) Convictions for a violation of K.S.A. 8-1567, and amendments
13 thereto, or a violation of an ordinance of any city or resolution of any
14 county within this state that prohibits the acts prohibited by that statute or
15 is otherwise comparable, or any violation of Wichita municipal ordinance
16 section 11.38.150, or entering into a diversion agreement in lieu of further
17 criminal proceedings on a complaint alleging any such violation, but only
18 convictions or diversions occurring on or after July 1, 2001;

19 (b) convictions for a violation of K.S.A. 2017 Supp. 8-1025, and
20 amendments thereto, or a violation of an ordinance of any city or
21 resolution of any county or any law of another state that prohibits the acts
22 prohibited by that statute or is otherwise comparable, or entering into a
23 diversion agreement in lieu of further criminal proceedings on a complaint
24 alleging any such violation, but only for convictions or diversions
25 occurring on or after July 1, 2018;

26 (c) convictions for a violation of the following sections occurring
27 during a person's lifetime:

28 (1) Driving a commercial motor vehicle under the influence, K.S.A.
29 8-2,144, and amendments thereto;

30 (2) operating a vessel under the influence of alcohol or drugs, K.S.A.
31 32-1131, and amendments thereto;

32 (3) involuntary manslaughter while driving under the influence of
33 alcohol or drugs, K.S.A. 21-3442, prior to its repeal, or K.S.A. 21-5405(a)
34 (3), and amendments thereto;

35 (4) aggravated battery, as described in K.S.A. 21-5413(b)(3), and
36 amendments thereto;

1 (5) aggravated vehicular homicide, K.S.A. 21-3405a, prior to its
2 repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the
3 crime was committed while committing a violation of K.S.A. 8-1567, and
4 amendments thereto; or

5 (6) violation of an ordinance of any city, a resolution of any county or
6 any law of another state that would constitute a crime described in this
7 subsection, prohibits the acts prohibited in this subsection or is otherwise
8 comparable thereto;

9 (d) receiving punishment under the uniform code of military justice
10 or Kansas code of military justice for an act that was committed on a
11 military reservation and that would constitute a crime described in
12 subsection (a), (b) or (c) if committed off a military reservation in this
13 state;

14 (e) convictions for a violation of any of the following laws, and
15 amendments thereto, or entering into a diversion agreement in lieu of
16 further criminal proceedings on a complaint alleging any such violations
17 occurring on or after July 1, 2001:

18 Alabama - Ala. §32-5A-191(a);

19 Alaska - AS §28.35.030(a);

20 Arizona - A.R.S. §28-1381(A);

21 Arkansas - A.C.A. §5-65-103(a);

22 California - Cal. Vehicle Code §23152;

23 Colorado - C.R.S.A. §42-4-1301(1);

24 Connecticut - C.G.S.A. §14-227a(a);

25 Delaware - 21 Del.C. §4177(a);

26 District of Columbia - D.C. Code §50-2206.11;

27 Florida - F.S.A. §316.193(1);

28 Georgia - OGCA §40-6-391(a);

29 Hawaii - HRS §291E-61(a);

30 Idaho - I.C. §18-8004(1);

31 Illinois - 625 ILCS 5/11-501(a);

32 Indiana - IC §9-30-5-1;

33 Iowa - I.C.A. §321J.2(1);

34 Kentucky - KRS §189A.010(1);

35 Louisiana - La. R.S. §14:98(A);

36 Maine - 29-A M.R.S.A. §2411(1-A);

37 Maryland - MD Code, Transportation §21-902(a)(1);

38 Massachusetts - M.G.L.A. 90 § 24;

39 Michigan - M.C.L.A. §257.625;

40 Minnesota - M.S.A. §169A.20;

41 Mississippi - Miss. Code Ann. §63-11-30;

42 Missouri - V.A.M.S. §577.010, V.A.M.S. §577.012;

43 Montana - MCA §61-8-401;

- 1 Nebraska - Neb. Rev. St. §60-6,196;
 2 Nevada - N.R.S. §484C.110;
 3 New Hampshire - N.H. Rev. Stat. §265-A:2;
 4 New Jersey - N.J.S.A. §39:4-50;
 5 New Mexico - NMSA §66-8-102;
 6 New York – (NYCRR) Veh & Traf §1192;
 7 North Carolina - N.C.G.S. §§ 20-4.01(14a), 20-138.1(a)(1);
 8 North Dakota - NDCC §39-08-01;
 9 Ohio - R.C. §4511.19;
 10 Oklahoma - 47 Okl. St. Ann. §11-902;
 11 Oregon - O.R.S. §813.010(1)(b);
 12 Pennsylvania - 75 Pa.C.S.A. §3802;
 13 Puerto Rico - 9 L.P.R.A §5202;
 14 Rhode Island - Gen. Laws 1956 §31-27-2;
 15 South Carolina - Code of Laws of South Carolina Annotated (Code
 16 1976) §56-5-2930(1);
 17 South Dakota - SDCL §32-23-1;
 18 Tennessee - T.C.A. §55-10-401;
 19 Texas - V.T.C.A., Penal Code §§49.01, 49.04, 49.045, 49.05, 49.06;
 20 Utah - U.C.A. §41-6a-502, U.C.A. §41-6a-517, U.C.A. §41-6a-517;
 21 Vermont - 23 VSA §1201(a)(2);
 22 Virginia - Va. Code Ann. §18.2-266;
 23 Washington - RCWA §46.61.502;
 24 West Virginia - W. Va. Code §17C-5-2;
 25 Wisconsin - W.S.A. §346.63;
 26 Wyoming - W.S. §31-5-233; or
 27 United States Government Property - 36 C.F.R. §4.23; and
 28 (f) convictions for a violation of any ordinance of any city or
 29 resolution of any county outside this state that prohibits the acts prohibited
 30 by K.S.A. 8-1567, and amendments thereto, or the acts prohibited by the
 31 statute listed in subsection (e) wherein that violation occurred, or is
 32 otherwise comparable thereto, or entering into a diversion agreement in
 33 lieu of further criminal proceedings on a complaint alleging any such
 34 violations occurring on or after July 1, 2001.
 35 Sec. 2. K.S.A. 8-2,137 is hereby amended to read as follows: 8-2,137.
 36 (a) A person who drives a commercial motor vehicle within this state ~~is~~
 37 ~~deemed to have given consent~~ *consents*, subject to *the* provisions of K.S.A.
 38 8-1001 et seq., and amendments thereto, ~~and K.S.A. 8-1567, and~~
 39 ~~amendments thereto~~, to take a test or tests of that person's blood, breath ~~or~~
 40 urine *or other bodily substance* for the purpose of determining that
 41 person's alcohol concentration or the presence of other drugs.
 42 (b) A test or tests may be administered at the direction of a law
 43 enforcement officer, who after stopping or detaining the commercial motor

1 vehicle driver, has probable cause to believe that driver was driving a
2 commercial motor vehicle while having alcohol or other drugs in such
3 person's system.

4 Sec. 3. K.S.A. 2017 Supp. 8-2,142 is hereby amended to read as
5 follows: 8-2,142. (a) A person is disqualified from driving a commercial
6 motor vehicle for a period of not less than one year upon a first occurrence
7 of any one of the following:

8 (1) While operating a commercial motor vehicle:

9 (A) The person is convicted of violating K.S.A. 8-2,144, and
10 amendments thereto;

11 (B) the person is convicted of violating ~~subsection (b) of~~ K.S.A. 8-
12 2,132(b), and amendments thereto;

13 (C) the person is convicted of causing a fatality through the negligent
14 operation of a commercial motor vehicle;

15 (D) the person's test refusal or test failure, as defined in subsection
16 (m); or

17 (E) the person is convicted of a violation identified in subsection (a)
18 (2)(A); or

19 (2) while operating a noncommercial motor vehicle:

20 (A) The person is convicted of a violation of ~~K.S.A. 8-1567 or K.S.A.~~
21 ~~2017 Supp. 8-1025, and amendments thereto, or of a violation of an~~
22 ~~ordinance of any city in this state, a resolution of any county in this state~~
23 ~~or any law of another state, which ordinance or law declares to be~~
24 ~~unlawful the acts prohibited by that statute~~ *an offense described in section*
25 *I, and amendments thereto; or*

26 (B) the person's test refusal or test failure, as defined in K.S.A. 8-
27 1013, and amendments thereto; or

28 (3) while operating any motor vehicle:

29 (A) The person is convicted of leaving the scene of an accident; or

30 (B) the person is convicted of a felony, other than a felony described
31 in subsection (e), while using a motor vehicle to commit such felony.

32 (b) If any offenses, test refusal or test failure specified in subsection
33 (a) occurred in a commercial motor vehicle while transporting a hazardous
34 material required to be placarded, the person is disqualified for a period of
35 not less than three years.

36 (c) A person shall be disqualified for life upon the second or a
37 subsequent occurrence of any offense, test refusal or test failure specified
38 in subsection (a), or any combination thereof, arising from two or more
39 separate incidents.

40 (d) The secretary of revenue may adopt rules and regulations
41 establishing guidelines, including conditions, under which a
42 disqualification for life under subsection (c) may be reduced to a period of
43 not less than 10 years.

1 (e) A person is disqualified from driving a commercial motor vehicle
2 for life who uses a commercial motor vehicle or noncommercial motor
3 vehicle in the commission of any felony involving the manufacture,
4 distribution or dispensing of a controlled substance, or possession with
5 intent to manufacture, distribute or dispense a controlled substance.

6 (f) A person is disqualified from driving a commercial motor vehicle
7 for a period of not less than 60 days if convicted of two serious traffic
8 violations, or 120 days if convicted of three or more serious traffic
9 violations, committed in a commercial motor vehicle arising from separate
10 incidents occurring within a three-year period. Any disqualification period
11 under this paragraph shall be in addition to any other previous period of
12 disqualification. The beginning date for any three-year period within a ten-
13 year period, required by this subsection, shall be the issuance date of the
14 citation which resulted in a conviction.

15 (g) A person is disqualified from driving a commercial motor vehicle
16 for a period of not less than 60 days if convicted of two serious traffic
17 violations, or 120 days if convicted of three or more serious traffic
18 violations, committed in a noncommercial motor vehicle arising from
19 separate incidents occurring within a three-year period, if such convictions
20 result in the revocation, cancellation or suspension of the person's driving
21 privileges.

22 (h) (1) A person who is convicted of operating a commercial motor
23 vehicle in violation of an out-of-service order shall be disqualified from
24 driving a commercial motor vehicle for a period of not less than:

25 (A) Ninety days nor more than one year, if the driver is convicted of a
26 first violation of an out-of-service order;

27 (B) one year nor more than five years if the person has one prior
28 conviction for violating an out-of-service order in a separate incident and
29 such prior offense was committed within the 10 years immediately
30 preceding the date of the present violation; or

31 (C) three years nor more than five years if the person has two or more
32 prior convictions for violating out-of-service orders in separate incidents
33 and such prior offenses were committed within the 10 years immediately
34 preceding the date of the present violation.

35 (2) A person who is convicted of operating a commercial motor
36 vehicle in violation of an out-of-service order while transporting a
37 hazardous material required to be placarded under 49 U.S.C. § 5101 et seq.
38 or while operating a motor vehicle designed to transport more than 15
39 passengers, including the driver, shall be disqualified from driving a
40 commercial motor vehicle for a period of not less than:

41 (A) One hundred and eighty days nor more than two years if the
42 driver is convicted of a first violation of an out-of-service order; or

43 (B) three years nor more than five years if the person has a prior

1 conviction for violating an out-of-service order in a separate incident and
2 such prior offense was committed within the 10 years immediately
3 preceding the date of the present violation.

4 (i) (1) A person who is convicted of operating a commercial motor
5 vehicle in violation of a federal, state or local law or regulation pertaining
6 to one of the following six offenses at a railroad-highway grade crossing
7 shall be disqualified from driving a commercial motor vehicle for the
8 period of time specified in paragraph (2):

9 (A) For persons who are not required to always stop, failing to slow
10 down and check that the tracks are clear of an approaching train;

11 (B) for persons who are not required to always stop, failing to stop
12 before reaching the crossing, if the tracks are not clear;

13 (C) for persons who are always required to stop, failing to stop before
14 driving onto the crossing;

15 (D) for all persons failing to have sufficient space to drive completely
16 through the crossing without stopping;

17 (E) for all persons failing to obey a traffic control device or the
18 directions of an enforcement official at the crossing; or

19 (F) for all persons failing to negotiate a crossing because of
20 insufficient undercarriage clearance.

21 (2) A driver shall be disqualified from driving a commercial motor
22 vehicle for not less than:

23 (A) Sixty days if the driver is convicted of a first violation of a
24 railroad-highway grade crossing violation;

25 (B) one hundred and twenty days if, during any three-year period, the
26 driver is convicted of a second railroad-highway grade crossing violation
27 in separate incidents; or

28 (C) one year if, during any three-year period, the driver is convicted
29 of a third or subsequent railroad-highway grade crossing violation in
30 separate incidents.

31 (j) After suspending, revoking or canceling a commercial driver's
32 license, the division shall update its records to reflect that action within 10
33 days. After suspending, revoking or canceling a nonresident commercial
34 driver's privileges, the division shall notify the licensing authority of the
35 state which issued the commercial driver's license or nonresident
36 commercial driver's license within 10 days. The notification shall include
37 both the disqualification and the violation that resulted in the
38 disqualification, suspension, revocation or cancellation.

39 (k) Upon receiving notification from the licensing authority of
40 another state, that it has disqualified a commercial driver's license holder
41 licensed by this state, or has suspended, revoked or canceled such
42 commercial driver's license holder's commercial driver's license, the
43 division shall record such notification and the information such

1 notification provides on the driver's record.

2 (l) Upon suspension, revocation, cancellation or disqualification of a
3 commercial driver's license under this act, the license shall be immediately
4 surrendered to the division if still in the licensee's possession. If otherwise
5 eligible, and upon payment of the required fees, the licensee may be issued
6 a noncommercial driver's license for the period of suspension, revocation,
7 cancellation or disqualification of the commercial driver's license under
8 the same identifier number.

9 (m) As used in this section, "test refusal" means a person's refusal to
10 submit to and complete a test requested pursuant to K.S.A. 8-2,145, and
11 amendments thereto; "test failure" means a person's submission to and
12 completion of a test which determines that the person's alcohol
13 concentration is 0.04 or greater, pursuant to K.S.A. 8-2,145, and
14 amendments thereto.

15 Sec. 4. K.S.A. 2017 Supp. 8-2,144 is hereby amended to read as
16 follows: 8-2,144. (a) Driving a commercial motor vehicle under the
17 influence is operating or attempting to operate any commercial motor
18 vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, within this
19 state while:

20 (1) The alcohol concentration in the person's blood or breath, as
21 shown by any competent evidence, including other competent evidence, as
22 defined in K.S.A. 8-1013(f)(1), and amendments thereto, is 0.04 or more;

23 (2) the alcohol concentration in the person's blood or breath, as
24 measured within three hours of the time of driving a commercial motor
25 vehicle, is 0.04 or more; or

26 (3) committing a violation of K.S.A. 8-1567(a), and amendments
27 thereto, or the ordinance of a city or resolution of a county which prohibits
28 any of the acts prohibited thereunder *or is otherwise comparable*.

