

As Amended by House Committee

Session of 2018

HOUSE BILL No. 2439

By Representatives Jennings, Brim, Delperdang, Mastroni, Ryckman, Schwab, E. Smith, Tarwater and Wheeler

12-21

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to involuntary manslaughter; **aggravated battery**; involving certain
3 violations of driving under the influence of alcohol or drugs; amending
4 K.S.A. 2017 Supp. 8-262, 8-2,144, **8-1013**, 8-1025, 8-1567, 21-5405,
5 **21-5413**, 21-6811, 38-2312 and 75-52,148 and repealing the existing
6 sections.

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

9 Section 1. K.S.A. 2017 Supp. 21-5405 is hereby amended to read as
10 follows: 21-5405. (a) Involuntary manslaughter is the killing of a human
11 being committed:

12 (1) Recklessly;

13 (2) in the commission of, or attempt to commit, or flight from any
14 felony, other than an inherently dangerous felony as defined in K.S.A.
15 2017 Supp. 21-5402, and amendments thereto, that is enacted for the
16 protection of human life or safety or a misdemeanor that is enacted for the
17 protection of human life or safety, including acts described in K.S.A. 8-
18 1566 and ~~subsection (a) of 8-1568(a)~~, and amendments thereto, but
19 excluding the acts described in K.S.A. 8-1567, and amendments thereto;

20 (3) in the commission of, or attempt to commit, or flight from an act
21 described in K.S.A. 8-1567, and amendments thereto; ~~or~~

22 (4) during the commission of a lawful act in an unlawful manner; *or*

23 (5) *in the commission of, or attempt to commit, or flight from an act*
24 *described in K.S.A. 8-1567, and amendments thereto, while:*

25 (A) *in violation of any restriction imposed on such person's driving*
26 *privileges pursuant to article 10 of chapter 8 of the Kansas Statutes*
27 *Annotated, and amendments thereto;*

28 (B) *such person's driving privileges are suspended or revoked*
29 *pursuant to article 10 of chapter 8 of the Kansas Statutes Annotated, and*
30 *amendments thereto; or*

31 (C) *such person has been deemed a habitual violator as defined in*
32 *K.S.A. 8-285, and amendments thereto, including at least one violation of*
33 *K.S.A. 8-1567, and amendments thereto, or violating an ordinance of any*
34 *city in this state, any resolution of any county in this state or any law of*
35 *another state, which ordinance, resolution or law declares to be unlawful*

1 *the acts prohibited by that statute.*

2 (b) Involuntary manslaughter as defined in:

3 (1) Subsection (a)(1), (a)(2) or (a)(4) is a severity level 5, person
4 felony; ~~and~~

5 (2) subsection (a)(3) is a severity level 4, person felony; *and*

6 (3) *subsection (a)(5) is a severity level 3, person felony.*

7 **Sec. 2. K.S.A. 2017 Supp. 21-5413 is hereby amended to read as**
8 **follows: 21-5413. (a) Battery is:**

9 (1) **Knowingly or recklessly causing bodily harm to another**
10 **person; or**

11 (2) **knowingly causing physical contact with another person when**
12 **done in a rude, insulting or angry manner.**

13 (b) **Aggravated battery is:**

14 (1) (A) **Knowingly causing great bodily harm to another person**
15 **or disfigurement of another person;**

16 (B) **knowingly causing bodily harm to another person with a**
17 **deadly weapon, or in any manner whereby great bodily harm,**
18 **disfigurement or death can be inflicted; or**

19 (C) **knowingly causing physical contact with another person when**
20 **done in a rude, insulting or angry manner with a deadly weapon, or in**
21 **any manner whereby great bodily harm, disfigurement or death can**
22 **be inflicted;**

23 (2) (A) **recklessly causing great bodily harm to another person or**
24 **disfigurement of another person; ~~or~~**

25 (B) **recklessly causing bodily harm to another person with a**
26 **deadly weapon, or in any manner whereby great bodily harm,**
27 **disfigurement or death can be inflicted; or**

28 (3) (A) **committing an act described in K.S.A. 8-1567, and**
29 **amendments thereto, when great bodily harm to another person or**
30 **disfigurement of another person results from such act; or**

31 (B) **committing an act described in K.S.A. 8-1567, and**
32 **amendments thereto, when bodily harm to another person results**
33 **from such act under circumstances whereby great bodily harm,**
34 **disfigurement or death can result from such act; or**

35 (4) *committing an act described in K.S.A. 8-1567, and amendments*
36 *thereto, when great bodily harm to another person or disfigurement of*
37 *another person results from such act while:*

38 (A) *In violation of any restriction imposed on such person's driving*
39 *privileges pursuant to article 10 of chapter 8 of the Kansas Statutes*
40 *Annotated, and amendments thereto;*

41 (B) *such person's driving privileges are suspended or revoked*
42 *pursuant to article 10 of chapter 8 of the Kansas Statutes Annotated, and*
43 *amendments thereto; or*

1 (C) *such person has been deemed a habitual violator as defined in*
2 *K.S.A. 8-285, and amendments thereto, including at least one violation of*
3 *K.S.A. 8-1567, and amendments thereto, or violating an ordinance of any*
4 *city in this state, any resolution of any county in this state or any law of*
5 *another state, which ordinance, resolution or law declares to be unlawful*
6 *the acts prohibited by that statute.*

7 (c) **Battery against a law enforcement officer is:**

8 (1) **Battery, as defined in subsection (a)(2), committed against a:**

9 (A) **Uniformed or properly identified university or campus police**
10 **officer while such officer is engaged in the performance of such**
11 **officer's duty;**

12 (B) **uniformed or properly identified state, county or city law**
13 **enforcement officer, other than a state correctional officer or**
14 **employee, a city or county correctional officer or employee or a**
15 **juvenile detention facility officer, or employee, while such officer is**
16 **engaged in the performance of such officer's duty;**

17 (C) **judge, while such judge is engaged in the performance of such**
18 **judge's duty;**

19 (D) **attorney, while such attorney is engaged in the performance**
20 **of such attorney's duty; or**

21 (E) **community corrections officer or court services officer, while**
22 **such officer is engaged in the performance of such officer's duty;**

23 (2) **battery, as defined in subsection (a)(1), committed against a:**

24 (A) **Uniformed or properly identified university or campus police**
25 **officer while such officer is engaged in the performance of such**
26 **officer's duty; or**

27 (B) **uniformed or properly identified state, county or city law**
28 **enforcement officer, other than a state correctional officer or**
29 **employee, a city or county correctional officer or employee or a**
30 **juvenile detention facility officer, or employee, while such officer is**
31 **engaged in the performance of such officer's duty;**