29 (b) (1) Driving a commercial motor vehicle under the influence is:

30 (A) On a first conviction a class B, nonperson misdemeanor. The
31 person convicted shall be sentenced to not less than 48 consecutive hours
32 nor more than six months' imprisonment, or in the court's discretion, 100
33 hours of public service, and fined not less than \$750 nor more than \$1,000.
34 The person convicted shall serve at least 48 consecutive hours'
35 imprisonment or 100 hours of public service either before or as a condition
36 of any grant of probation, suspension or reduction of sentence or parole or
37 other release;

38 (B) on a second conviction a class A, nonperson misdemeanor. The
39 person convicted shall be sentenced to not less than 90 days nor more than
40 one year's imprisonment and fined not less than \$1,250 nor more than
41 \$1,750. The person convicted shall serve at least five consecutive days'
42 imprisonment before the person is granted probation, suspension or
43 reduction of sentence or parole or is otherwise released. The five days'

1 imprisonment mandated by this subsection may be served in a work
2 release program only after such person has served 48 consecutive hours'
3 imprisonment, provided such work release program requires such person
4 to return to confinement at the end of each day in the work release
5 program. The person convicted, if placed into a work release program,
6 shall serve a minimum of 120 hours of confinement. Such 120 hours of
7 confinement shall be a period of at least 48 consecutive hours of
8 imprisonment followed by confinement hours at the end of and continuing
9 to the beginning of the offender's work day. The court may place the
10 person convicted under a house arrest program pursuant to K.S.A. 2017
11 Supp. 21-6609, and amendments thereto, to serve the five days'
12 imprisonment mandated by this subsection only after such person has
13 served 48 consecutive hours' imprisonment. The person convicted, if
14 placed under house arrest, shall be monitored by an electronic monitoring
15 device, which verifies the offender's location. The offender shall serve a
16 minimum of 120 hours of confinement within the boundaries of the
17 offender's residence. Any exceptions to remaining within the boundaries of
18 the offender's residence provided for in the house arrest agreement shall
19 not be counted as part of the 120 hours; and

20 (C) on a third or subsequent conviction a nonperson felony. The
21 person convicted shall be sentenced to not less than 90 days nor more than
22 one year's imprisonment and fined not less than \$1,750 nor more than
23 \$2,500. The person convicted shall not be eligible for release on probation,
24 suspension or reduction of sentence or parole until the person has served at
25 least 90 days' imprisonment. The 90 days' imprisonment mandated by this
26 subsection may be served in a work release program only after such person
27 has served 48 consecutive hours' imprisonment, provided such work
28 release program requires such person to return to confinement at the end of
29 each day in the work release program. The person convicted, if placed into
30 a work release program, shall serve a minimum of 2,160 hours of
31 confinement. Such 2,160 hours of confinement shall be a period of at least
32 48 consecutive hours of imprisonment followed by confinement hours at
33 the end of and continuing to the beginning of the offender's work day. The
34 court may place the person convicted under a house arrest program
35 pursuant to K.S.A. 2017 Supp. 21-6609, and amendments thereto, to serve
36 the 90 days' imprisonment mandated by this subsection only after such
37 person has served 48 consecutive hours' imprisonment. The person
38 convicted, if placed under house arrest, shall be monitored by an electronic
39 monitoring device, which verifies the offender's location. The offender
40 shall serve a minimum of 2,160 hours of confinement within the
41 boundaries of the offender's residence. Any exceptions to remaining within
42 the boundaries of the offender's residence provided for in the house arrest
43 agreement shall not be counted as part of the 2,160 hours.

1 (2) In addition, for any conviction pursuant to subsection (b)(1)(C), at
2 the time of the filing of the judgment form or journal entry as required by
3 K.S.A. 22-3426 or K.S.A. 2017 Supp. 21-6711, and amendments thereto,
4 the court shall cause a certified copy to be sent to the officer having the
5 offender in charge. The court shall determine whether the offender, upon
6 release from imprisonment, shall be supervised by community correctional
7 services or court services based upon the risk and needs of the offender.
8 The risk and needs of the offender shall be determined by use of a risk
9 assessment tool specified by the Kansas sentencing commission. The law
10 enforcement agency maintaining custody and control of a defendant for
11 imprisonment shall cause a certified copy of the judgment form or journal
12 entry to be sent to the supervision office designated by the court and upon
13 expiration of the term of imprisonment shall deliver the defendant to a
14 location designated by the supervision office designated by the court. After
15 the term of imprisonment imposed by the court, the person shall be placed
16 on supervision to community correctional services or court services, as
17 determined by the court, for a mandatory one-year period of supervision,
18 which such period of supervision shall not be reduced. During such
19 supervision, the person shall be required to participate in a
20 multidisciplinary model of services for substance use disorders facilitated
21 by a Kansas department for aging and disability services designated care
22 coordination agency to include assessment and, if appropriate, referral to a
23 community based substance use disorder treatment including recovery
24 management and mental health counseling as needed. The
25 multidisciplinary team shall include the designated care coordination
26 agency, the supervision officer, the aging and disability services
27 department designated treatment provider and the offender. *An offender*
28 *for whom a warrant has been issued by the court alleging a violation of*
29 *such supervision shall be considered a fugitive from justice if it is found*
30 *that the warrant cannot be served. If it is found the offender has violated*
31 *the provisions of this supervision, the court shall determine whether the*
32 *time from the issuing of the warrant to the date of the court's*
33 *determination of an alleged violation, or any part of it, shall be counted as*
34 *time served on supervision. Any violation of the conditions of such*
35 *supervision may subject such person to revocation of supervision and*
36 *imprisonment in jail for the remainder of the period of imprisonment, the*
37 *remainder of the supervision period, or any combination or portion*
38 *thereof. The term of supervision may be extended at the court's discretion*
39 *beyond one year, and any violation of the conditions of such extended term*
40 *of supervision may subject such person to the revocation of supervision*
41 *and imprisonment in jail of up to the remainder of the original sentence,*
42 *not the term of the extended supervision.*

43 (3) In addition, prior to sentencing for any conviction pursuant to

1 subsection (b)(1)(A) or (b)(1)(B), the court shall order the person to
2 participate in an alcohol and drug evaluation conducted by a provider in
3 accordance with K.S.A. 8-1008, and amendments thereto. The person shall
4 be required to follow any recommendation made by the provider after such
5 evaluation, unless otherwise ordered by the court.

6 (c) Any person *18 years of age or older* convicted of a violation of
7 this section, or a violation of a city ordinance or county resolution
8 prohibiting the acts prohibited by this section, who had one or more
9 children under the age of ~~14~~ *18* years in the vehicle at the time of the
10 offense shall have such person's punishment enhanced by one month of
11 imprisonment. This imprisonment shall be served consecutively to any
12 other minimum mandatory penalty imposed for a violation of this section,
13 or a violation of a city ordinance or county resolution prohibiting the acts
14 prohibited by this section. Any enhanced penalty imposed shall not exceed
15 the maximum sentence allowable by law. During the service of the
16 enhanced penalty, the judge may order the person on house arrest, work
17 release or other conditional release.

18 (d) If a person is charged with a violation of *K.S.A. 8-1567(a)(4) or*
19 *(a)(5) as incorporated in this section* ~~involving drugs~~, the fact that the
20 person is or has been entitled to use the drug under the laws of this state
21 shall not constitute a defense against the charge.

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

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

37 (g) Prior to filing a complaint alleging a violation of this section, a
38 prosecutor shall request and shall receive from the: (1) Division a record
39 of all prior convictions obtained against such person for any violations of
40 any of the motor vehicle laws of this state; and (2) Kansas bureau of
41 investigation central repository all criminal history record information
42 concerning such person.

43 (h) The court shall electronically report every conviction of a

1 violation of this section and every diversion agreement entered into in lieu
2 of further criminal proceedings on a complaint alleging a violation of this
3 section to the division. Prior to sentencing under the provisions of this
4 section, the court shall request and shall receive from the: (1) Division a
5 record of all prior convictions obtained against such person for any
6 violation of any of the motor vehicle laws of this state; and (2) Kansas
7 bureau of investigation central repository all criminal history record
8 information concerning such person.

9 (i) Upon conviction of a person of a violation of this section or a
10 violation of a city ordinance or county resolution prohibiting the acts
11 prohibited by this section, the division, upon receiving a report of
12 conviction, shall: (1) Disqualify the person from driving a commercial
13 motor vehicle under K.S.A. 8-2,142, and amendments thereto; and (2)
14 suspend, restrict or suspend and restrict the person's driving privileges as
15 provided by K.S.A. 8-1014, and amendments thereto.

16 (j) (1) Nothing contained in this section shall be construed as
17 preventing any city from enacting ordinances, or any county from adopting
18 resolutions, declaring acts prohibited or made unlawful by this section as
19 unlawful or prohibited in such city or county and prescribing penalties for
20 violation thereof.

21 (2) The minimum penalty prescribed by any such ordinance or
22 resolution shall not be less than the minimum penalty prescribed by this
23 section for the same violation, and the maximum penalty in any such
24 ordinance or resolution shall not exceed the maximum penalty prescribed
25 for the same violation.

26 (3) Any such ordinance or resolution shall authorize the court to order
27 that the convicted person pay restitution to any victim who suffered loss
28 due to the violation for which the person was convicted.

29 (k) (1) Upon the filing of a complaint, citation or notice to appear
30 alleging a person has violated a city ordinance prohibiting the acts
31 prohibited by this section, and prior to conviction thereof, a city attorney
32 shall request and shall receive from the: (A) Division of vehicles a record
33 of all prior convictions obtained against such person for any violations of
34 any of the motor vehicle laws of this state; and (B) Kansas bureau of
35 investigation central repository all criminal history record information
36 concerning such person.

37 (2) If the elements of such ordinance violation are the same as the
38 elements of a violation of this section that would constitute, and be
39 punished as, a felony, the city attorney shall refer the violation to the
40 appropriate county or district attorney for prosecution. The county or
41 district attorney shall accept such referral and pursue a disposition of such
42 violation, and shall not refer any such violation back to the city attorney.

43 (l) No plea bargaining agreement shall be entered into nor shall any

1 judge approve a plea bargaining agreement entered into for the purpose of
2 permitting a person charged with a violation of this section, or a violation
3 of any ordinance of a city or resolution of any county in this state which
4 prohibits the acts prohibited by this section, to avoid the mandatory
5 penalties established by this section or by the ordinance or resolution.

6 (m) The alternatives set out in ~~subsections (a)(1), (a)(2) and (a)(3)~~
7 *subsection (a)* may be pleaded in the alternative, and the state, city or
8 county may, but shall not be required to, elect one or ~~two of the three more~~
9 *of such alternatives* prior to submission of the case to the fact finder.

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

12 (1) ~~Convictions for a violation of K.S.A. 8-1567, and amendments~~
13 ~~thereto, or a violation of an ordinance of any city or resolution of any~~
14 ~~county which prohibits the acts that such section prohibits, or entering into~~
15 ~~a diversion agreement in lieu of further criminal proceedings on a~~
16 ~~complaint alleging any such violations, shall be taken into account, but~~
17 ~~only convictions or diversions occurring on or after July 1, 2001 or~~
18 ~~diversions listed in section 1, and amendments thereto. Except for~~
19 ~~violations of K.S.A. 2017 Supp. 8-1025, and amendments thereto, or~~
20 ~~comparable statutes, municipal ordinances or county resolutions, that~~
21 ~~occurred prior to July 1, 2018, nothing in this provision shall be construed~~
22 ~~as preventing any court from considering any convictions or diversions~~
23 ~~occurring during the person's lifetime in determining the sentence to be~~
24 ~~imposed within the limits provided for a first, second, third, fourth or~~
25 ~~subsequent offense;~~

26 (2) ~~any convictions for a violation of the following sections occurring~~
27 ~~during a person's lifetime shall be taken into account: (A) This section; (B)~~
28 ~~refusing to submit to a test to determine the presence of alcohol or drugs,~~
29 ~~K.S.A. 2017 Supp. 8-1025, and amendments thereto; (C) operating a~~
30 ~~vessel under the influence of alcohol or drugs, K.S.A. 32-1131, and~~
31 ~~amendments thereto; (D) involuntary manslaughter while driving under~~
32 ~~the influence of alcohol or drugs, K.S.A. 21-3442, prior to its repeal, or~~
33 ~~K.S.A. 2017 Supp. 21-5405(a)(3), and amendments thereto; (E)~~
34 ~~aggravated battery as described in K.S.A. 2017 Supp. 21-5413(b)(3), and~~
35 ~~amendments thereto; and (F) aggravated vehicular homicide, K.S.A. 21-~~
36 ~~3405a, prior to its repeal, or vehicular battery, K.S.A. 21-3405b, prior to its~~
37 ~~repeal, if the crime was committed while committing a violation of K.S.A.~~
38 ~~8-1567, and amendments thereto;~~

39 (3) ~~"conviction" includes: (A) Entering into a diversion agreement in~~
40 ~~lieu of further criminal proceedings on a complaint alleging a violation of~~
41 ~~a crime described in subsection (n)(2); (B) conviction of a violation of an~~
42 ~~ordinance of a city in this state, a resolution of a county in this state or any~~
43 ~~law of another state which would constitute a crime described in~~

1 ~~subsection (n)(1) or (n)(2); and (C) receiving punishment under the~~
2 ~~uniform code of military justice or Kansas code of military justice for an~~
3 ~~act which was committed on a military reservation and which would~~
4 ~~constitute a crime described in subsection (n)(1) or (n)(2) if committed off~~
5 ~~a military reservation in this state;~~

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

8 ~~(5) (3)~~ multiple convictions of any crime described in ~~subsection (n)~~
9 ~~(1) or (n)(2) section 1(a), (b), (d) or (e), and amendments thereto~~, arising
10 from the same arrest shall only be counted as one conviction.

11 (o) For the purpose of this section:

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

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

18 (3) "drug" includes toxic vapors as such term is defined in K.S.A.
19 2017 Supp. 21-5712, and amendments thereto.

20 (p) On and after July 1, 2011, the amount of \$250 from each fine
21 imposed pursuant to this section shall be remitted by the clerk of the
22 district court to the state treasurer in accordance with the provisions of
23 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
24 remittance, the state treasurer shall credit the entire amount to the
25 community corrections supervision fund established by K.S.A. 2017 Supp.
26 75-52,113, and amendments thereto.