32 (C) **judge, while such judge is engaged in the performance of such**
33 **judge's duty;**

34 (D) **attorney, while such attorney is engaged in the performance**
35 **of such attorney's duty; or**

36 (E) **community corrections officer or court services officer, while**
37 **such officer is engaged in the performance of such officer's duty; or**

38 (3) **battery, as defined in subsection (a) committed against a:**

39 (A) **State correctional officer or employee by a person in custody**
40 **of the secretary of corrections, while such officer or employee is**
41 **engaged in the performance of such officer's or employee's duty;**

42 (B) **state correctional officer or employee by a person confined in**
43 **such juvenile correctional facility, while such officer or employee is**

1 engaged in the performance of such officer's or employee's duty;

2 (C) juvenile detention facility officer or employee by a person
3 confined in such juvenile detention facility, while such officer or
4 employee is engaged in the performance of such officer's or
5 employee's duty; or

6 (D) city or county correctional officer or employee by a person
7 confined in a city holding facility or county jail facility, while such
8 officer or employee is engaged in the performance of such officer's or
9 employee's duty.

10 (d) Aggravated battery against a law enforcement officer is:

11 (1) An aggravated battery, as defined in subsection (b)(1)(A)
12 committed against a:

13 (A) Uniformed or properly identified state, county or city law
14 enforcement officer while the officer is engaged in the performance of
15 the officer's duty;

16 (B) uniformed or properly identified university or campus police
17 officer while such officer is engaged in the performance of such
18 officer's duty;

19 (C) judge, while such judge is engaged in the performance of such
20 judge's duty;

21 (D) attorney, while such attorney is engaged in the performance
22 of such attorney's duty; or

23 (E) community corrections officer or court services officer, while
24 such officer is engaged in the performance of such officer's duty;

25 (2) an aggravated battery, as defined in subsection (b)(1)(B) or (b)
26 (1)(C), committed against a:

27 (A) Uniformed or properly identified state, county or city law
28 enforcement officer while the officer is engaged in the performance of
29 the officer's duty;

30 (B) uniformed or properly identified university or campus police
31 officer while such officer is engaged in the performance of such
32 officer's duty;

33 (C) judge, while such judge is engaged in the performance of such
34 judge's duty;

35 (D) attorney, while such attorney is engaged in the performance
36 of such attorney's duty; or

37 (E) community corrections officer or court services officer, while
38 such officer is engaged in the performance of such officer's duty; or

39 (3) knowingly causing, with a motor vehicle, bodily harm to a:

40 (A) Uniformed or properly identified state, county or city law
41 enforcement officer while the officer is engaged in the performance of
42 the officer's duty; or

43 (B) uniformed or properly identified university or campus police

1 officer while such officer is engaged in the performance of such
2 officer's duty.

3 (e) Battery against a school employee is a battery, as defined in
4 subsection (a), committed against a school employee in or on any
5 school property or grounds upon which is located a building or
6 structure used by a unified school district or an accredited nonpublic
7 school for student instruction or attendance or extracurricular
8 activities of pupils enrolled in kindergarten or any of the grades one
9 through 12 or at any regularly scheduled school sponsored activity or
10 event, while such employee is engaged in the performance of such
11 employee's duty.

12 (f) Battery against a mental health employee is a battery, as
13 defined in subsection (a), committed against a mental health employee
14 by a person in the custody of the secretary for aging and disability
15 services, while such employee is engaged in the performance of such
16 employee's duty.

17 (g) (1) Battery is a class B person misdemeanor.

18 (2) Aggravated battery as defined in:

19 (A) Subsection (b)(1)(A) *or* (b)(4) is a severity level 4, person
20 felony;

21 (B) subsection (b)(1)(B) or (b)(1)(C) is a severity level 7, person
22 felony;

23 (C) subsection (b)(2)(A) or (b)(3)(A) is a severity level 5, person
24 felony; and

25 (D) subsection (b)(2)(B) or (b)(3)(B) is a severity level 8, person
26 felony.

27 (3) Battery against a law enforcement officer as defined in:

28 (A) Subsection (c)(1) is a class A person misdemeanor;

29 (B) subsection (c)(2) is a severity level 7, person felony; and

30 (C) subsection (c)(3) is a severity level 5, person felony.

31 (4) Aggravated battery against a law enforcement officer as
32 defined in:

33 (A) Subsection (d)(1) or (d)(3) is a severity level 3, person felony;
34 and

35 (B) subsection (d)(2) is a severity level 4, person felony.

36 (5) Battery against a school employee is a class A person
37 misdemeanor.

38 (6) Battery against a mental health employee is a severity level 7,
39 person felony.

40 (h) As used in this section:

41 (1) "Correctional institution" means any institution or facility
42 under the supervision and control of the secretary of corrections;

43 (2) "state correctional officer or employee" means any officer or

1 employee of the Kansas department of corrections or any independent
2 contractor, or any employee of such contractor, whose duties include
3 working at a correctional institution;

4 (3) "juvenile detention facility officer or employee" means any
5 officer or employee of a juvenile detention facility as defined in K.S.A.
6 2017 Supp. 38-2302, and amendments thereto;

7 (4) "city or county correctional officer or employee" means any
8 correctional officer or employee of the city or county or any
9 independent contractor, or any employee of such contractor, whose
10 duties include working at a city holding facility or county jail facility;

11 (5) "school employee" means any employee of a unified school
12 district or an accredited nonpublic school for student instruction or
13 attendance or extracurricular activities of pupils enrolled in
14 kindergarten or any of the grades one through 12;

15 (6) "mental health employee" means: (A) An employee of the
16 Kansas department for aging and disability services working at
17 Larned state hospital, Osawatomie state hospital, Kansas neurological
18 institute and Parsons state hospital and training center and the
19 treatment staff as defined in K.S.A. 59-29a02, and amendments
20 thereto; and (B) contractors and employees of contractors under
21 contract to provide services to the Kansas department for aging and
22 disability services working at any such institution or facility;

23 (7) "judge" means a duly elected or appointed justice of the
24 supreme court, judge of the court of appeals, judge of any district
25 court of Kansas, district magistrate judge or municipal court judge;

26 (8) "attorney" means a: (A) County attorney, assistant county
27 attorney, special assistant county attorney, district attorney, assistant
28 district attorney, special assistant district attorney, attorney general,
29 assistant attorney general or special assistant attorney general; and
30 (B) public defender, assistant public defender, contract counsel for the
31 state board of indigents' defense services or an attorney who is
32 appointed by the court to perform services for an indigent person as
33 provided by article 45 of chapter 22 of the Kansas Statutes Annotated,
34 and amendments thereto;