27 Sec. 5. K.S.A. 8-2,145 is hereby amended to read as follows: 8-2,145.

28 (a) Prior to requesting a test or tests pursuant to K.S.A. 8-2,137, and
29 amendments thereto, in addition to any notices provided pursuant to
30 K.S.A. 8-1001, and amendments thereto, the following notice shall be
31 provided orally and in writing: Whenever a law enforcement officer has
32 reasonable grounds to believe a person has been driving a commercial
33 motor vehicle while having alcohol or other drugs in such person's system
34 and the person refuses to submit to and complete a test or tests requested
35 by a law enforcement officer or submits to and completes a test requested
36 by a law enforcement officer which determines that the person's alcohol
37 concentration is 0.04 or greater *or otherwise submits a test failure, as*
38 *defined in K.S.A. 8-1013, and amendments thereto*, the person will be
39 disqualified from driving a commercial motor vehicle for at least one year,
40 pursuant to Kansas law.

41 (b) It shall not be a defense that the person did not understand the
42 notices required by this section.

43 (c) Upon completion of the notices set out in K.S.A. 8-1001, and

1 amendments thereto, and the notices in subsection (a), the law
2 enforcement officer shall proceed to request a test or tests. In addition to
3 the completion of any certification required under K.S.A. 8-1002, and
4 amendments thereto, a law enforcement officer's certification shall be
5 prepared and signed by one or more officers to certify:

6 (1) There existed reasonable grounds to believe the person had been
7 driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and
8 amendments thereto, while having alcohol or other drugs in such person's
9 system;

10 (2) the person had been placed under arrest, was in custody or had
11 been involved in a motor vehicle accident or collision;

12 (3) a law enforcement officer had presented the person with the
13 notices required by this section; and

14 (4) the person refused to submit to and complete a test or the test
15 result for alcohol content of blood or breath was 0.04 or greater, *or a test*
16 *of the person's blood or oral fluid revealed a measurable amount of a*
17 *controlled substance listed in K.S.A. 65-4105 or 65-4107, and*
18 *amendments thereto, or its pharmacologically active metabolite.*

19 (d) For purposes of this section, certification shall be complete upon
20 signing, and no additional acts of oath, affirmation, acknowledgment or
21 proof of execution shall be required. The signed certification or a copy or
22 photostatic reproduction thereof shall be admissible in evidence in all
23 proceedings brought pursuant to this act, and receipt of any such
24 certification, copy or reproduction shall accord the division authority to
25 proceed as set forth herein. Any person who signs a certification submitted
26 to the division knowing it contains a false statement is guilty of a class B
27 misdemeanor.

28 (e) Upon completing a certification under subsection (c), the officer
29 shall serve upon the person notice of disqualification of the privilege to
30 drive a commercial motor vehicle pursuant to K.S.A. 8-2,142, and
31 amendments thereto, together with a copy of the certification. In cases
32 where a 0.04 or greater test result, *or other test failure, as defined in*
33 *K.S.A. 8-1013, and amendments thereto*, is established by a subsequent
34 analysis of a breath or blood sample, the officer shall serve notice of such
35 suspension in person or by another designated officer or by mailing the
36 notice to the person at the address provided at the time of the test. If the
37 determination of a test refusal or 0.04 or greater test result, *or other test*
38 *failure, as defined in K.S.A. 8-1013, and amendments thereto*, is made
39 while the person is still in custody, service shall be made in person by the
40 officer on behalf of the division of vehicles.

41 (f) (1) The notice shall contain the following information:

42 (†) (A) The person's name, driver's license number and current
43 address pursuant to K.S.A. 8-248, and amendments thereto;

- 1 ~~(2)~~ (B) the reason and statutory grounds for the disqualification;
- 2 ~~(3)~~ (C) the date notice is being served and the effective date of the
- 3 disqualification, which shall be the 20th day after the date of service;
- 4 ~~(4)~~ (D) the right of the person to request an administrative hearing;
- 5 ~~and~~
- 6 ~~(5)~~ (E) the procedure the person must follow to request an
- 7 administrative hearing; *and*
- 8 (F) *if the officer is certifying the result of a test of the person's blood*
- 9 *or oral fluid that revealed a measurable amount of a controlled substance*
- 10 *listed in K.S.A. 65-4105 or 65-4107, and amendments thereto, or its*
- 11 *pharmacologically active metabolite, the notice shall also inform the*
- 12 *person of the opportunity to establish the affirmative defense that the*
- 13 *person lawfully ingested the controlled substance by order of a*
- 14 *practitioner or mid-level practitioner, as defined in K.S.A. 65-4101, and*
- 15 *amendments thereto, or otherwise ingested the controlled substance in*
- 16 *accordance with the laws of the United States or the state of Kansas.*
- 17 (2) The notice of disqualification shall also inform the person that all
- 18 correspondence will be mailed to the person at the address contained in the
- 19 notice of disqualification unless the person notifies the division in writing
- 20 of a different address or change of address. The address provided will be
- 21 considered a change of address for purposes of K.S.A. 8-248, and
- 22 amendments thereto, if the address furnished is different from that on file
- 23 with the division.
- 24 (g) If the person mails a written request which is postmarked within
- 25 10 calendar days after service of the notice, if by personal service, or 13
- 26 calendar days after service, if by mail, the division shall schedule a hearing
- 27 in the county where the alleged violation occurred, or in a county adjacent
- 28 thereto. The licensee may request that subpoenas be issued in accordance
- 29 with the notice provided pursuant to subsection (d). Any request made by
- 30 the licensee to subpoena witnesses must be made in writing at the time the
- 31 hearing is requested and must include the name and current address of
- 32 such witness and, except for the certifying law enforcement officer or
- 33 officers, a statement of how the testimony of such witness is relevant.
- 34 Upon receiving a timely request for a hearing, the division shall mail to the
- 35 person notice of the time, date and place of hearing in accordance with
- 36 subsection (i) and extend the person's temporary driving privileges until
- 37 the date set for the hearing by the division, unless otherwise disqualified,
- 38 suspended, revoked or canceled.
- 39 (h) The law enforcement officer shall forward the certification
- 40 required under subsection (c) to the director within five days of the date of
- 41 certification. Upon receipt of the certification, the division shall review the
- 42 certification to determine that it meets the requirements of subsection (c).
- 43 Upon so determining, the director shall proceed to disqualify the driver

1 from driving a commercial motor vehicle in accordance with the notice of
2 disqualification previously served.

3 (i) All notices of disqualification under this section and all notices of
4 a hearing held under this section shall be sent by first-class mail and a
5 United States post office certificate of mailing shall be obtained therefor.
6 All notices so mailed shall be deemed received three days after mailing.

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

11 (k) The rules regarding evidence and procedure at hearings held
12 under K.S.A. 8-1020, and amendments thereto, shall be applicable to
13 hearings held under this section. At the hearing on a disqualification of
14 commercial driving privileges, the issues shall be limited to those set out
15 in the certification.

16 (l) The division shall prepare and distribute forms for use by law
17 enforcement officers in giving the notice required by this section.

18 Sec. 6. K.S.A. 2017 Supp. 8-1001 is hereby amended to read as
19 follows: 8-1001. (a) Any person who operates or attempts to operate a
20 vehicle within this state ~~is deemed to have given consent~~ *consents*, subject
21 to the provisions of this article, to submit to one or more tests of the
22 person's blood, breath, urine or other bodily substance to determine the
23 presence of alcohol or drugs. The testing ~~deemed consented to herein~~ shall
24 include all quantitative and qualitative tests for alcohol and drugs. ~~A~~
25 ~~person who is dead or unconscious shall be deemed not to have withdrawn~~
26 ~~the person's consent to such test or tests, which shall be administered in the~~
27 ~~manner provided by this section~~ *The test must be administered at the*
28 *direction of a law enforcement officer, and the law enforcement officer*
29 *shall determine which manner of test is to be conducted or requested.*

30 (b) (1) ~~A law enforcement officer shall request a person to submit to a~~
31 ~~test or tests deemed consented to under subsection (a):~~ (1) ~~If, at the time of~~
32 ~~the request, the officer has reasonable grounds to believe the person was~~
33 ~~operating or attempting to operate a vehicle while under the influence of~~
34 ~~alcohol or drugs, or both~~ *One or more tests may be required of a person*
35 *when, at the time of the request, a law enforcement officer has probable*
36 *cause to believe the person has committed a violation of K.S.A. 8-1567(a),*
37 *and amendments thereto, or to believe that the person was driving a*
38 *commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments*
39 *thereto, while having alcohol or other drugs in such person's system, or*
40 ~~was to believe the person is~~ *under the age of 21 years and was operating or*
41 *attempting to operate a vehicle while having alcohol or other drugs in such*
42 *person's system; and one of the following conditions exists: (A) The*
43 *person has been arrested or otherwise taken into custody for any violation*

1 of any state statute, county resolution or city ordinance; or (B) the person
2 has been involved in a *motor* vehicle accident or collision resulting in
3 property damage or, personal injury other than serious injury; or (2) if the
4 person was operating or attempting to operate a vehicle and such vehicle
5 has been involved in an accident or collision resulting in serious injury or
6 death of any person and the operator could be cited for any traffic offense,
7 as defined in K.S.A. 8-2117, and amendments thereto. The traffic offense
8 violation shall constitute probable cause for purposes of paragraph (2). The
9 test or tests under paragraph (2) shall not be required if a law enforcement
10 officer has reasonable grounds to believe the actions of the operator did
11 not contribute to the accident or collision or death.

12 (2) The law enforcement officer directing administration of the test or
13 tests may act on personal knowledge or on the basis of the collective
14 information available to law enforcement officers involved in the accident
15 investigation or arrest.

16 (c) *When requesting a test or tests of breath or other bodily substance*
17 *other than blood or urine, under this section, the person shall be given*
18 *oral and written notice that:*

19 (1) *Kansas law requires the person to take a test to determine if the*
20 *person is under the influence of alcohol or drugs, or both;*

21 (2) *there is no right to consult with an attorney regarding whether to*
22 *submit to testing, but, after the completion of the testing, the person may*
23 *request and has the right to consult with an attorney and may secure*
24 *additional testing;*

25 (3) *if the person refuses to submit to and complete the test or tests, or*
26 *if the person fails a test, the person's driving privileges will be suspended*
27 *for a period of at least 30 days and up to one year;*

28 (4) *refusal to submit to testing may be used against the person at any*
29 *trial or hearing on a charge arising out of refusal to submit to testing or*
30 *the operation or attempted operation of a vehicle while under the*
31 *influence of alcohol or drugs, or both; and*

32 (5) *the results of the testing may be used against the person at any*
33 *trial or hearing on a charge arising out of the operation or attempted*
34 *operation of a vehicle while under the influence of alcohol or drugs, or*
35 *both.*

36 (d) *When requesting a test or tests of blood or urine, under this*
37 *section, the person shall be given oral and written notice that:*

38 (1) *Kansas law requires the person to take a test to determine if the*
39 *person is under the influence of alcohol or drugs, or both;*

40 (2) *if the person refuses to submit to and complete the test or tests, or*
41 *if the person fails a test, the person's driving privileges will be suspended*
42 *for a period of at least 30 days and up to one year;*

43 (3) *the results of the testing may be used against the person at any*

1 trial or hearing on a charge arising out of the operation or attempted
2 operation of a vehicle while under the influence of alcohol or drugs, or
3 both; and

4 (4) after the completion of the testing, the person may request and
5 has the right to consult with an attorney and may secure additional
6 testing.

7 (e) Nothing in this section shall be construed to limit the right of a
8 law enforcement officer to conduct any search of a person's breath or
9 other bodily substance, other than blood or urine, incident to a lawful
10 arrest pursuant to the constitution of the United States, with or without
11 providing the person the advisories authorized in subsection (c), nor limit
12 the admissibility at any trial or hearing of alcohol or drug concentration
13 testing results obtained pursuant to such a search.

14 (f) Nothing in this section shall be construed to limit the right of a
15 law enforcement officer to conduct or obtain a blood or urine test of a
16 person pursuant to a warrant under K.S.A. 22-2502, and amendments
17 thereto, the constitution of the United States or a judicially recognized
18 exception to the search warrant requirement, with or without providing the
19 person the advisories authorized in subsection (d), nor limit the
20 admissibility at any trial or hearing of alcohol or drug concentration
21 testing results obtained pursuant to such a search.

22 (g) A law enforcement officer may direct a medical professional, as
23 described in subsection (h), to draw one or more samples of blood from a
24 person to determine the blood's alcohol or drug concentration:

25 (1) If the person has given consent, with or without the advisories in
26 subsection (d), and meets the requirements of subsection (b);

27 (2) if law enforcement has obtained a search warrant authorizing the
28 collection of blood from the person; or

29 (3) if the person refuses or is unable to consent to submit to and
30 complete a test, and another judicially recognized exception to the
31 warrant requirement applies.

32 (h) If a law enforcement officer ~~requests a person to submit to a test~~
33 is authorized to collect one or more tests of blood under this section, the
34 withdrawal of blood at the direction of the officer may be performed only
35 by: (1) A person licensed to practice medicine and surgery, licensed as a
36 physician assistant, or a person acting under the direction of any such
37 licensed person; (2) a registered nurse or a licensed practical nurse; (3) any
38 qualified medical technician, including, but not limited to, an emergency
39 medical technician-intermediate, mobile intensive care technician, an
40 emergency medical technician-intermediate defibrillator, an advanced
41 emergency medical technician or a paramedic, as those terms are defined
42 in K.S.A. 65-6112, and amendments thereto, authorized by medical
43 protocol; or (4) a phlebotomist.

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

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

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

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

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

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

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

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

40 ~~(i) (k) If a law enforcement officer requests a person to submit to a~~
41 ~~test is authorized to collect one or more tests of urine under this section,~~
42 ~~the collection of the urine sample shall be supervised by: (1) A person~~
43 ~~licensed to practice medicine and surgery, licensed as a physician assistant,~~

1 or a person acting under the direction of any such licensed person; (2) a
2 registered nurse or a licensed practical nurse; or (3) a law enforcement
3 officer of the same sex as the person being tested. The collection of the
4 urine sample shall be conducted out of the view of any person other than
5 the persons supervising the collection of the sample and the person being
6 tested, unless the right to privacy is waived by the person being tested.
7 When possible, the supervising person shall be a law enforcement officer.
8 The results of qualitative testing for drug presence shall be admissible in
9 evidence and questions of accuracy or reliability shall go to the weight
10 rather than the admissibility of the evidence. If the person is medically
11 unable to provide a urine sample in such manner due to the injuries or
12 treatment of the injuries, the same authorization and procedure as used for
13 the collection of blood in subsections ~~(d) and (e)~~ (g) and (i) shall apply to
14 the collection of a urine sample.