35 (9) "community corrections officer" means an employee of a
36 community correctional services program responsible for supervision
37 of adults or juveniles as assigned by the court to community
38 corrections supervision and any other employee of a community
39 correctional services program that provides enhanced supervision of
40 offenders such as house arrest and surveillance programs; and

41 (10) "court services officer" means an employee of the Kansas
42 judicial branch or local judicial district responsible for supervising,
43 monitoring or writing reports relating to adults or juveniles as

1 **assigned by the court, or performing related duties as assigned by the**
2 **court.**

3 ~~Sec. 2.~~ **3.** K.S.A. 2017 Supp. 8-262 is hereby amended to read as
4 follows: 8-262. (a) (1) Any person who drives a motor vehicle on any
5 highway of this state at a time when such person's privilege so to do is
6 canceled, suspended or revoked or while such person's privilege to obtain
7 a driver's license is suspended or revoked pursuant to K.S.A. 8-252a, and
8 amendments thereto, shall be guilty of a class B nonperson misdemeanor
9 on the first conviction and a class A nonperson misdemeanor on the second
10 or subsequent conviction.

11 (2) No person shall be convicted under this section if such person was
12 entitled at the time of arrest under K.S.A. 8-257, and amendments thereto,
13 to the return of such person's driver's license.

14 (3) Except as otherwise provided by subsection (a)(4) or (c), every
15 person convicted under this section shall be sentenced to at least five days'
16 imprisonment and fined at least \$100 and upon a second conviction shall
17 not be eligible for parole until completion of five days' imprisonment.

18 (4) Except as otherwise provided by subsection (c), if a person: (A) Is
19 convicted of a violation of this section, committed while the person's
20 privilege to drive or privilege to obtain a driver's license was suspended or
21 revoked for a violation of K.S.A. 8-2,144 or 8-1567 or K.S.A. 2017 Supp.
22 8-1025, and amendments thereto, or any ordinance of any city or
23 resolution of any county or a law of another state, which ordinance or
24 resolution or law prohibits the acts prohibited by those statutes; and (B) is
25 or has been also convicted of a violation of K.S.A. 8-2,144 or 8-1567 or
26 K.S.A. 2017 Supp. 8-1025, and amendments thereto, or any ordinance of
27 any city or resolution of any county or law of another state, which
28 ordinance or resolution or law prohibits the acts prohibited by those
29 statutes, committed while the person's privilege to drive or privilege to
30 obtain a driver's license was so suspended or revoked, the person shall not
31 be eligible for suspension of sentence, probation or parole until the person
32 has served at least 90 days' imprisonment, and any fine imposed on such
33 person shall be in addition to such a term of imprisonment.

34 (b) The division, upon receiving a record of the conviction of any
35 person under this section, or any ordinance of any city or resolution of any
36 county or a law of another state which is in substantial conformity with
37 this section, upon a charge of driving a vehicle while the license of such
38 person is revoked or suspended, shall extend the period of such suspension
39 or revocation for an additional period of 90 days.

40 (c) (1) The person found guilty of a class A nonperson misdemeanor
41 on a third or subsequent conviction of this section shall be sentenced to not
42 less than 90 days' imprisonment and fined not less than \$1,500 if such
43 person's privilege to drive a motor vehicle is canceled, suspended or

1 revoked because such person:

2 (A) Refused to submit and complete any test of blood, breath or urine
3 requested by law enforcement excluding the preliminary screening test as
4 set forth in K.S.A. 8-1012, and amendments thereto;

5 (B) was convicted of violating the provisions of K.S.A. 40-3104, and
6 amendments thereto, relating to motor vehicle liability insurance coverage;

7 (C) was convicted of vehicular homicide, K.S.A. 21-3405, prior to its
8 repeal, or K.S.A. 2017 Supp. 21-5406, and amendments thereto,
9 involuntary manslaughter while driving under the influence of alcohol or
10 drugs, K.S.A. 21-3442, prior to its repeal, or involuntary manslaughter as
11 defined in ~~subsection (a)(3)~~ of K.S.A. 2017 Supp. 21-5405(a)(3) and (a)
12 (5), and amendments thereto, or any other murder or manslaughter crime
13 resulting from the operation of a motor vehicle; or

14 (D) was convicted of being a habitual violator, K.S.A. 8-287, and
15 amendments thereto.

16 (2) The person convicted shall not be eligible for release on
17 probation, suspension or reduction of sentence or parole until the person
18 has served at least 90 days' imprisonment. The 90 days' imprisonment
19 mandated by this subsection may be served in a work release program only
20 after such person has served 48 consecutive hours' imprisonment, provided
21 such work release program requires such person to return to confinement
22 at the end of each day in the work release program. The court may place
23 the person convicted under a house arrest program pursuant to K.S.A.
24 2017 Supp. 21-6609, and amendments thereto, or any municipal ordinance
25 to serve the remainder of the minimum sentence only after such person has
26 served 48 consecutive hours' imprisonment.

27 (d) For the purposes of determining whether a conviction is a first,
28 second, third or subsequent conviction in sentencing under this section,
29 "conviction" includes a conviction of a violation of any ordinance of any
30 city or resolution of any county or a law of another state which is in
31 substantial conformity with this section.

32 ~~Sec. 3.~~ 4. K.S.A. 2017 Supp. 8-2,144 is hereby amended to read as
33 follows: 8-2,144. (a) Driving a commercial motor vehicle under the
34 influence is operating or attempting to operate any commercial motor
35 vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, within this
36 state while:

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

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

43 (3) committing a violation of K.S.A. 8-1567(a), and amendments

1 thereto, or the ordinance of a city or resolution of a county which prohibits
2 any of the acts prohibited thereunder.

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

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

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

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

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

18 (2) In addition, for any conviction pursuant to subsection (b)(1)(C), at
19 the time of the filing of the judgment form or journal entry as required by
20 K.S.A. 22-3426 or K.S.A. 2017 Supp. 21-6711, and amendments thereto,
21 the court shall cause a certified copy to be sent to the officer having the
22 offender in charge. The court shall determine whether the offender, upon
23 release from imprisonment, shall be supervised by community correctional
24 services or court services based upon the risk and needs of the offender.
25 The risk and needs of the offender shall be determined by use of a risk
26 assessment tool specified by the Kansas sentencing commission. The law
27 enforcement agency maintaining custody and control of a defendant for
28 imprisonment shall cause a certified copy of the judgment form or journal
29 entry to be sent to the supervision office designated by the court and upon
30 expiration of the term of imprisonment shall deliver the defendant to a
31 location designated by the supervision office designated by the court. After
32 the term of imprisonment imposed by the court, the person shall be placed
33 on supervision to community correctional services or court services, as
34 determined by the court, for a mandatory one-year period of supervision,
35 which such period of supervision shall not be reduced. During such
36 supervision, the person shall be required to participate in a
37 multidisciplinary model of services for substance use disorders facilitated
38 by a Kansas department for aging and disability services designated care
39 coordination agency to include assessment and, if appropriate, referral to a
40 community based substance use disorder treatment including recovery
41 management and mental health counseling as needed. The
42 multidisciplinary team shall include the designated care coordination
43 agency, the supervision officer, the aging and disability services

1 department designated treatment provider and the offender. Any violation
2 of the conditions of such supervision may subject such person to
3 revocation of supervision and imprisonment in jail for the remainder of the
4 period of imprisonment, the remainder of the supervision period, or any
5 combination or portion thereof.

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

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

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

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

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

41 (g) Prior to filing a complaint alleging a violation of this section, a
42 prosecutor shall request and shall receive from the: (1) Division a record
43 of all prior convictions obtained against such person for any violations of

1 any of the motor vehicle laws of this state; and (2) Kansas bureau of
2 investigation central repository all criminal history record information
3 concerning such person.

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

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

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

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

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

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

41 (2) If the elements of such ordinance violation are the same as the
42 elements of a violation of this section that would constitute, and be
43 punished as, a felony, the city attorney shall refer the violation to the

1 appropriate county or district attorney for prosecution. The county or
2 district attorney shall accept such referral and pursue a disposition of such
3 violation, and shall not refer any such violation back to the city attorney.

4 (l) No plea bargaining agreement shall be entered into nor shall any
5 judge approve a plea bargaining agreement entered into for the purpose of
6 permitting a person charged with a violation of this section, or a violation
7 of any ordinance of a city or resolution of any county in this state which
8 prohibits the acts prohibited by this section, to avoid the mandatory
9 penalties established by this section or by the ordinance or resolution.

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

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

16 (1) Convictions for a violation of K.S.A. 8-1567, and amendments
17 thereto, or a violation of an ordinance of any city or resolution of any
18 county which prohibits the acts that such section prohibits, or entering into
19 a diversion agreement in lieu of further criminal proceedings on a
20 complaint alleging any such violations, shall be taken into account, but
21 only convictions or diversions occurring on or after July 1, 2001. Nothing
22 in this provision shall be construed as preventing any court from
23 considering any convictions or diversions occurring during the person's
24 lifetime in determining the sentence to be imposed within the limits
25 provided for a 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) 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) *or* (a)(5), and amendments thereto; (E)
34 aggravated battery as described in K.S.A. 2017 Supp. 21-5413(b)(3) **or** (b)
35 (4), and amendments thereto; and (F) aggravated vehicular homicide,
36 K.S.A. 21-3405a, prior to its repeal, or vehicular battery, K.S.A. 21-3405b,
37 prior to its repeal, if the crime was committed while committing a
38 violation of K.S.A. 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) multiple convictions of any crime described in subsection (n)(1)
9 or (n)(2) arising from the same arrest shall only be counted as one
10 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. 2017 Supp. 8-1013 is hereby amended to read as**
28 **follows: 8-1013. As used in K.S.A. 8-1001 through 8-1010, 8-1011, 8-**
29 **1012, 8-1014, 8-1015, 8-1016, 8-1017 and 8-1018, and amendments**
30 **thereto, and this section:**

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

33 **(b) (1) "Alcohol or drug-related conviction" means any of the**
34 **following: (A) Conviction of vehicular battery or aggravated vehicular**
35 **homicide, prior to their repeal, if the crime is committed while**
36 **committing a violation of K.S.A. 8-1567, and amendments thereto, or**
37 **the ordinance of a city or resolution of a county in this state which**
38 **prohibits any acts prohibited by that statute, or conviction of a**
39 **violation of K.S.A. 8-2,144 or 8-1567 or K.S.A. 2017 Supp. 8-1025, and**
40 **amendments thereto, or conviction of a violation of aggravated battery**
41 **as described in subsection (b)(3) of K.S.A. 2017 Supp. 21-5413(b)(3) or**
42 **(b)(4), and amendments thereto, or conviction of a violation of**
43 **involuntary manslaughter as described in K.S.A. 2017 Supp. 21-5405(a)**

1 (3) or (a)(5), and amendments thereto; (B) conviction of a violation of a
2 law of another state which would constitute a crime described in
3 subsection (b)(1)(A) if committed in this state; (C) conviction of a
4 violation of an ordinance of a city in this state or a resolution of a
5 county in this state which would constitute a crime described in
6 subsection (b)(1)(A), whether or not such conviction is in a court of
7 record; or (D) conviction of an act which was committed on a military
8 reservation and which would constitute a violation of K.S.A. 8-2,144
9 or 8-1567 or K.S.A. 2017 Supp. 8-1025, and amendments thereto, or
10 would constitute a crime described in subsection (b)(1)(A) if
11 committed off a military reservation in this state.

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

20 (c) "Division" means the division of vehicles of the department of
21 revenue.

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

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

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

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

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

41 (i) "Test refusal" or "refuses a test" refers to a person's failure to
42 submit to or complete any test of the person's blood, breath, urine or
43 other bodily substance, other than a preliminary screening test, in

1 **accordance with this act, and includes refusal of any such test on a**
2 **military reservation.**

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

9 Sec.-4: 6. K.S.A. 2017 Supp. 8-1025 is hereby amended to read as
10 follows: 8-1025. (a) Refusing to submit to a test to determine the presence
11 of alcohol or drugs is refusing to submit to or complete a test or tests
12 deemed consented to under K.S.A. 8-1001(a), and amendments thereto, if
13 such person has:

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

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

24 (b) (1) Refusing to submit to a test to determine the presence of
25 alcohol or drugs is:

26 (A) On a first conviction a class A, nonperson misdemeanor. The
27 person convicted shall be sentenced to not less than 90 days nor more than
28 one year's imprisonment and fined not less than \$1,250 nor more than
29 \$1,750. The person convicted shall serve at least five consecutive days'
30 imprisonment before the person is granted probation, suspension or
31 reduction of sentence or parole or is otherwise released. The five days'
32 imprisonment mandated by this subsection may be served in a work
33 release program only after such person has served 48 consecutive hours'
34 imprisonment, provided such work release program requires such person
35 to return to confinement at the end of each day in the work release
36 program. The person convicted, if placed into a work release program,
37 shall serve a minimum of 120 hours of confinement. Such 120 hours of
38 confinement shall be a period of at least 48 consecutive hours of
39 imprisonment followed by confinement hours at the end of and continuing
40 to the beginning of the offender's work day. The court may place the
41 person convicted under a house arrest program pursuant to K.S.A. 2017
42 Supp. 21-6609, and amendments thereto, to serve the five days'
43 imprisonment mandated by this subsection only after such person has