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

18 ~~(k) Before a test or tests are administered under this section, the~~
19 ~~person shall be given oral and written notice that:~~

20 ~~(1) Kansas law requires the person to submit to and complete one or~~
21 ~~more tests of breath, blood or urine to determine if the person is under the~~
22 ~~influence of alcohol or drugs, or both;~~

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

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

27 ~~(4) if the person refuses to submit to and complete any test of breath,~~
28 ~~blood or urine hereafter requested by a law enforcement officer, the person~~
29 ~~may be charged with a separate crime of refusing to submit to a test to~~
30 ~~determine the presence of alcohol or drugs, which carries criminal~~
31 ~~penalties that are greater than or equal to the criminal penalties for the~~
32 ~~crime of driving under the influence, if such person has:~~

33 ~~(A) Any prior test refusal as defined in K.S.A. 8-1013, and~~
34 ~~amendments thereto, which occurred: (i) On or after July 1, 2001; and (ii)~~
35 ~~when such person was 18 years of age or older; or~~

36 ~~(B) any prior conviction for a violation of K.S.A. 8-1567 or 8-2,144,~~
37 ~~and amendments thereto, or a violation of an ordinance of any city or~~
38 ~~resolution of any county which prohibits the acts that such section~~
39 ~~prohibits, or entering into a diversion agreement in lieu of further criminal~~
40 ~~proceedings on a complaint alleging any such violations, which occurred:~~
41 ~~(i) On or after July 1, 2001; and (ii) when such person was 18 years of age~~
42 ~~or older;~~

43 ~~(5) if the person refuses to submit to and complete any test of breath,~~

1 blood or urine hereafter requested by a law enforcement officer, the
2 person's driving privileges will be suspended for one year for the first or
3 subsequent occurrence;

4 (6) ~~if the person submits to and completes the test or tests and the test
5 results show:~~

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

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

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

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

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

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

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

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

1 person at any trial on a charge arising out of the alleged operation or
2 attempted operation of a vehicle while under the influence of alcohol or
3 drugs, or both. The person's refusal shall be admissible in evidence against
4 the person at any trial on a charge arising out of the alleged violation of
5 K.S.A. 2017 Supp. 8-1025, and amendments thereto.

6 (o) If a law enforcement officer had ~~reasonable grounds~~ *probable*
7 *cause* to believe the person had been driving a commercial motor vehicle,
8 as defined in K.S.A. 8-2,128, and amendments thereto, and the test results
9 show a blood or breath alcohol concentration of .04 or greater, the person
10 shall be disqualified from driving a commercial motor vehicle, pursuant to
11 K.S.A. 8-2,142, and amendments thereto. If a law enforcement officer had
12 ~~reasonable grounds~~ *probable cause* to believe the person had been driving
13 ~~a commercial motor vehicle, as defined in K.S.A. 8-2,128, and~~
14 ~~amendments thereto, and the test results show a blood or breath alcohol~~
15 ~~concentration of .08 or greater~~ *any motor vehicle, the person fails a test, as*
16 *defined in K.S.A. 8-1013(h), and amendments thereto*, or the person
17 refuses a test, the person's driving privileges shall be subject to suspension,
18 or suspension and restriction, pursuant to this section, in addition to being
19 disqualified from driving a commercial motor vehicle pursuant to K.S.A.
20 8-2,142, and amendments thereto.

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

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

32 (r) (q) It shall not be a defense that the person did not understand the
33 written or oral notice ~~required~~ *authorized* by this section.

34 (s) (r) No test results shall be suppressed because of ~~technical~~
35 ~~irregularities~~ *not affecting the substantial rights of the accused* in the
36 consent or notice ~~required~~ *authorized* pursuant to this act. *Failure to*
37 *provide any or all of the notices set forth in subsection (c) or (d) shall not*
38 *be an issue or defense in any action other than an administrative action*
39 *regarding the subject's driving privileges. If the United States supreme*
40 *court or an appellate court of this state determines that any portion of this*
41 *section is unconstitutional, the attorney general may amend the notices*
42 *provided in subsection (c) or (d) for publication by the Kansas department*
43 *of revenue according to its policies and procedures.*

1 (†) (s) Nothing in this section shall be construed to limit the
 2 admissibility at any trial of alcohol or drug concentration testing results
 3 obtained pursuant to a search warrant *or other judicially recognized*
 4 *exception to the warrant requirement.*

5 (‡) (t) 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 *when available.*

8 (↔) (u) 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. 7. K.S.A. 2017 Supp. 8-1002 is hereby amended to read as
 22 follows: 8-1002. (a) Whenever a test is requested pursuant to this act and
 23 results in either a test failure or test refusal, a law enforcement officer's
 24 certification shall be prepared. If the person had been driving a
 25 commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments
 26 thereto, a separate certification pursuant to K.S.A. 8-2,145, and
 27 amendments thereto, shall be prepared in addition to any certification
 28 required by this section. The certification required by this section shall be
 29 signed by one or more officers to certify:

30 (1) With regard to a test refusal, that: (A) There existed reasonable
 31 grounds to believe the person was operating or attempting to operate a
 32 vehicle while under the influence of alcohol or drugs, or both, or to believe
 33 that the person had been driving a commercial motor vehicle, as defined in
 34 K.S.A. 8-2,128, and amendments thereto, or is under 21 years of age while
 35 having alcohol or other drugs in such person's system; (B) the person had
 36 been placed under arrest, was in custody or had been involved in a vehicle
 37 accident or collision; (C) a law enforcement officer had presented the
 38 person with the oral and written notice required by K.S.A. 8-1001, and
 39 amendments thereto; and (D) the person refused to submit to and complete
 40 a test as requested by a law enforcement officer.

41 (2) With regard to a test failure, that: (A) There existed reasonable
 42 grounds to believe the person was operating a vehicle while under the
 43 influence of alcohol or drugs, or both, or to believe that the person had

1 been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128,
2 and amendments thereto, or is under 21 years of age while having alcohol
3 or other drugs in such person's system; (B) the person had been placed
4 under arrest, was in custody or had been involved in a vehicle accident or
5 collision; (C) a law enforcement officer had presented the person with the
6 oral and written notice required by K.S.A. 8-1001, and amendments
7 thereto; and (D) the result of the test showed that the person had an alcohol
8 concentration of 0.08 or greater in such person's blood or breath *or had a*
9 *measurable amount of a controlled substance listed in K.S.A. 65-4105 or*
10 *65-4107, and amendments thereto, or its pharmacologically active*
11 *metabolite in the person's blood or oral fluid. If the officer is certifying*
12 *that the result of a test of the person's blood or oral fluid revealed a*
13 *measurable amount of a controlled substance listed in K.S.A. 65-4105 or*
14 *65-4107, and amendments thereto, or its pharmacologically active*
15 *metabolite, the notice shall also inform the person of the opportunity to*
16 *establish the affirmative defense that the person lawfully ingested the*
17 *controlled substance by order of a practitioner or mid-level practitioner,*
18 *as defined in K.S.A. 65-4101, and amendments thereto, or otherwise*
19 *ingested the controlled substance in accordance with the laws of the*
20 *United States or the state of Kansas.*

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

28 (b) For purposes of this section, certification shall be complete upon
29 signing, and no additional acts of oath, affirmation, acknowledgment or
30 proof of execution shall be required. The signed certification or a copy or
31 photostatic reproduction thereof shall be admissible in evidence in all
32 proceedings brought pursuant to this act, and receipt of any such
33 certification, copy or reproduction shall accord the department authority to
34 proceed as set forth herein. Any person who signs a certification submitted
35 to the division knowing it contains a false statement is guilty of a class B
36 nonperson misdemeanor.

37 (c) When the officer directing administration of the testing
38 determines that a person has refused a test and the criteria of subsection (a)
39 (1) have been met or determines that a person has failed a test and the
40 criteria of subsection (a)(2) have been met, the officer shall serve upon the
41 person notice of suspension of driving privileges pursuant to K.S.A. 8-
42 1014, and amendments thereto. If the determination is made while the
43 person is still in custody, service shall be made in person by the officer on

1 behalf of the division of vehicles. In cases where a test failure is
2 established by a subsequent analysis of a breath, blood or ~~urine sample~~
3 *oral fluid*, the officer shall serve notice of such suspension in person or by
4 another designated officer or by mailing the notice to the person at the
5 address provided at the time of the test.

6 (d) In addition to the information required by subsection (a), the law
7 enforcement officer's certification and notice of suspension shall contain
8 the following information: (1) The person's name, driver's license number
9 and current address; (2) the reason and statutory grounds for the
10 suspension; (3) the date notice is being served and a statement that the
11 effective date of the suspension shall be the 30th day after the date of
12 service; (4) the right of the person to request an administrative hearing;
13 and (5) the procedure the person must follow to request an administrative
14 hearing. The law enforcement officer's certification and notice of
15 suspension shall also inform the person that: (1) Constitutional issues
16 cannot be decided at the administrative hearing, but may be preserved and
17 raised in a petition for review of the hearing as provided in K.S.A. 8-
18 1020(o) and (p), and amendments thereto; and (2) all correspondence will
19 be mailed to the person at the address contained in the law enforcement
20 officer's certification and notice of suspension unless the person notifies
21 the division in writing of a different address or change of address. The
22 address provided will be considered a change of address for purposes of
23 K.S.A. 8-248, and amendments thereto, if the address furnished is different
24 from that on file with the division.

25 (e) If a person refuses a test or if a person is still in custody when it is
26 determined that the person has failed a test, the officer shall take any
27 license in the possession of the person and, if the license is not expired,
28 suspended, revoked or canceled, shall issue a temporary license effective
29 until the 30th day after the date of service set out in the law enforcement
30 officer's certification and notice of suspension. If the test failure is
31 established by a subsequent analysis of a breath or blood sample, the
32 temporary license shall be served together with the copy of the law
33 enforcement officer's certification and notice of suspension. A temporary
34 license issued pursuant to this subsection shall bear the same restrictions
35 and limitations as the license for which it was exchanged. Within seven
36 days after the date of service of a copy of the law enforcement officer's
37 certification and notice of suspension the officer's certification and notice
38 of suspension, along with any licenses taken, shall be forwarded to the
39 division.

40 (f) Upon receipt of the law enforcement officer's certification, the
41 division shall review the certification to determine that it meets the
42 requirements of subsection (a). Upon so determining, the division shall
43 proceed to suspend the person's driving privileges in accordance with the

1 notice of suspension previously served. If the requirements of subsection
2 (a) are not met, the division shall dismiss the administrative proceeding
3 and return any license surrendered by the person.

4 (g) The division shall prepare and distribute forms for use by law
5 enforcement officers in giving the notice required by this section.

6 (h) The provisions of K.S.A. 60-206, and amendments thereto,
7 regarding the computation of time shall be applicable in determining the
8 effective date of suspension set out in subsection (d).

9 Sec. 8. K.S.A. 2017 Supp. 8-1012 is hereby amended to read as
10 follows: 8-1012. (a) ~~Any person who operates or attempts to operate a~~
11 ~~vehicle within this state is deemed to have given consent to submit to a~~
12 ~~preliminary screening test of the person's breath or saliva, or both, subject~~
13 ~~to the provisions set out in subsection (b):~~

14 (b) ~~A law enforcement officer may request a person who is operating~~
15 ~~or attempting to operate a vehicle within this state to submit to a~~
16 ~~preliminary screening test of the person's breath or *saliva oral fluid*, or~~
17 ~~both, *if otherwise permitted by law* or if the officer has reasonable~~
18 ~~suspicion to believe the person has been operating or attempting to operate~~
19 ~~a vehicle while under the influence of alcohol or drugs, or both alcohol~~
20 ~~and drugs.~~

21 (e) ~~At the time the test is requested, the person shall be given oral~~
22 ~~notice that: (1) There is no right to consult with an attorney regarding~~
23 ~~whether to submit to testing; (2) refusal to submit to testing is a traffic~~
24 ~~infraction; and (3) further testing may be required after the preliminary~~
25 ~~screening test. Failure to provide the notice shall not be an issue or defense~~
26 ~~in any action. The law enforcement officer then shall request the person to~~
27 ~~submit to the test.~~

28 (d) ~~Refusal to take and complete the test as requested is a traffic~~
29 ~~infraction. If the person submits to the test, the results shall be used for the~~
30 ~~purpose of assisting law enforcement officers in determining whether an~~
31 ~~arrest should be made and whether to request the tests authorized by~~
32 ~~K.S.A. 8-1001, and amendments thereto. A law enforcement officer may~~
33 ~~arrest a person based in whole or in part upon the results of a preliminary~~
34 ~~screening test. Such results shall not be admissible in any civil or criminal~~
35 ~~action concerning the operation of or attempted operation of a vehicle~~
36 ~~except to aid the court or hearing officer in determining a challenge to the~~
37 ~~validity of the arrest or the validity of the request to submit to a test~~
38 ~~pursuant to K.S.A. 8-1001, and amendments thereto. Following the~~
39 ~~preliminary screening test, additional tests may be requested pursuant to~~
40 ~~K.S.A. 8-1001, and amendments thereto.~~

41 (e) (b) Any preliminary screening of a person's breath shall be
42 conducted with a device approved pursuant to K.S.A. 65-1,107, and
43 amendments thereto. *Any preliminary screening of a person's oral fluid*

1 *shall be conducted in accordance with rules and regulations, if any,*
2 *approved pursuant to K.S.A. 75-712h, and amendments thereto.*

3 Sec. 9. K.S.A. 2017 Supp. 8-1013 is hereby amended to read as
4 follows: 8-1013. As used in K.S.A. 8-1001 through 8-1010, 8-1011, 8-
5 1012, 8-1014, 8-1015, 8-1016, 8-1017 and 8-1018, and amendments
6 thereto, and this section:

7 (a) "Alcohol concentration" means the number of grams of alcohol
8 per 100 milliliters of blood or per 210 liters of breath.

9 (b) (1) "Alcohol or drug-related conviction" means any of the
10 following: (A) Conviction of vehicular battery or aggravated vehicular
11 homicide, if the crime is committed while committing a violation of
12 K.S.A. 8-1567, and amendments thereto, or the ordinance of a city or
13 resolution of a county in this state which prohibits any acts prohibited by
14 that statute, or conviction of a violation of K.S.A. 8-2,144 or 8-1567 or
15 K.S.A. 2017 Supp. 8-1025, and amendments thereto, or conviction of a
16 violation of aggravated battery as described in ~~subsection (b)(3) of~~ K.S.A.
17 2017 Supp. 21-5413(b)(3), and amendments thereto; (B) conviction of a
18 violation of a law of another state which would constitute a crime
19 described in subsection (b)(1)(A) if committed in this state; (C) conviction
20 of a violation of an ordinance of a city in this state or a resolution of a
21 county in this state which would constitute a crime described in subsection
22 (b)(1)(A), whether or not such conviction is in a court of record; or (D)
23 conviction of an act which was committed on a military reservation and
24 which would constitute a violation of K.S.A. 8-2,144 or 8-1567 or K.S.A.
25 2017 Supp. 8-1025, and amendments thereto, or would constitute a crime
26 described in subsection (b)(1)(A) if committed off a military reservation in
27 this state.

28 (2) For the purpose of determining whether an occurrence is a first,
29 second or subsequent occurrence: (A) "Alcohol or drug-related conviction"
30 also includes entering into a diversion agreement in lieu of further criminal
31 proceedings on a complaint alleging commission of a crime described in
32 subsection (b)(1), including a diversion agreement entered into prior to the
33 effective date of this act; and (B) it is irrelevant whether an offense
34 occurred before or after conviction or diversion for a previous offense.

35 (c) "Division" means the division of vehicles of the department of
36 revenue.

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

40 (e) "Occurrence" means a test refusal, test failure or alcohol or drug-
41 related conviction, or any combination thereof arising from one arrest,
42 including an arrest which occurred prior to the effective ~~day~~ *date* of this
43 act.

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

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

7 (h) "Test failure" or "fails a test" refers to a person's having results of
8 a test administered pursuant to this act, other than a preliminary screening
9 test, which show an alcohol concentration of 0.08 or greater in the person's
10 blood or breath, *or a measurable amount of a controlled substance listed*
11 *in K.S.A. 65-4105 or 65-4107, and amendments thereto, or its*
12 *pharmacologically active metabolite in the person's blood or oral fluid,*
13 and includes failure of any such test on a military reservation.

14 (i) "Test refusal" or "refuses a test" refers to a person's failure to
15 submit to or complete any test of the person's blood, breath, urine or other
16 bodily substance, other than a preliminary screening test, in accordance
17 with this act, and includes refusal of any such test on a military
18 reservation.

19 (j) "Law enforcement officer" has the meaning provided by K.S.A.
20 2017 Supp. 21-5111, and amendments thereto, and includes any person
21 authorized by law to make an arrest on a military reservation for an act
22 which would constitute a violation of K.S.A. 8-1567 or K.S.A. 2017 Supp.
23 8-1025, and amendments thereto, if committed off a military reservation in
24 this state.

25 (k) *A "pharmacologically active metabolite" is a drug that has been*
26 *metabolized by the body into a modified form of the ingested drug that*
27 *continues to produce effects in the body similar to that of the parent drug.*

28 Sec. 10. K.S.A. 2017 Supp. 8-1020 is hereby amended to read as
29 follows: 8-1020. (a) Any licensee served with an officer's certification and
30 notice of suspension pursuant to K.S.A. 8-1002, and amendments thereto,
31 may request an administrative hearing. Such request may be made either
32 by:

33 (1) Mailing a written request which is postmarked 14 days after
34 service of notice; or

35 (2) transmitting a written request by electronic facsimile which is
36 received by the division within 14 days after service of notice.

37 (b) If the licensee makes a timely request for an administrative
38 hearing and makes a timely payment of the required hearing fee, any
39 temporary license issued pursuant to K.S.A. 8-1002, and amendments
40 thereto, shall remain in effect until the 30th day after the effective date of
41 the decision made by the division.

42 (c) If the licensee fails to make a timely request for an administrative
43 hearing together with the required hearing fee, the licensee's driving

1 privileges shall be suspended or suspended and then restricted in
2 accordance with the notice of suspension served pursuant to K.S.A. 8-
3 1002, and amendments thereto.

4 (d) (1) Upon receipt of a timely request for a hearing together with
5 the required hearing fee, the division shall forthwith set the matter for
6 hearing before a representative of the director and provide notice of the
7 extension of temporary driving privileges. The hearing shall be held by
8 telephone conference call unless the hearing request includes a request that
9 the hearing be held in person before a representative of the director. The
10 officer's certification and notice of suspension shall inform the licensee of
11 the availability of a hearing before a representative of the director. Except
12 for a hearing conducted by telephone conference call, the hearing shall be
13 conducted in the county where the arrest occurred or a county adjacent
14 thereto.

15 (2) The division shall charge a fee of \$50 for a hearing, to be paid
16 within the time period for making a timely request for a hearing, whether
17 held by telephone or in person, to be applied by the division for
18 administrative costs to conduct the hearing. The division shall remit all
19 hearing fees to the state treasurer in accordance with the provisions of
20 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
21 remittance, the state treasurer shall deposit the entire amount in the state
22 treasury to the credit of the division of vehicles operating fund. The
23 hearing fee established in this section shall be the only fee collected or
24 moneys in the nature of a fee collected for such hearing. Such fee shall
25 only be established by an act of the legislature and no other authority is
26 established by law or otherwise to collect a fee.

27 (e) Except as provided in subsection (f), prehearing discovery shall be
28 limited to the following documents, which shall be provided to the
29 licensee or the licensee's attorney no later than seven days prior to the date
30 of hearing:

31 (1) The officer's certification and notice of suspension;

32 (2) in the case of a breath or blood test failure, copies of documents
33 indicating the result of any evidentiary breath or blood test administered at
34 the request of a law enforcement officer;

35 (3) in the case of a breath test failure, a copy of the affidavit showing
36 certification of the officer and the instrument; ~~and~~

37 (4) in the case of a breath test failure, a copy of the Kansas
38 department of health and environment testing protocol checklist; *and*

39 (5) *in the case of a drug test failure, a copy of the report from the lab*
40 *certifying the test result.*

41 (f) At or prior to the time the notice of hearing is sent, the division
42 shall issue an order allowing the licensee or the licensee's attorney to
43 review any law enforcement report and video or audio tape record made of

1 the events upon which the administrative action is based. Such review
2 shall take place at a reasonable time designated by the law enforcement
3 agency and shall be made at the location where the law enforcement report
4 or video or audio tape is kept. The licensee may obtain a copy of any such
5 law enforcement report or video or audio tape upon request and upon
6 payment of a reasonable fee to the law enforcement agency, not to exceed
7 \$25 per tape or \$.25 per page of the law enforcement report.

8 (g) Witnesses at the hearing shall be limited to the licensee, to any
9 law enforcement officer who signed the certification form and to one other
10 witness who was present at the time of the issuance of the certification and
11 called by the licensee. The presence of the certifying officer or officers
12 shall not be required, unless requested by the licensee at the time of
13 making the request for the hearing. The examination of a law enforcement
14 officer shall be restricted to the factual circumstances relied upon in the
15 officer's certification.

16 (h) (1) If the officer certifies that the person refused the test, the scope
17 of the hearing shall be limited to whether:

18 (A) A law enforcement officer had reasonable grounds to believe the
19 person was operating or attempting to operate a vehicle while under the
20 influence of alcohol or drugs, or both, or had been driving a commercial
21 motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto,
22 while having alcohol or other drugs in such person's system or was under
23 the age of 21 years and was operating or attempting to operate a vehicle
24 while having alcohol or other drugs in such person's system;

25 (B) the person was in custody or arrested or was involved in a vehicle
26 accident or collision resulting in property damage, personal injury or
27 death;

28 (C) a law enforcement officer had presented the person with the oral
29 and written notice required by K.S.A. 8-1001, and amendments thereto;
30 and

31 (D) the person refused to submit to and complete a test as requested
32 by a law enforcement officer.

33 (2) If the officer certifies that the person failed a breath test, the scope
34 of the hearing shall be limited to whether:

35 (A) A law enforcement officer had reasonable grounds to believe the
36 person was operating a vehicle while under the influence of alcohol or
37 drugs, or both, or had been driving a commercial motor vehicle, as defined
38 in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other
39 drugs in such person's system or was under the age of 21 years and was
40 operating or attempting to operate a vehicle while having alcohol or other
41 drugs in such person's system;

42 (B) the person was in custody or arrested or was involved in a vehicle
43 accident or collision resulting in property damage, personal injury or

1 death;

2 (C) a law enforcement officer had presented the person with the oral
3 and written notice required by K.S.A. 8-1001, and amendments thereto;

4 (D) the testing equipment used was certified by the Kansas
5 department of health and environment;

6 (E) the person who operated the testing equipment was certified by
7 the Kansas department of health and environment;

8 (F) the testing procedures used substantially complied with the
9 procedures set out by the Kansas department of health and environment;

10 (G) the test result determined that the person had an alcohol
11 concentration of .08 or greater in such person's breath; and

12 (H) the person was operating or attempting to operate a vehicle.

13 (3) If the officer certifies that the person failed a blood *or oral fluid*
14 test, the scope of the hearing shall be limited to whether:

15 (A) A law enforcement officer had reasonable grounds to believe the
16 person was operating a vehicle while under the influence of alcohol or
17 drugs, or both, or had been driving a commercial motor vehicle, as defined
18 in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other
19 drugs in such person's system or was under the age of 21 years and was
20 operating or attempting to operate a vehicle while having alcohol or other
21 drugs in such person's system;

22 (B) the person was in custody or arrested or was involved in a vehicle
23 accident or collision resulting in property damage, personal injury or
24 death;

25 (C) a law enforcement officer had presented the person with the oral
26 and written notice required by K.S.A. 8-1001, and amendments thereto;

27 (D) the testing equipment used was reliable;

28 (E) the person who operated the testing equipment was qualified;

29 (F) the testing procedures used were reliable;

30 (G) the test result determined that the person had an alcohol
31 concentration of 0.08 or greater in such person's blood *or a measurable*
32 *amount of a controlled substance listed in K.S.A. 65-4105 or 65-4107, and*
33 *amendments thereto, or its pharmacologically active metabolite in such*
34 *person's blood, or oral fluid; and*

35 (H) the person was operating or attempting to operate a vehicle.

36 (i) At a hearing pursuant to this section, or upon court review of an
37 order entered at such a hearing, an affidavit of the custodian of records at
38 the Kansas department of health and environment stating that the breath
39 testing device was certified and the operator of such device was certified
40 on the date of the test shall be admissible into evidence in the same
41 manner and with the same force and effect as if the certifying officer or
42 employee of the Kansas department of health and environment had
43 testified in person. A certified operator of a breath testing device shall be

1 competent to testify regarding the proper procedures to be used in
2 conducting the test.

3 (j) At a hearing pursuant to this section, or upon court review of an
4 order entered at such a hearing, in which the report of blood test results
5 have been prepared by the Kansas bureau of investigation or other forensic
6 laboratory of a state or local law enforcement agency are to be introduced
7 as evidence, the report, or a copy of the report, of the findings of the
8 forensic examiner shall be admissible into evidence in the same manner
9 and with the same force and effect as if the forensic examiner who
10 performed such examination, analysis, comparison or identification and
11 prepared the report thereon had testified in person.

12 (k) At the hearing, the licensee has the burden of proof by a
13 preponderance of the evidence to show that the facts set out in the officer's
14 certification are false or insufficient, *or that any prohibited controlled*
15 *substance or pharmacologically active metabolite in the licensee's blood*
16 *or oral fluid was lawfully ingested by order of a practitioner or mid-level*
17 *practitioner, as defined in K.S.A. 65-4101, and amendments thereto, or*
18 *otherwise ingested in accordance with the laws of the United States or the*
19 *state of Kansas*, and that the order suspending or suspending and
20 restricting the licensee's driving privileges should be dismissed.

21 (l) Evidence at the hearing shall be limited to the following:

22 (1) The documents set out in subsection (e);

23 (2) the testimony of the licensee;

24 (3) the testimony of any certifying officer;

25 (4) the testimony of any witness present at the time of the issuance of
26 the certification and called by the licensee;

27 (5) any affidavits submitted from other witnesses;

28 (6) any documents submitted by the licensee to show the existence of
29 a medical condition, as described in K.S.A. 8-1001, and amendments
30 thereto; and

31 (7) any video or audio tape record of the events upon which the
32 administrative action is based.

33 (m) After the hearing, the representative of the director shall enter an
34 order affirming the order of suspension or suspension and restriction of
35 driving privileges or for good cause appearing therefor, dismiss the
36 administrative action. If the representative of the director enters an order
37 affirming the order of suspension or suspension and restriction of driving
38 privileges, the suspension or suspension and restriction shall begin on the
39 30th day after the effective date of the order of suspension or suspension
40 and restriction. If the person whose privileges are suspended is a
41 nonresident licensee, the license of the person shall be forwarded to the
42 appropriate licensing authority in the person's state of residence if the
43 result at the hearing is adverse to such person or if no timely request for a

1 hearing is received.

2 (n) The representative of the director may issue an order at the close
3 of the hearing or may take the matter under advisement and issue a hearing
4 order at a later date. If the order is made at the close of the hearing, the
5 licensee or the licensee's attorney shall be served with a copy of the order
6 by the representative of the director. If the matter is taken under
7 advisement or if the hearing was by telephone conference call, the licensee
8 and any attorney who appeared at the administrative hearing upon behalf
9 of the licensee each shall be served with a copy of the hearing order by
10 mail. Any law enforcement officer who appeared at the hearing also may
11 be mailed a copy of the hearing order. The effective date of the hearing
12 order shall be the date upon which the hearing order is served, whether
13 served in person or by mail.

14 (o) The licensee may file a petition for review of the hearing order
15 pursuant to K.S.A. 8-259, and amendments thereto. Upon filing a petition
16 for review, the licensee shall serve the secretary of revenue with a copy of
17 the petition and summons. Upon receipt of a copy of the petition for
18 review by the secretary, the temporary license issued pursuant to
19 subsection (b) shall be extended until the decision on the petition for
20 review is final.

21 (p) Such review shall be in accordance with this section and the
22 Kansas judicial review act. To the extent that this section and any other
23 provision of law conflicts, this section shall prevail. The petition for
24 review shall be filed within 14 days after the effective date of the order.
25 Venue of the action for review is the county where the person was arrested
26 or the accident occurred, or, if the hearing was not conducted by telephone
27 conference call, the county where the administrative proceeding was held.
28 The action for review shall be by trial de novo to the court and the
29 evidentiary restrictions of subsection (l) shall not apply to the trial de
30 novo. The court shall take testimony, examine the facts of the case and
31 determine whether the petitioner is entitled to driving privileges or
32 whether the petitioner's driving privileges are subject to suspension or
33 suspension and restriction under the provisions of this act. Notwithstanding
34 K.S.A. 77-617, and amendments thereto, the court: (1)
35 May also consider and determine any constitutional issue, including, but
36 not limited to, the lawfulness of the law enforcement encounter, even if
37 such issue was not raised before the agency; and (2) shall also consider
38 and determine any constitutional issue, including, but not limited to, the
39 lawfulness of the law enforcement encounter, if such issue is raised by the
40 petitioner in the petition for review, even if such issue was not raised
41 before the agency. If the court finds that the grounds for action by the
42 agency have been met, the court shall affirm.

43 (q) Upon review, the licensee shall have the burden to show that the

1 decision of the agency should be set aside.

2 (r) Notwithstanding the requirement to issue a temporary license in
3 K.S.A. 8-1002, and amendments thereto, and the requirements to extend
4 the temporary license in this section, any such temporary driving
5 privileges are subject to restriction, suspension, revocation or cancellation
6 as provided in K.S.A. 8-1014, and amendments thereto, or for other cause.

7 (s) Upon motion by a party, or on the court's own motion, the court
8 may enter an order restricting the driving privileges allowed by the
9 temporary license provided for in K.S.A. 8-1002, and amendments thereto,
10 and in this section. The temporary license also shall be subject to
11 restriction, suspension, revocation or cancellation, as set out in K.S.A. 8-
12 1014, and amendments thereto, or for other cause.

13 (t) The facts found by the hearing officer or by the district court upon
14 a petition for review shall be independent of the determination of the same
15 or similar facts in the adjudication of any criminal charges arising out of
16 the same occurrence. The disposition of those criminal charges shall not
17 affect the suspension or suspension and restriction to be imposed under
18 this section.