1 served 48 consecutive hours' imprisonment. The person convicted, if
2 placed under house arrest, shall be monitored by an electronic monitoring
3 device, which verifies the offender's location. The offender shall serve a
4 minimum of 120 hours of confinement within the boundaries of the
5 offender's residence. Any exceptions to remaining within the boundaries of
6 the offender's residence provided for in the house arrest agreement shall
7 not be counted as part of the 120 hours;

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

33 (C) on a second conviction a nonperson felony if the person has a
34 prior conviction which occurred within the preceding 10 years, not
35 including any period of incarceration. The person convicted shall be
36 sentenced to not less than 90 days nor more than one year's imprisonment
37 and fined not less than \$1,750 nor more than \$2,500. The person convicted
38 shall not be eligible for release on probation, suspension or reduction of
39 sentence or parole until the person has served at least 90 days'
40 imprisonment. The 90 days' imprisonment mandated by this subsection
41 may be served in a work release program only after such person has served
42 48 consecutive hours' imprisonment, provided such work release program
43 requires such person to return to confinement at the end of each day in the

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

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

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

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

20 (3) In addition, for any conviction pursuant to subsection (b)(1)(B),
21 (b)(1)(C) or (b)(1)(D), at the time of the filing of the judgment form or
22 journal entry as required by K.S.A. 22-3426 or K.S.A. 2017 Supp. 21-
23 6711, and amendments thereto, the court shall cause a certified copy to be
24 sent to the officer having the offender in charge. The court shall determine
25 whether the offender, upon release from imprisonment, shall be supervised
26 by community correctional services or court services based upon the risk
27 and needs of the offender. The risk and needs of the offender shall be
28 determined by use of a risk assessment tool specified by the Kansas
29 sentencing commission. The law enforcement agency maintaining custody
30 and control of a defendant for imprisonment shall cause a certified copy of
31 the judgment form or journal entry to be sent to the supervision office
32 designated by the court and upon expiration of the term of imprisonment
33 shall deliver the defendant to a location designated by the supervision
34 office designated by the court. After the term of imprisonment imposed by
35 the court, the person shall be placed on supervision to community
36 correctional services or court services, as determined by the court, for a
37 mandatory one-year period of supervision, which such period of
38 supervision shall not be reduced. During such supervision, the person shall
39 be required to participate in a multidisciplinary model of services for
40 substance use disorders facilitated by a Kansas department for aging and
41 disability services designated care coordination agency to include
42 assessment and, if appropriate, referral to a community based substance
43 use disorder treatment including recovery management and mental health

1 counseling as needed. The multidisciplinary team shall include the
2 designated care coordination agency, the supervision officer, the aging and
3 disability services department designated treatment provider and the
4 offender. Any violation of the conditions of such supervision may subject
5 such person to revocation of supervision and imprisonment in jail for the
6 remainder of the period of imprisonment, the remainder of the supervision
7 period, or any combination or portion thereof.

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

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

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

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

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

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

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

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

10 (h) 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 K.S.A. 8-1567, and amendments
14 thereto, or a violation of an ordinance of any city or resolution of any
15 county which prohibits the acts that such section prohibits, or entering into
16 a diversion agreement in lieu of further criminal proceedings on a
17 complaint alleging any such violations, shall be taken into account, but
18 only convictions or diversions occurring: (A) On or after July 1, 2001; and
19 (B) when such person was 18 years of age or older. Nothing in this
20 provision shall be construed as preventing any court from considering any
21 convictions or diversions occurring during the person's lifetime in
22 determining the sentence to be imposed within the limits provided for a
23 first, second, third, fourth or subsequent offense;

24 (2) any convictions for a violation of the following sections which
25 occurred during a person's lifetime shall be taken into account, but only
26 convictions occurring when such person was 18 years of age or older: (A)
27 This section; (B) driving a commercial motor vehicle under the influence,
28 K.S.A. 8-2,144, and amendments thereto; (C) operating a vessel under the
29 influence of alcohol or drugs, K.S.A. 32-1131, and amendments thereto;
30 (D) involuntary manslaughter while driving under the influence of alcohol
31 or drugs, K.S.A. 21-3442, prior to its repeal, or K.S.A. 2017 Supp. 21-
32 5405(a)(3) *or* (a)(5), and amendments thereto; (E) aggravated battery as
33 described in K.S.A. 2017 Supp. 21-5413(b)(3) **or** (b)(4), and amendments
34 thereto; and (F) aggravated vehicular homicide, K.S.A. 21-3405a, prior to
35 its repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the
36 crime was committed while committing a violation of K.S.A. 8-1567, and
37 amendments thereto;

38 (3) "conviction" includes: (A) Entering into a diversion agreement in
39 lieu of further criminal proceedings on a complaint alleging a violation of
40 a crime described in subsection (h)(2); (B) conviction of a violation of an
41 ordinance of a city in this state, a resolution of a county in this state or any
42 law of another state which would constitute a crime described in
43 subsection (h)(1) or (h)(2); and (C) receiving punishment under the

1 uniform code of military justice or Kansas code of military justice for an
2 act which was committed on a military reservation and which would
3 constitute a crime described in subsection (h)(1) or (h)(2) if committed off
4 a military reservation in this state;

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

7 (5) multiple convictions of any crime described in subsection (h)(1)
8 or (h)(2) arising from the same arrest shall only be counted as one
9 conviction;

10 (6) the prior conviction that is an element of the crime of refusing to
11 submit to a test to determine the presence of alcohol or drugs shall not be
12 used for the purpose of determining whether a conviction is a first, second,
13 third or subsequent conviction in sentencing under this section and shall
14 not be considered in determining the sentence to be imposed within the
15 limits provided for a first, second, third or subsequent offense; and

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

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

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

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

34 (3) An ordinance may grant to a municipal court jurisdiction over a
35 violation of such ordinance which is concurrent with the jurisdiction of the
36 district court over a violation of this section, notwithstanding that the
37 elements of such ordinance violation are the same as the elements of a
38 violation of this section that would constitute, and be punished as, a felony.