19 (u) All notices affirming or canceling a suspension under this section,
20 all notices of a hearing held under this section and all issuances of
21 temporary driving privileges pursuant to this section shall be sent by first-
22 class mail and a United States post office certificate of mailing shall be
23 obtained therefor. All notices so mailed shall be deemed received three
24 days after mailing, except that this provision shall not apply to any
25 licensee where such application would result in a manifest injustice.

26 (v) The provisions of K.S.A. 60-206, and amendments thereto,
27 regarding the computation of time shall be applicable in determining the
28 time for requesting an administrative hearing as set out in subsection (a)
29 and to the time for filing a petition for review pursuant to subsection (o)
30 and K.S.A. 8-259, and amendments thereto.

31 Sec. 11. K.S.A. 2017 Supp. 8-1024 is hereby amended to read as
32 follows: 8-1024. No medical care facility, clinical laboratory, medical
33 clinic, other medical institution, person licensed to practice medicine or
34 surgery, person acting under the direction of any such licensed person,
35 licensed physician assistant, registered nurse, licensed practical nurse,
36 medical technician, emergency medical technician, phlebotomist, health
37 care provider or person who participates in good faith in the obtaining,
38 withdrawal, collection or testing of blood, breath, urine or other bodily
39 substance at the direction of a law enforcement officer pursuant to K.S.A.
40 8-1001, and amendments thereto, *or otherwise as authorized by law*, shall
41 incur any civil, administrative or criminal liability as a result of such
42 participation, regardless of whether or not the patient resisted or objected
43 to the administration of the procedure or test.

1 Sec. 12. K.S.A. 2017 Supp. 8-1025 is hereby amended to read as
 2 follows: 8-1025. (a) Refusing to submit to a *breath* test to determine the
 3 presence of alcohol ~~or drugs is refusing to submit to or complete a test or~~
 4 ~~tests deemed consented to under K.S.A. 8-1001(a), and amendments~~
 5 ~~thereto, if such person has:~~

6 (1) ~~Any prior test refusal as defined in K.S.A. 8-1013, and~~
 7 ~~amendments thereto, which occurred: (A) On or after July 1, 2001; and (B)~~
 8 ~~when such person was 18 years of age or older; or~~

9 (2) ~~any prior conviction for a violation of K.S.A. 8-1567 or 8-2,144,~~
 10 ~~and amendments thereto, or a violation of an ordinance of any city or~~
 11 ~~resolution of any county which prohibits the acts that such section~~
 12 ~~prohibits, or entering into a diversion agreement in lieu of further criminal~~
 13 ~~proceedings on a complaint alleging any such violations, which occurred:~~
 14 ~~(A) On or after July 1, 2001; and (B) when such person was 18 years of~~
 15 ~~age or older is the act of refusing to submit to or complete a breath test,~~
 16 ~~other than a preliminary screening as defined in K.S.A. 8-1012, and~~
 17 ~~amendments thereto, to determine the presence of alcohol when lawfully~~
 18 ~~requested or directed to submit to such testing by a law enforcement~~
 19 ~~officer.~~

20 (b) (1) Refusing to submit to a *breath* test to determine the presence
 21 of alcohol ~~or drugs~~ is:

22 (A) *On a first conviction a class B, nonperson misdemeanor. The*
 23 *person convicted shall be sentenced to not less than 48 consecutive hours*
 24 *nor more than six months' imprisonment, or in the court's discretion, 100*
 25 *hours of public service, and fined not less than \$750 nor more than*
 26 *\$1,000. The person convicted shall serve at least 48 consecutive hours'*
 27 *imprisonment or 100 hours of public service, either before or as a*
 28 *condition of any grant of probation or suspension, reduction of sentence*
 29 *or parole. The court may place the person convicted under a house arrest*
 30 *program pursuant to K.S.A. 2017 Supp. 21-6609, and amendments thereto,*
 31 *to serve the remainder of the sentence only after such person has served*
 32 *48 consecutive hours' imprisonment;*

33 (B) ~~On a first~~ *second* conviction a class A, nonperson misdemeanor.
 34 The person convicted shall be sentenced to not less than 90 days nor more
 35 than one year's imprisonment and fined not less than \$1,250 nor more than
 36 \$1,750. The person convicted shall serve at least five consecutive days'
 37 imprisonment before the person is granted probation, suspension or
 38 reduction of sentence or parole or is otherwise released. The five days'
 39 imprisonment mandated by this subsection may be served in a work
 40 release program only after such person has served 48 consecutive hours'
 41 imprisonment, provided such work release program requires such person
 42 to return to confinement at the end of each day in the work release
 43 program. The person convicted, if placed into a work release program,

1 shall serve a minimum of 120 hours of confinement. Such 120 hours of
2 confinement shall be a period of at least 48 consecutive hours of
3 imprisonment followed by confinement hours at the end of and continuing
4 to the beginning of the offender's work day. The court may place the
5 person convicted under a house arrest program pursuant to K.S.A. 2017
6 Supp. 21-6609, and amendments thereto, to serve the five days'
7 imprisonment mandated by this subsection only after such person has
8 served 48 consecutive hours' imprisonment. The person convicted, if
9 placed under house arrest, shall be monitored by an electronic monitoring
10 device, which verifies the offender's location. The offender shall serve a
11 minimum of 120 hours of confinement within the boundaries of the
12 offender's residence. Any exceptions to remaining within the boundaries of
13 the offender's residence provided for in the house arrest agreement shall
14 not be counted as part of the 120 hours;

15 ~~(B)~~ (C) on a ~~second~~ *third* conviction a class A, nonperson
16 misdemeanor, except as provided in subsection (b)(1)~~(C)~~ (D). The person
17 convicted shall be sentenced to not less than 90 days nor more than one
18 year's imprisonment and fined not less than \$1,750 nor more than \$2,500.
19 The person convicted shall not be eligible for release on probation,
20 suspension or reduction of sentence or parole until the person has served at
21 least 90 days' imprisonment. The 90 days' imprisonment mandated by this
22 subsection may be served in a work release program only after such person
23 has served 48 consecutive hours' imprisonment, provided such work
24 release program requires such person to return to confinement at the end of
25 each day in the work release program. The person convicted, if placed into
26 a work release program, shall serve a minimum of 2,160 hours of
27 confinement. Such 2,160 hours of confinement shall be a period of at least
28 48 consecutive hours of imprisonment followed by confinement hours at
29 the end of and continuing to the beginning of the offender's work day. The
30 court may place the person convicted under a house arrest program
31 pursuant to K.S.A. 2017 Supp. 21-6609, and amendments thereto, to serve
32 the 90 days' imprisonment mandated by this subsection only after such
33 person has served 48 consecutive hours' imprisonment. The person
34 convicted, if placed under house arrest, shall be monitored by an electronic
35 monitoring device, which verifies the offender's location. The offender
36 shall serve a minimum of 2,160 hours of confinement within the
37 boundaries of the offender's residence. Any exceptions to remaining within
38 the boundaries of the offender's residence provided for in the house arrest
39 agreement shall not be counted as part of the 2,160 hours;

40 ~~(C)~~ (D) on a ~~second~~ *third* conviction a nonperson felony if the person
41 has a prior conviction which occurred within the preceding 10 years, not
42 including any period of incarceration. The person convicted shall be
43 sentenced to not less than 90 days nor more than one year's imprisonment

1 and fined not less than \$1,750 nor more than \$2,500. The person convicted
2 shall not be eligible for release on probation, suspension or reduction of
3 sentence or parole until the person has served at least 90 days'
4 imprisonment. The 90 days' imprisonment mandated by this subsection
5 may be served in a work release program only after such person has served
6 48 consecutive hours' imprisonment, provided such work release program
7 requires such person to return to confinement at the end of each day in the
8 work release program. The person convicted, if placed into a work release
9 program, shall serve a minimum of 2,160 hours of confinement. Such
10 2,160 hours of confinement shall be a period of at least 48 consecutive
11 hours of imprisonment followed by confinement hours at the end of and
12 continuing to the beginning of the offender's work day. The court may
13 place the person convicted under a house arrest program pursuant to
14 K.S.A. 2017 Supp. 21-6609, and amendments thereto, to serve the 90 days'
15 imprisonment mandated by this subsection only after such person has
16 served 48 consecutive hours' imprisonment. The person convicted, if
17 placed under house arrest, shall be monitored by an electronic monitoring
18 device, which verifies the offender's location. The offender shall serve a
19 minimum of 2,160 hours of confinement within the boundaries of the
20 offender's residence. Any exceptions to remaining within the boundaries of
21 the offender's residence provided for in the house arrest agreement shall
22 not be counted as part of the 2,160 hours; and

23 ~~(D)~~ (E) on a ~~third~~ *fourth* or subsequent conviction a nonperson felony.
24 The person convicted shall be sentenced to not less than 90 days nor more
25 than one year's imprisonment and fined \$2,500. The person convicted shall
26 not be eligible for release on probation, suspension or reduction of
27 sentence or parole until the person has served at least 90 days'
28 imprisonment. The 90 days' imprisonment mandated by this subsection
29 may be served in a work release program only after such person has served
30 72 consecutive hours' imprisonment, provided such work release program
31 requires such person to return to confinement at the end of each day in the
32 work release program. The person convicted, if placed into a work release
33 program, shall serve a minimum of 2,160 hours of confinement. Such
34 2,160 hours of confinement shall be a period of at least 72 consecutive
35 hours of imprisonment followed by confinement hours at the end of and
36 continuing to the beginning of the offender's work day. The court may
37 place the person convicted under a house arrest program pursuant to
38 K.S.A. 2017 Supp. 21-6609, and amendments thereto, to serve the 90 days'
39 imprisonment mandated by this subsection only after such person has
40 served 72 consecutive hours' imprisonment. The person convicted, if
41 placed under house arrest, shall be monitored by an electronic monitoring
42 device, which verifies the offender's location. The offender shall serve a
43 minimum of 2,160 hours of confinement within the boundaries of the

1 offender's residence. Any exceptions to remaining within the boundaries of
2 the offender's residence provided for in the house arrest agreement shall
3 not be counted as part of the 2,160 hours.

4 (2) The court may order that the term of imprisonment imposed
5 pursuant to subsection ~~(b)(1)(C)~~ or (b)(1)(D) or (b)(1)(E) be served in a
6 state facility in the custody of the secretary of corrections in a facility
7 designated by the secretary for the provision of substance abuse treatment
8 pursuant to the provisions of K.S.A. 2017 Supp. 21-6804, and amendments
9 thereto. The person shall remain imprisoned at the state facility only while
10 participating in the substance abuse treatment program designated by the
11 secretary and shall be returned to the custody of the sheriff for execution
12 of the balance of the term of imprisonment upon completion of or the
13 person's discharge from the substance abuse treatment program. Custody
14 of the person shall be returned to the sheriff for execution of the sentence
15 imposed in the event the secretary of corrections determines: (A) That
16 substance abuse treatment resources or the capacity of the facility
17 designated by the secretary for the incarceration and treatment of the
18 person is not available; (B) the person fails to meaningfully participate in
19 the treatment program of the designated facility; (C) the person is
20 disruptive to the security or operation of the designated facility; or (D) the
21 medical or mental health condition of the person renders the person
22 unsuitable for confinement at the designated facility. The determination by
23 the secretary that the person either is not to be admitted into the designated
24 facility or is to be transferred from the designated facility is not subject to
25 review. The sheriff shall be responsible for all transportation expenses to
26 and from the state correctional facility.

27 (3) In addition, for any conviction pursuant to subsection ~~(b)(1)(B)~~,
28 (b)(1)(C) ~~or~~, (b)(1)(D) or (b)(1)(E), at the time of the filing of the
29 judgment form or journal entry as required by K.S.A. 22-3426 or K.S.A.
30 2017 Supp. 21-6711, and amendments thereto, the court shall cause a
31 certified copy to be sent to the officer having the offender in charge. The
32 court shall determine whether the offender, upon release from
33 imprisonment, shall be supervised by community correctional services or
34 court services based upon the risk and needs of the offender. The risk and
35 needs of the offender shall be determined by use of a risk assessment tool
36 specified by the Kansas sentencing commission. The law enforcement
37 agency maintaining custody and control of a defendant for imprisonment
38 shall cause a certified copy of the judgment form or journal entry to be
39 sent to the supervision office designated by the court and upon expiration
40 of the term of imprisonment shall deliver the defendant to a location
41 designated by the supervision office designated by the court. After the term
42 of imprisonment imposed by the court, the person shall be placed on
43 supervision to community correctional services or court services, as

1 determined by the court, for a mandatory one-year period of supervision,
2 which such period of supervision shall not be reduced. During such
3 supervision, the person shall be required to participate in a
4 multidisciplinary model of services for substance use disorders facilitated
5 by a Kansas department for aging and disability services designated care
6 coordination agency to include assessment and, if appropriate, referral to a
7 community based substance use disorder treatment including recovery
8 management and mental health counseling as needed. The
9 multidisciplinary team shall include the designated care coordination
10 agency, the supervision officer, the aging and disability services
11 department designated treatment provider and the offender. *A defendant*
12 *for whom a warrant has been issued by the court alleging a violation of*
13 *this supervision shall be considered a fugitive from justice if it is found*
14 *that the warrant cannot be served. If it is found the defendant has violated*
15 *the provisions of this supervision, the court shall determine whether the*
16 *time from the issuing of the warrant to the date of the court's*
17 *determination of an alleged violation, or any part of it, shall be counted as*
18 *time served on supervision. Any violation of the conditions of such*
19 *supervision may subject such person to revocation of supervision and*
20 *imprisonment in jail for the remainder of the period of imprisonment, the*
21 *remainder of the supervision period, or any combination or portion*
22 *thereof. The term of supervision may be extended at the court's discretion*
23 *beyond one year, and any violation of the conditions of such extended term*
24 *of supervision may subject such person to the revocation of supervision*
25 *and imprisonment in jail of up to the remainder of the original sentence,*
26 *not the term of the extended supervision.*

27 (4) In addition, prior to sentencing for any conviction pursuant to
28 subsection (b)(1)(A) or (b)(1)(B), the court shall order the person to
29 participate in an alcohol and drug evaluation conducted by a provider in
30 accordance with K.S.A. 8-1008, and amendments thereto. The person shall
31 be required to follow any recommendation made by the provider after such
32 evaluation, unless otherwise ordered by the court.

33 (c) Any person *18 years of age or older* convicted of violating this
34 section or an ordinance which prohibits the acts that this section prohibits
35 who had one or more children under the age of ~~14~~ 18 years in the vehicle
36 at the time of the offense shall have such person's punishment enhanced by
37 one month of imprisonment. This imprisonment must be served
38 consecutively to any other minimum mandatory penalty imposed for a
39 violation of this section or an ordinance which prohibits the acts that this
40 section prohibits. Any enhanced penalty imposed shall not exceed the
41 maximum sentence allowable by law. During the service of the enhanced
42 penalty, the judge may order the person on house arrest, work release or
43 other conditional release.

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

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

16 (f) Prior to filing a complaint alleging a violation of this section, a
17 prosecutor shall request and shall receive from the:

18 (1) Division a record of all prior convictions obtained against such
19 person for any violations of any of the motor vehicle laws of this state; and

20 (2) Kansas bureau of investigation central repository all criminal
21 history record information concerning such person.

22 (g) 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 on 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 (h) 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) Convictions for a violation of K.S.A. 8-1567, and amendments~~
33 ~~thereto, or a violation of an ordinance of any city or resolution of any~~
34 ~~county which prohibits the acts that such section prohibits, or entering into~~
35 ~~a diversion agreement in lieu of further criminal proceedings on a~~
36 ~~complaint alleging any such violations, shall be taken into account, but~~
37 ~~only convictions or diversions occurring: (A) On or after July 1, 2001; and~~
38 ~~(B) when such person was 18 years of age or older. or diversions listed in~~
39 ~~section 1, and amendments thereto. Except for violations of K.S.A. 2017~~
40 ~~Supp. 8-1025, and amendments thereto, or comparable statutes, municipal~~
41 ~~ordinances or county resolutions, that occurred prior to July 1, 2018,~~
42 ~~nothing in this provision shall be construed as preventing any court from~~
43 ~~considering any convictions or diversions occurring during the person's~~

1 lifetime in determining the sentence to be imposed within the limits
2 provided for a first, second, third, fourth or subsequent offense;

3 ~~(2) any convictions for a violation of the following sections which~~
4 ~~occurred during a person's lifetime shall be taken into account, but only~~
5 ~~convictions occurring when such person was 18 years of age or older: (A)~~
6 ~~This section; (B) driving a commercial motor vehicle under the influence,~~
7 ~~K.S.A. 8-2,144, and amendments thereto; (C) operating a vessel under the~~
8 ~~influence of alcohol or drugs, K.S.A. 32-1131, and amendments thereto;~~
9 ~~(D) involuntary manslaughter while driving under the influence of alcohol~~
10 ~~or drugs, K.S.A. 21-3442, prior to its repeal, or K.S.A. 2017 Supp. 21-~~
11 ~~5405(a)(3), and amendments thereto; (E) aggravated battery as described~~
12 ~~in K.S.A. 2017 Supp. 21-5413(b)(3), and amendments thereto; and (F)~~
13 ~~aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or~~
14 ~~vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was~~
15 ~~committed while committing a violation of K.S.A. 8-1567, and~~
16 ~~amendments thereto;~~

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

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

29 ~~(5) (3) multiple convictions of any crime described in subsection (h)~~
30 ~~(1) or (h)(2) section 1(a), (b), (d) or (e), and amendments thereto, arising~~
31 ~~from the same arrest shall only be counted as one conviction;~~

32 ~~(6) the prior conviction that is an element of the crime of refusing to~~
33 ~~submit to a test to determine the presence of alcohol or drugs shall not be~~
34 ~~used for the purpose of determining whether a conviction is a first, second,~~
35 ~~third or subsequent conviction in sentencing under this section and shall~~
36 ~~not be considered in determining the sentence to be imposed within the~~
37 ~~limits provided for a first, second, third or subsequent offense; and~~

38 ~~(7) (4) a person may enter into a diversion agreement in lieu of~~
39 ~~further criminal proceedings for a violation of this section, or an ordinance~~
40 ~~which prohibits the acts of this section, only once during the person's~~
41 ~~lifetime.~~

42 ~~(i) Upon conviction of a person of a violation of this section or a~~
43 ~~violation of a city ordinance or county resolution prohibiting the acts~~

1 prohibited by this section, the division, upon receiving a report of
2 conviction, shall suspend, restrict or suspend and restrict the person's
3 driving privileges as provided by K.S.A. 8-1014, and amendments thereto.

4 (j) (1) Nothing contained in this section shall be construed as
5 preventing any city from enacting ordinances, or any county from adopting
6 resolutions, declaring acts prohibited or made unlawful by this act as
7 unlawful or prohibited in such city or county and prescribing penalties for
8 violation thereof.

9 (2) The minimum penalty prescribed by any such ordinance or
10 resolution shall not be less than the minimum penalty prescribed by this
11 section for the same violation, and the maximum penalty in any such
12 ordinance or resolution shall not exceed the maximum penalty prescribed
13 for the same violation.

14 (3) An ordinance may grant to a municipal court jurisdiction over a
15 violation of such ordinance which is concurrent with the jurisdiction of the
16 district court over a violation of this section, notwithstanding that the
17 elements of such ordinance violation are the same as the elements of a
18 violation of this section that would constitute, and be punished as, a felony.

19 (4) Any such ordinance or resolution shall authorize the court to order
20 that the convicted person pay restitution to any victim who suffered loss
21 due to the violation for which the person was convicted.

22 (k) (1) Upon the filing of a complaint, citation or notice to appear
23 alleging a person has violated a city ordinance prohibiting the acts
24 prohibited by this section, and prior to conviction thereof, a city attorney
25 shall request and shall receive from the:

26 (A) Division a record of all prior convictions obtained against such
27 person for any violations of any of the motor vehicle laws of this state; and

28 (B) Kansas bureau of investigation central repository all criminal
29 history record information concerning such person.

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

34 (l) No plea bargaining agreement shall be entered into nor shall any
35 judge approve a plea bargaining agreement entered into for the purpose of
36 permitting a person charged with a violation of this section, or a violation
37 of any ordinance of a city or resolution of any county in this state which
38 prohibits the acts prohibited by this section, to avoid the mandatory
39 penalties established by this section or by the ordinance. For the purpose
40 of this subsection, entering into a diversion agreement pursuant to K.S.A.
41 12-4413 et seq. or 22-2906 et seq., and amendments thereto, shall not
42 constitute plea bargaining. *The prohibitions of this subsection shall not*
43 *apply if the person is convicted for a violation of K.S.A. 8-1567, and*

1 *amendments thereto, arising from the same arrest.*

2 (m) As used in this section, "imprisonment" shall include any
3 restrained environment in which the court and law enforcement agency
4 intend to retain custody and control of a defendant and such environment
5 has been approved by the board of county commissioners or the governing
6 body of a city.

7 (n) On and after July 1, 2012, the amount of \$250 from each fine
8 imposed pursuant to this section shall be remitted by the clerk of the
9 district court to the state treasurer in accordance with the provisions of
10 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
11 remittance, the state treasurer shall credit the entire amount to the
12 community corrections supervision fund established by K.S.A. 2017 Supp.
13 75-52,113, and amendments thereto.

14 Sec. 13. K.S.A. 2017 Supp. 8-1567 is hereby amended to read as
15 follows: 8-1567. (a) Driving under the influence is operating or attempting
16 to operate any vehicle within this state while:

17 (1) The alcohol concentration in the person's blood or breath as
18 shown by any competent evidence, including other competent evidence, as
19 defined in ~~paragraph (1) of subsection (f) of K.S.A. 8-1013(f)(1), and~~
20 amendments thereto, is 0.08 or more;

21 (2) the alcohol concentration in the person's blood or breath, as
22 measured within three hours of the time of operating or attempting to
23 operate a vehicle, is 0.08 or more;

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

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

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

31 (6) *having present in the person's blood any amount, as measured*
32 *within three hours of the time of operating or attempting to operate a*
33 *vehicle, of a controlled substance listed in K.S.A. 65-4105 or 65-4107, and*
34 *amendments thereto, or its pharmacologically active metabolite, as*
35 *defined in K.S.A. 8-1013, and amendments thereto. It shall be an*
36 *affirmative defense to a violation of this paragraph that the person*
37 *lawfully ingested the controlled substance by order of a practitioner or*
38 *mid-level practitioner, as defined in K.S.A. 65-4101, and amendments*
39 *thereto, or otherwise ingested the controlled substance in accordance with*
40 *the laws of the United States or the state of Kansas.*

41 (b) (1) Driving under the influence is:

42 (A) On a first conviction a class B, nonperson misdemeanor. The
43 person convicted shall be sentenced to not less than 48 consecutive hours

1 nor more than six months' imprisonment, or in the court's discretion 100
2 hours of public service, and fined not less than \$750 nor more than \$1,000.
3 The person convicted shall serve at least 48 consecutive hours'
4 imprisonment or 100 hours of public service either before or as a condition
5 of any grant of probation or suspension, reduction of sentence or parole.
6 The court may place the person convicted under a house arrest program
7 pursuant to K.S.A. 2017 Supp. 21-6609, and amendments thereto, to serve
8 the remainder of the sentence only after such person has served 48
9 consecutive hours' imprisonment;

10 (B) on a second conviction a class A, nonperson misdemeanor. The
11 person convicted shall be sentenced to not less than 90 days nor more than
12 one year's imprisonment and fined not less than \$1,250 nor more than
13 \$1,750. The person convicted shall serve at least five consecutive days'
14 imprisonment before the person is granted probation, suspension or
15 reduction of sentence or parole or is otherwise released. The five days'
16 imprisonment mandated by this subsection may be served in a work
17 release program only after such person has served 48 consecutive hours'
18 imprisonment, provided such work release program requires such person
19 to return to confinement at the end of each day in the work release
20 program. The person convicted, if placed into a work release program,
21 shall serve a minimum of 120 hours of confinement. Such 120 hours of
22 confinement shall be a period of at least 48 consecutive hours of
23 imprisonment followed by confinement hours at the end of and continuing
24 to the beginning of the offender's work day. The court may place the
25 person convicted under a house arrest program pursuant to K.S.A. 2017
26 Supp. 21-6609, and amendments thereto, to serve the five days'
27 imprisonment mandated by this subsection only after such person has
28 served 48 consecutive hours' imprisonment. The person convicted, if
29 placed under house arrest, shall be monitored by an electronic monitoring
30 device, which verifies the offender's location. The offender shall serve a
31 minimum of 120 hours of confinement within the boundaries of the
32 offender's residence. Any exceptions to remaining within the boundaries of
33 the offender's residence provided for in the house arrest agreement shall
34 not be counted as part of the 120 hours;

35 (C) on a third conviction a class A, nonperson misdemeanor, except
36 as provided in subsection (b)(1)(D). The person convicted shall be
37 sentenced to not less than 90 days nor more than one year's imprisonment
38 and fined not less than \$1,750 nor more than \$2,500. The person convicted
39 shall not be eligible for release on probation, suspension or reduction of
40 sentence or parole until the person has served at least 90 days'
41 imprisonment. The 90 days' imprisonment mandated by this subsection
42 may be served in a work release program only after such person has served
43 48 consecutive hours' imprisonment, provided such work release program

1 requires such person to return to confinement at the end of each day in the
2 work release program. The person convicted, if placed into a work release
3 program, shall serve a minimum of 2,160 hours of confinement. Such
4 2,160 hours of confinement shall be a period of at least 48 consecutive
5 hours of imprisonment followed by confinement hours at the end of and
6 continuing to the beginning of the offender's work day. The court may
7 place the person convicted under a house arrest program pursuant to
8 K.S.A. 2017 Supp. 21-6609, and amendments thereto, to serve the 90 days'
9 imprisonment mandated by this subsection only after such person has
10 served 48 consecutive hours' imprisonment. The person convicted, if
11 placed under house arrest, shall be monitored by an electronic monitoring
12 device, which verifies the offender's location. The offender shall serve a
13 minimum of 2,160 hours of confinement within the boundaries of the
14 offender's residence. Any exceptions to remaining within the boundaries of
15 the offender's residence provided for in the house arrest agreement shall
16 not be counted as part of the 2,160 hours;

17 (D) on a third conviction a nonperson felony if the person has a prior
18 conviction which occurred within the preceding 10 years, not including
19 any period of incarceration. The person convicted shall be sentenced to not
20 less than 90 days nor more than one year's imprisonment and fined not less
21 than \$1,750 nor more than \$2,500. The person convicted shall not be
22 eligible for release on probation, suspension or reduction of sentence or
23 parole until the person has served at least 90 days' imprisonment. The 90
24 days' imprisonment mandated by this subsection may be served in a work
25 release program only after such person has served 48 consecutive hours'
26 imprisonment, provided such work release program requires such person
27 to return to confinement at the end of each day in the work release
28 program. The person convicted, if placed into a work release program,
29 shall serve a minimum of 2,160 hours of confinement. Such 2,160 hours of
30 confinement shall be a period of at least 48 consecutive hours of
31 imprisonment followed by confinement hours at the end of and continuing
32 to the beginning of the offender's work day. The court may place the
33 person convicted under a house arrest program pursuant to K.S.A. 2017
34 Supp. 21-6609, and amendments thereto, to serve the 90 days'
35 imprisonment mandated by this subsection only after such person has
36 served 48 consecutive hours' imprisonment. The person convicted, if
37 placed under house arrest, shall be monitored by an electronic monitoring
38 device, which verifies the offender's location. The offender shall serve a
39 minimum of 2,160 hours of confinement within the boundaries of the
40 offender's residence. Any exceptions to remaining within the boundaries of
41 the offender's residence provided for in the house arrest agreement shall
42 not be counted as part of the 2,160 hours; and

43 (E) on a fourth or subsequent conviction a nonperson felony. The

1 person convicted shall be sentenced to not less than 90 days nor more than
2 one year's imprisonment and fined \$2,500. The person convicted shall not
3 be eligible for release on probation, suspension or reduction of sentence or
4 parole until the person has served at least 90 days' imprisonment. The 90
5 days' imprisonment mandated by this subsection may be served in a work
6 release program only after such person has served 72 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 person convicted, if placed into a work release program,
10 shall serve a minimum of 2,160 hours of confinement. Such 2,160 hours of
11 confinement shall be a period of at least 72 consecutive hours of
12 imprisonment followed by confinement hours at the end of and continuing
13 to the beginning of the offender's work day. The court may place the
14 person convicted under a house arrest program pursuant to K.S.A. 2017
15 Supp. 21-6609, and amendments thereto, to serve the 90 days'
16 imprisonment mandated by this subsection only after such person has
17 served 72 consecutive hours' imprisonment. The person convicted, if
18 placed under house arrest, shall be monitored by an electronic monitoring
19 device, which verifies the offender's location. The offender shall serve a
20 minimum of 2,160 hours of confinement within the boundaries of the
21 offender's residence. Any exceptions to remaining within the boundaries of
22 the offender's residence provided for in the house arrest agreement shall
23 not be counted as part of the 2,160 hours.