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

42 (k) (1) Upon the filing of a complaint, citation or notice to appear
43 alleging a person has violated a city ordinance prohibiting the acts

1 prohibited by this section, and prior to conviction thereof, a city attorney
2 shall request and shall receive from the:

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

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

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

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

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

25 (n) On and after July 1, 2012, the amount of \$250 from each fine
26 imposed pursuant to this section shall be remitted by the clerk of the
27 district court to the state treasurer in accordance with the provisions of
28 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
29 remittance, the state treasurer shall credit the entire amount to the
30 community corrections supervision fund established by K.S.A. 2017 Supp.
31 75-52,113, and amendments thereto.

32 ~~Sec. 5-~~ 7. K.S.A. 2017 Supp. 8-1567 is hereby amended to read as
33 follows: 8-1567. (a) Driving under the influence is operating or attempting
34 to operate any vehicle within this state while:

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

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

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

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

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

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

7 (A) On a first conviction a class B, nonperson misdemeanor. The
8 person convicted shall be sentenced to not less than 48 consecutive hours
9 nor more than six months' imprisonment, or in the court's discretion 100
10 hours of public service, and fined not less than \$750 nor more than \$1,000.
11 The person convicted shall serve at least 48 consecutive hours'
12 imprisonment or 100 hours of public service either before or as a condition
13 of any grant of probation or suspension, reduction of sentence or parole.
14 The court may place the person convicted under a house arrest program
15 pursuant to K.S.A. 2017 Supp. 21-6609, and amendments thereto, to serve
16 the remainder of the sentence only after such person has served 48
17 consecutive hours' imprisonment;

18 (B) on a second conviction a class A, nonperson misdemeanor. The
19 person convicted shall be sentenced to not less than 90 days nor more than
20 one year's imprisonment and fined not less than \$1,250 nor more than
21 \$1,750. The person convicted shall serve at least five consecutive days'
22 imprisonment before the person is granted probation, suspension or
23 reduction of sentence or parole or is otherwise released. The five days'
24 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 120 hours of confinement. Such 120 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 five 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 120 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 120 hours;

43 (C) on a third conviction a class A, nonperson misdemeanor, except

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

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

1 served 48 consecutive hours' imprisonment. The person convicted, if
2 placed under house arrest, shall be monitored by an electronic monitoring
3 device, which verifies the offender's location. The offender shall serve a
4 minimum of 2,160 hours of confinement within the boundaries of the
5 offender's residence. Any exceptions to remaining within the boundaries of
6 the offender's residence provided for in the house arrest agreement shall
7 not be counted as part of the 2,160 hours; and

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

32 (2) The court may order that the term of imprisonment imposed
33 pursuant to subsection (b)(1)(D) or (b)(1)(E) be served in a state facility in
34 the custody of the secretary of corrections in a facility designated by the
35 secretary for the provision of substance abuse treatment pursuant to the
36 provisions of K.S.A. 2017 Supp. 21-6804, and amendments thereto. The
37 person shall remain imprisoned at the state facility only while participating
38 in the substance abuse treatment program designated by the secretary and
39 shall be returned to the custody of the sheriff for execution of the balance
40 of the term of imprisonment upon completion of or the person's discharge
41 from the substance abuse treatment program. Custody of the person shall
42 be returned to the sheriff for execution of the sentence imposed in the
43 event the secretary of corrections determines: (A) That substance abuse

1 treatment resources or the capacity of the facility designated by the
2 secretary for the incarceration and treatment of the person is not available;
3 (B) the person fails to meaningfully participate in the treatment program of
4 the designated facility; (C) the person is disruptive to the security or
5 operation of the designated facility; or (D) the medical or mental health
6 condition of the person renders the person unsuitable for confinement at
7 the designated facility. The determination by the secretary that the person
8 either is not to be admitted into the designated facility or is to be
9 transferred from the designated facility is not subject to review. The sheriff
10 shall be responsible for all transportation expenses to and from the state
11 correctional facility.

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

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

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

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

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

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

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

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

41 (h) The court shall electronically report every conviction of a
42 violation of this section and every diversion agreement entered into in lieu
43 of further criminal proceedings on a complaint alleging a violation of this

1 section to the division. Prior to sentencing under the provisions of this
2 section, the court shall request and shall receive from the division a record
3 of all prior convictions obtained against such person for any violations of
4 any of the motor vehicle laws of this state.

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

8 (1) Convictions for a violation of this section, or a violation of an
9 ordinance of any city or resolution of any county which prohibits the acts
10 that this section prohibits, or entering into a diversion agreement in lieu of
11 further criminal proceedings on a complaint alleging any such violations,
12 shall be taken into account, but only convictions or diversions occurring
13 on or after July 1, 2001. Nothing in this provision shall be construed as
14 preventing any court from considering any convictions or diversions
15 occurring during the person's lifetime in determining the sentence to be
16 imposed within the limits provided for a first, second, third, fourth or
17 subsequent offense;

18 (2) any convictions for a violation of the following sections occurring
19 during a person's lifetime shall be taken into account: (A) Refusing to
20 submit to a test to determine the presence of alcohol or drugs, K.S.A. 2017
21 Supp. 8-1025, and amendments thereto; (B) driving a commercial motor
22 vehicle under the influence, K.S.A. 8-2,144, and amendments thereto; (C)
23 operating a vessel under the influence of alcohol or drugs, K.S.A. 32-1131,
24 and amendments thereto; (D) involuntary manslaughter while driving
25 under the influence of alcohol or drugs, K.S.A. 21-3442, prior to its repeal,
26 or ~~subsection (a)(3) of K.S.A. 2017 Supp. 21-5405(a)(3) or (a)(5), and~~
27 ~~amendments thereto; (E) aggravated battery as described in subsection (b)~~
28 ~~(3) of K.S.A. 2017 Supp. 21-5413(b)(3) or (b)(4), and amendments~~
29 ~~thereto; and (F) aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the~~
30 ~~crime was committed while committing a violation of K.S.A. 8-1567, and~~
31 ~~amendments thereto;~~

32
33 (3) "conviction" includes: (A) Entering into a diversion agreement in
34 lieu of further criminal proceedings on a complaint alleging a violation of
35 a crime described in subsection (i)(2); (B) conviction of a violation of an
36 ordinance of a city in this state, a resolution of a county in this state or any
37 law of another state which would constitute a crime described in
38 subsection (i)(1) or (i)(2); and (C) receiving punishment under the uniform
39 code of military justice or Kansas code of military justice for an act which
40 was committed on a military reservation and which would constitute a
41 crime described in subsection (i)(1) or (i)(2) if committed off a military
42 reservation in this state;

43 (4) multiple convictions of any crime described in subsection (i)(1) or

1 (i)(2) arising from the same arrest shall only be counted as one conviction;

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

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

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

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

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

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

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

33 (l) (1) Upon the filing of a complaint, citation or notice to appear
34 alleging a person has violated a city ordinance prohibiting the acts
35 prohibited by this section, and prior to conviction thereof, a city attorney
36 shall request and shall receive from the:

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

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

41 (2) If the elements of such ordinance violation are the same as the
42 elements of a violation of this section that would constitute, and be
43 punished as, a felony, the city attorney shall refer the violation to the

1 appropriate county or district attorney for prosecution.