24 (2) The court may order that the term of imprisonment imposed
25 pursuant to subsection (b)(1)(D) or (b)(1)(E) be served in a state facility in
26 the custody of the secretary of corrections in a facility designated by the
27 secretary for the provision of substance abuse treatment pursuant to the
28 provisions of K.S.A. 2017 Supp. 21-6804, and amendments thereto. The
29 person shall remain imprisoned at the state facility only while participating
30 in the substance abuse treatment program designated by the secretary and
31 shall be returned to the custody of the sheriff for execution of the balance
32 of the term of imprisonment upon completion of or the person's discharge
33 from the substance abuse treatment program. Custody of the person shall
34 be returned to the sheriff for execution of the sentence imposed in the
35 event the secretary of corrections determines: (A) That substance abuse
36 treatment resources or the capacity of the facility designated by the
37 secretary for the incarceration and treatment of the person is not available;
38 (B) the person fails to meaningfully participate in the treatment program of
39 the designated facility; (C) the person is disruptive to the security or
40 operation of the designated facility; or (D) the medical or mental health
41 condition of the person renders the person unsuitable for confinement at
42 the designated facility. The determination by the secretary that the person
43 either is not to be admitted into the designated facility or is to be

1 transferred from the designated facility is not subject to review. The sheriff
2 shall be responsible for all transportation expenses to and from the state
3 correctional facility.

4 (3) In addition, for any conviction pursuant to subsection (b)(1)(C),
5 (b)(1)(D) or (b)(1)(E), at the time of the filing of the judgment form or
6 journal entry as required by K.S.A. 22-3426 or K.S.A. 2017 Supp. 21-
7 6711, and amendments thereto, the court shall cause a certified copy to be
8 sent to the officer having the offender in charge. The court shall determine
9 whether the offender, upon release from imprisonment, shall be supervised
10 by community correctional services or court services based upon the risk
11 and needs of the offender. The risk and needs of the offender shall be
12 determined by use of a risk assessment tool specified by the Kansas
13 sentencing commission. The law enforcement agency maintaining custody
14 and control of a defendant for imprisonment shall cause a certified copy of
15 the judgment form or journal entry to be sent to the supervision office
16 designated by the court and upon expiration of the term of imprisonment
17 shall deliver the defendant to a location designated by the supervision
18 office designated by the court. After the term of imprisonment imposed by
19 the court, the person shall be placed on supervision to community
20 correctional services or court services, as determined by the court, for a
21 mandatory one-year period of supervision, which such period of
22 supervision shall not be reduced. During such supervision, the person shall
23 be required to participate in a multidisciplinary model of services for
24 substance use disorders facilitated by a Kansas department for aging and
25 disability services designated care coordination agency to include
26 assessment and, if appropriate, referral to a community based substance
27 use disorder treatment including recovery management and mental health
28 counseling as needed. The multidisciplinary team shall include the
29 designated care coordination agency, the supervision officer, the Kansas
30 department for aging and disability services designated treatment provider
31 and the offender. *An offender for whom a warrant has been issued by the*
32 *court alleging a violation of this supervision shall be considered a fugitive*
33 *from justice if it is found that the warrant cannot be served. If it is found*
34 *the offender has violated the provisions of this supervision, the court shall*
35 *determine whether the time from the issuing of the warrant to the date of*
36 *the court's determination of an alleged violation, or any part of it, shall be*
37 *counted as time served on supervision. Any violation of the conditions of*
38 *such supervision may subject such person to revocation of supervision and*
39 *imprisonment in jail for the remainder of the period of imprisonment, the*
40 *remainder of the supervision period, or any combination or portion*
41 *thereof. The term of supervision may be extended at the court's discretion*
42 *beyond one year; and any violation of the conditions of such extended term*
43 *of supervision may subject such person to the revocation of supervision*

1 *and imprisonment in jail of up to the remainder of the original sentence,*
2 *not the term of the extended supervision.*

3 (4) In addition, prior to sentencing for any conviction pursuant to
4 subsection (b)(1)(A) or (b)(1)(B), the court shall order the person to
5 participate in an alcohol and drug evaluation conducted by a provider in
6 accordance with K.S.A. 8-1008, and amendments thereto. The person shall
7 be required to follow any recommendation made by the provider after such
8 evaluation, unless otherwise ordered by the court.

9 (c) Any person *18 years of age or older* convicted of violating this
10 section or an ordinance which prohibits the acts that this section prohibits
11 who had one or more children under the age of ~~14~~ *18* years in the vehicle
12 at the time of the offense shall have such person's punishment enhanced by
13 one month of imprisonment. This imprisonment must be served
14 consecutively to any other minimum mandatory penalty imposed for a
15 violation of this section or an ordinance which prohibits the acts that this
16 section prohibits. Any enhanced penalty imposed shall not exceed the
17 maximum sentence allowable by law. During the service of the enhanced
18 penalty, the judge may order the person on house arrest, work release or
19 other conditional release.

20 (d) If a person is charged with a violation of ~~this section involving~~
21 ~~drugs~~ *subsection (a)(4) or (a)(5)*, the fact that the person is or has been
22 entitled to use the drug under the laws of this state shall not constitute a
23 defense against the charge.

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

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

39 (g) Prior to filing a complaint alleging a violation of this section, a
40 prosecutor shall request and shall receive from the:

41 (1) Division a record of all prior convictions obtained against such
42 person for any violations of any of the motor vehicle laws of this state; and

43 (2) Kansas bureau of investigation central repository all criminal

1 history record information concerning such person.

2 (h) The court shall electronically report every conviction of a
3 violation of this section and every diversion agreement entered into in lieu
4 of further criminal proceedings on a complaint alleging a violation of this
5 section to the division, *including any finding regarding the alcohol*
6 *concentration in the offender's blood or breath.* Prior to sentencing under
7 the provisions of this section, the court shall request and shall receive from
8 the division a record of all prior convictions obtained against such person
9 for any violations of any of the motor vehicle laws of this state.

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

13 (1) ~~Convictions for a violation of this section, or a violation of an~~
14 ~~ordinance of any city or resolution of any county which prohibits the acts~~
15 ~~that this section prohibits, or entering into a diversion agreement in lieu of~~
16 ~~further criminal proceedings on a complaint alleging any such violations,~~
17 ~~shall be taken into account, but only convictions or diversions occurring~~
18 ~~on or after July 1, 2001, or diversions listed in section 1, and amendments~~
19 ~~thereto. Except for violations of K.S.A. 2017 Supp. 8-1025, and~~
20 ~~amendments thereto, or comparable statutes, municipal ordinances or~~
21 ~~county resolutions, that occurred prior to July 1, 2018, nothing in this~~
22 ~~provision shall be construed as preventing any court from considering any~~
23 ~~convictions or diversions occurring during the person's lifetime in~~
24 ~~determining the sentence to be imposed within the limits provided for a~~
25 ~~first, second, third, fourth or subsequent offense;~~

26 (2) ~~any convictions for a violation of the following sections occurring~~
27 ~~during a person's lifetime shall be taken into account: (A) Refusing to~~
28 ~~submit to a test to determine the presence of alcohol or drugs, K.S.A. 2017~~
29 ~~Supp. 8-1025, and amendments thereto; (B) driving a commercial motor~~
30 ~~vehicle under the influence, K.S.A. 8-2,144, and amendments thereto; (C)~~
31 ~~operating a vessel under the influence of alcohol or drugs, K.S.A. 32-1131,~~
32 ~~and amendments thereto; (D) involuntary manslaughter while driving~~
33 ~~under the influence of alcohol or drugs, K.S.A. 21-3442, prior to its repeal,~~
34 ~~or subsection (a)(3) of K.S.A. 2017 Supp. 21-5405, and amendments~~
35 ~~thereto; (E) aggravated battery as described in subsection (b)(3) of K.S.A.~~
36 ~~2017 Supp. 21-5413, and amendments thereto; and (F) aggravated~~
37 ~~vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular~~
38 ~~battery, K.S.A. 21-3405b, prior to its repeal, if the crime was committed~~
39 ~~while committing a violation of K.S.A. 8-1567, and amendments thereto;~~

40 (3) ~~"conviction" includes: (A) Entering into a diversion agreement in~~
41 ~~lieu of further criminal proceedings on a complaint alleging a violation of~~
42 ~~a crime described in subsection (i)(2); (B) conviction of a violation of an~~
43 ~~ordinance of a city in this state, a resolution of a county in this state or any~~

1 law of another state which would constitute a crime described in
2 subsection (i)(1) or (i)(2); and (C) receiving punishment under the uniform
3 code of military justice or Kansas code of military justice for an act which
4 was committed on a military reservation and which would constitute a
5 crime described in subsection (i)(1) or (i)(2) if committed off a military
6 reservation in this state;

7 (4) multiple convictions of any crime described in subsection (i)(1) or
8 (i)(2) section 1(a), (b), (d) or (e), and amendments thereto, arising from
9 the same arrest shall only be counted as one conviction;

10 (5) (3) it is irrelevant whether an offense occurred before or after
11 conviction for a previous offense; and

12 (6) (4) a person may enter into a diversion agreement in lieu of
13 further criminal proceedings for a violation of this section, and
14 amendments thereto, or an ordinance which prohibits the acts of this
15 section, and amendments thereto, only once during the person's lifetime.

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

21 (k) (1) Nothing contained in this section shall be construed as
22 preventing any city from enacting ordinances, or any county from adopting
23 resolutions, declaring acts prohibited or made unlawful by this act as
24 unlawful or prohibited in such city or county and prescribing penalties for
25 violation thereof.

26 (2) The minimum penalty prescribed by any such ordinance or
27 resolution shall not be less than the minimum penalty prescribed by this
28 section for the same violation, and the maximum penalty in any such
29 ordinance or resolution shall not exceed the maximum penalty prescribed
30 for the same violation.

31 (3) On and after July 1, 2007, and retroactive for ordinance violations
32 committed on or after July 1, 2006, an ordinance may grant to a municipal
33 court jurisdiction over a violation of such ordinance which is concurrent
34 with the jurisdiction of the district court over a violation of this section,
35 notwithstanding that the elements of such ordinance violation are the same
36 as the elements of a violation of this section that would constitute, and be
37 punished as, a felony.

38 (4) Any such ordinance or resolution shall authorize the court to order
39 that the convicted person pay restitution to any victim who suffered loss
40 due to the violation for which the person was convicted.

41 (l) (1) Upon the filing of a complaint, citation or notice to appear
42 alleging a person has violated a city ordinance prohibiting the acts
43 prohibited by this section, and prior to conviction thereof, a city attorney

1 shall request and shall receive from the:

2 (A) Division a record of all prior convictions obtained against such
3 person for any violations of any of the motor vehicle laws of this state; and

4 (B) Kansas bureau of investigation central repository all criminal
5 history record information concerning such person.

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

10 (m) No plea bargaining agreement shall be entered into nor shall any
11 judge approve a plea bargaining agreement entered into for the purpose of
12 permitting a person charged with a violation of this section, or a violation
13 of any ordinance of a city or resolution of any county in this state which
14 prohibits the acts prohibited by this section, to avoid the mandatory
15 penalties established by this section or by the ordinance. For the purpose
16 of this subsection, entering into a diversion agreement pursuant to K.S.A.
17 12-4413 et seq. or 22-2906 et seq., and amendments thereto, shall not
18 constitute plea bargaining. *The prohibitions of this subsection shall not*
19 *apply if the person is convicted for a violation of K.S.A. 8-1025, and*
20 *amendments thereto, arising from the same arrest.*

21 (n) The alternatives set out in ~~subsections (a)(1), (a)(2) and (a)(3)~~
22 *subsection (a)* may be pleaded in the alternative, and the state, city or
23 county *may*, but shall not be required to, ~~may~~ elect one or ~~two of the three~~
24 *more of such alternatives* prior to submission of the case to the fact finder.

25 (o) As used in this section: (1) "Alcohol concentration" means the
26 number of grams of alcohol per 100 milliliters of blood or per 210 liters of
27 breath;

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

32 (3) "drug" includes toxic vapors as such term is defined in K.S.A.
33 2017 Supp. 21-5712, and amendments thereto.

34 (p) (1) The amount of the increase in fines as specified in this section
35 shall be remitted by the clerk of the district court to the state treasurer in
36 accordance with the provisions of K.S.A. 75-4215, and amendments
37 thereto. Upon receipt of remittance of the increase provided in this act, the
38 state treasurer shall deposit the entire amount in the state treasury and the
39 state treasurer shall credit 50% to the community alcoholism and
40 intoxication programs fund and 50% to the department of corrections
41 alcohol and drug abuse treatment fund, which is hereby created in the state
42 treasury.

43 (2) On and after July 1, 2011, the amount of \$250 from each fine

1 imposed pursuant to this section shall be remitted by the clerk of the
2 district court to the state treasurer in accordance with the provisions of
3 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
4 remittance, the state treasurer shall credit the entire amount to the
5 community corrections supervision fund established by K.S.A. 2017 Supp.
6 75-52,113, and amendments thereto.

7 Sec. 14. K.S.A. 2017 Supp. 65-1,107 is hereby amended to read as
8 follows: 65-1,107. The secretary of health and environment may adopt
9 rules and regulations establishing:

10 (a) The procedures, testing protocols and qualifications of authorized
11 personnel, instruments and methods used in laboratories performing tests
12 for the presence of controlled substances included in schedule I or II of the
13 uniform controlled substances act or metabolites thereof;

14 (b) the procedures, testing protocols, qualifications of personnel and
15 standards of performance in the testing of human breath for law
16 enforcement purposes, including procedures for the periodic inspection of
17 apparatus, equipment and devices, other than preliminary screening
18 devices, approved by the secretary of health and environment for the
19 testing of human breath for law enforcement purposes;

20 (c) the requirements for the training, certification and periodic testing
21 of persons who operate apparatus, equipment or devices, other than
22 preliminary screening devices, for the testing of human breath for law
23 enforcement purposes;

24 (d) criteria for preliminary screening devices for testing of breath for
25 law enforcement purposes, based on health and performance
26 considerations; and

27 (e) a list of preliminary screening devices which are approved for
28 testing of breath for law enforcement purposes and which law enforcement
29 agencies may purchase and train officers to use as aids in determining: (1)
30 Probable cause to arrest and grounds for *requesting or* requiring testing
31 pursuant to K.S.A. 8-1001, and amendments thereto, *or as otherwise*
32 *authorized by law*; and (2) violations of K.S.A. 41-727, and amendments
33 thereto.

34 Sec. 15. K.S.A. 2017 Supp. 75-712h is hereby amended to read as
35 follows: 75-712h. The director of the Kansas bureau of investigation is
36 authorized to adopt rules and regulations establishing: (a) Criteria for
37 preliminary screening devices for testing of ~~saliva~~ *oral fluid* for law
38 enforcement purposes, based on health and performance considerations;
39 and (b) a list of preliminary screening devices which are approved for
40 testing of ~~saliva~~ *oral fluid* for law enforcement purposes and which law
41 enforcement agencies may purchase and train officers to use as aids in
42 determining probable cause to arrest and grounds for *requesting or*
43 requiring testing pursuant to K.S.A. 8-1001, and amendments thereto, *or*

1 *as otherwise authorized by law.*

2 Sec. 16. K.S.A. 8-2,137 and 8-2,145 and K.S.A. 2017 Supp. 8-2,142,
3 8-2,144, 8-1001, 8-1002, 8-1012, 8-1013, 8-1020, 8-1024, 8-1025, 8-1567,
4 65-1,107 and 75-712h are hereby repealed.

5 Sec. 17. This act shall take effect and be in force from and after its
6 publication in the statute book.