2 (m) No plea bargaining agreement shall be entered into nor shall any
3 judge approve a plea bargaining agreement entered into for the purpose of
4 permitting a person charged with a violation of this section, or a violation
5 of any ordinance of a city or resolution of any county in this state which
6 prohibits the acts prohibited by this section, to avoid the mandatory
7 penalties established by this section or by the ordinance. For the purpose
8 of this subsection, entering into a diversion agreement pursuant to K.S.A.
9 12-4413 et seq. or 22-2906 et seq., and amendments thereto, shall not
10 constitute plea bargaining.

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

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

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

22 (3) "drug" includes toxic vapors as such term is defined in K.S.A.
23 2017 Supp. 21-5712, and amendments thereto.

24 (p) (1) The amount of the increase in fines as specified in this section
25 shall be remitted by the clerk of the district court to the state treasurer in
26 accordance with the provisions of K.S.A. 75-4215, and amendments
27 thereto. Upon receipt of remittance of the increase provided in this act, the
28 state treasurer shall deposit the entire amount in the state treasury and the
29 state treasurer shall credit 50% to the community alcoholism and
30 intoxication programs fund and 50% to the department of corrections
31 alcohol and drug abuse treatment fund, which is hereby created in the state
32 treasury.

33 (2) On and after July 1, 2011, the amount of \$250 from each fine
34 imposed pursuant to this section shall be remitted by the clerk of the
35 district court to the state treasurer in accordance with the provisions of
36 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
37 remittance, the state treasurer shall credit the entire amount to the
38 community corrections supervision fund established by K.S.A. 2017 Supp.
39 75-52,113, and amendments thereto.

40 ~~Sec. 8.~~ K.S.A. 2017 Supp. 21-6811 is hereby amended to read as
41 follows: 21-6811. In addition to the provisions of K.S.A. 2017 Supp. 21-
42 6810, and amendments thereto, the following shall apply in determining an
43 offender's criminal history classification as contained in the presumptive

1 sentencing guidelines grids:

2 (a) Every three prior adult convictions or juvenile adjudications of
3 class A and class B person misdemeanors in the offender's criminal history,
4 or any combination thereof, shall be rated as one adult conviction or one
5 juvenile adjudication of a person felony for criminal history purposes.
6 Every three prior adult convictions or juvenile adjudications of assault as
7 defined in K.S.A. 21-3408, prior to its repeal, or K.S.A. 2017 Supp. 21-
8 5412(a), and amendments thereto, occurring within a period commencing
9 three years prior to the date of conviction for the current crime of
10 conviction shall be rated as one adult conviction or one juvenile
11 adjudication of a person felony for criminal history purposes.

12 (b) A conviction of criminal possession of a firearm as defined in
13 K.S.A. 21-4204(a)(1) or (a)(5), prior to its repeal, criminal use of weapons
14 as defined in K.S.A. 2017 Supp. 21-6301(a)(10) or (a)(11), and
15 amendments thereto, or unlawful possession of a firearm as in effect on
16 June 30, 2005, and as defined in K.S.A. 21-4218, prior to its repeal, will be
17 scored as a select class B nonperson misdemeanor conviction or
18 adjudication and shall not be scored as a person misdemeanor for criminal
19 history purposes.

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

26 (2) If the current crime of conviction was committed on or after July
27 1, 1996, and is for a violation of K.S.A. 2017 Supp. 21-5405(a)(3) *or* (a)
28 (5), and amendments thereto, each prior adult conviction, diversion in lieu
29 of criminal prosecution or juvenile adjudication for: (A) Any act described
30 in K.S.A. 8-2,144 or 8-1567 or K.S.A. 2017 Supp. 8-1025, and
31 amendments thereto; or (B) a violation of a law of another state or an
32 ordinance of any city, or resolution of any county, which prohibits any act
33 described in K.S.A. 8-2,144 or 8-1567 or K.S.A. 2017 Supp. 8-1025, and
34 amendments thereto, shall count as one person felony for criminal history
35 purposes.

36 (3) If the current crime of conviction is for a violation of K.S.A. 2017
37 Supp. 21-5413(b)(3) **or** (b)(4), and amendments thereto:

38 (A) The first prior adult conviction, diversion in lieu of criminal
39 prosecution or juvenile adjudication for the following shall count as one
40 nonperson felony for criminal history purposes: (i) Any act described in
41 K.S.A. 8-2,144 or 8-1567 or K.S.A. 2017 Supp. 8-1025, and amendments
42 thereto; or (ii) a violation of a law of another state or an ordinance of any
43 city, or resolution of any county, which prohibits any act described in

1 K.S.A. 8-2,144 or 8-1567 or K.S.A. 2017 Supp. 8-1025, and amendments
2 thereto; and

3 (B) each second or subsequent prior adult conviction, diversion in
4 lieu of criminal prosecution or juvenile adjudication for the following shall
5 count as one person felony for criminal history purposes: (i) Any act
6 described in K.S.A. 8-2,144 or 8-1567 or K.S.A. 2017 Supp. 8-1025, and
7 amendments thereto; or (ii) a violation of a law of another state or an
8 ordinance of any city, or resolution of any county, which prohibits any act
9 described in K.S.A. 8-2,144 or 8-1567 or K.S.A. 2017 Supp. 8-1025, and
10 amendments thereto.

11 (d) Prior burglary adult convictions and juvenile adjudications will be
12 scored for criminal history purposes as follows:

13 (1) As a prior person felony if the prior conviction or adjudication
14 was classified as a burglary as defined in K.S.A. 21-3715(a), prior to its
15 repeal, or K.S.A. 2017 Supp. 21-5807(a)(1), and amendments thereto.

16 (2) As a prior nonperson felony if the prior conviction or adjudication
17 was classified as a burglary as defined in K.S.A. 21-3715(b) or (c), prior to
18 its repeal, or K.S.A. 2017 Supp. 21-5807(a)(2) or (a)(3), and amendments
19 thereto.

20 The facts required to classify prior burglary adult convictions and
21 juvenile adjudications shall be established by the state by a preponderance
22 of the evidence.

23 (e) (1) Out-of-state convictions and juvenile adjudications shall be
24 used in classifying the offender's criminal history.

25 (2) An out-of-state crime will be classified as either a felony or a
26 misdemeanor according to the convicting jurisdiction:

27 (A) If a crime is a felony in another state, it will be counted as a
28 felony in Kansas.

29 (B) If a crime is a misdemeanor in another state, the state of Kansas
30 shall refer to the comparable offense in order to classify the out-of-state
31 crime as a class A, B or C misdemeanor. If the comparable misdemeanor
32 crime in the state of Kansas is a felony, the out-of-state crime shall be
33 classified as a class A misdemeanor. If the state of Kansas does not have a
34 comparable crime, the out-of-state crime shall not be used in classifying
35 the offender's criminal history.

36 (3) The state of Kansas shall classify the crime as person or
37 nonperson. In designating a crime as person or nonperson, comparable
38 offenses under the Kansas criminal code in effect on the date the current
39 crime of conviction was committed shall be referred to. If the state of
40 Kansas does not have a comparable offense in effect on the date the
41 current crime of conviction was committed, the out-of-state conviction
42 shall be classified as a nonperson crime.

43 (4) Convictions or adjudications occurring within the federal system,

1 other state systems, the District of Columbia, foreign, tribal or military
2 courts are considered out-of-state convictions or adjudications.

3 (5) The facts required to classify out-of-state adult convictions and
4 juvenile adjudications shall be established by the state by a preponderance
5 of the evidence.

6 (f) Except as provided in K.S.A. 21-4710(d)(4), (d)(5) and (d)(6),
7 prior to its repeal, or K.S.A. 2017 Supp. 21-6810(d)(3)(B), (d)(3)(C), (d)
8 (3)(D), (d)(4) and (d)(5), and amendments thereto, juvenile adjudications
9 will be applied in the same manner as adult convictions. Out-of-state
10 juvenile adjudications will be treated as juvenile adjudications in Kansas.

11 (g) A prior felony conviction of an attempt, a conspiracy or a
12 solicitation as provided in K.S.A. 21-3301, 21-3302 or 21-3303, prior to
13 their repeal, or K.S.A. 2017 Supp. 21-5301, 21-5302 or 21-5303, and
14 amendments thereto, to commit a crime shall be treated as a person or
15 nonperson crime in accordance with the designation assigned to the
16 underlying crime.

17 (h) Drug crimes are designated as nonperson crimes for criminal
18 history scoring.

19 (i) If the current crime of conviction is for a violation of K.S.A. 8-
20 1602(b)(3) through (b)(5), and amendments thereto, each of the following
21 prior convictions for offenses committed on or after July 1, 2011, shall
22 count as a person felony for criminal history purposes: K.S.A. 8-235, 8-
23 262, 8-287, 8-291, 8-1566, 8-1567, 8-1568, 8-1602, 8-1605 and 40-3104,
24 and amendments thereto, and K.S.A. 2017 Supp. 21-5405(a)(3) *or* (a)(5)
25 and 21-5406, and amendments thereto, or a violation of a city ordinance or
26 law of another state which would also constitute a violation of such
27 sections.

28 (j) The amendments made to this section by chapter 5 of the 2015
29 Session Laws of Kansas are procedural in nature and shall be construed
30 and applied retroactively.

31 ~~Sec. 7. 9.~~ K.S.A. 2017 Supp. 38-2312 is hereby amended to read as
32 follows: 38-2312. (a) Except as provided in subsections (b) and (c), any
33 records or files specified in this code concerning a juvenile may be
34 expunged upon application to a judge of the court of the county in which
35 the records or files are maintained. The application for expungement may
36 be made by the juvenile, if 18 years of age or older or, if the juvenile is
37 less than 18 years of age, by the juvenile's parent or next friend.

38 (b) There shall be no expungement of records or files concerning acts
39 committed by a juvenile which, if committed by an adult, would constitute
40 a violation of K.S.A. 21-3401, prior to its repeal, or K.S.A. 2017 Supp. 21-
41 5402, and amendments thereto, murder in the first degree; K.S.A. 21-3402,
42 prior to its repeal, or K.S.A. 2017 Supp. 21-5403, and amendments
43 thereto, murder in the second degree; K.S.A. 21-3403, prior to its repeal,

1 or K.S.A. 2017 Supp. 21-5404, and amendments thereto, voluntary
2 manslaughter; K.S.A. 21-3404, prior to its repeal, or K.S.A. 2017 Supp.
3 21-5405, and amendments thereto, involuntary manslaughter; K.S.A. 21-
4 3439, prior to its repeal, or K.S.A. 2017 Supp. 21-5401, and amendments
5 thereto, capital murder; K.S.A. 21-3442, prior to its repeal, or K.S.A. 2017
6 Supp. 21-5405(a)(3) *or* (a)(5), and amendments thereto, involuntary
7 manslaughter while driving under the influence of alcohol or drugs; K.S.A.
8 21-3502, prior to its repeal, or K.S.A. 2017 Supp. 21-5503, and
9 amendments thereto, rape; K.S.A. 21-3503, prior to its repeal, or K.S.A.
10 2017 Supp. 21-5506(a), and amendments thereto, indecent liberties with a
11 child; K.S.A. 21-3504, prior to its repeal, or K.S.A. 2017 Supp. 21-
12 5506(b), and amendments thereto, aggravated indecent liberties with a
13 child; K.S.A. 21-3506, prior to its repeal, or K.S.A. 2017 Supp. 21-
14 5504(b), and amendments thereto, aggravated criminal sodomy; K.S.A.
15 21-3510, prior to its repeal, or K.S.A. 2017 Supp. 21-5508(a), and
16 amendments thereto, indecent solicitation of a child; K.S.A. 21-3511, prior
17 to its repeal, or K.S.A. 2017 Supp. 21-5508(b), and amendments thereto,
18 aggravated indecent solicitation of a child; K.S.A. 21-3516, prior to its
19 repeal, or K.S.A. 2017 Supp. 21-5510, and amendments thereto, sexual
20 exploitation of a child; K.S.A. 2017 Supp. 21-5514(a), and amendments
21 thereto, internet trading in child pornography; K.S.A. 2017 Supp. 21-
22 5514(b), and amendments thereto, aggravated internet trading in child
23 pornography; K.S.A. 21-3603, prior to its repeal, or K.S.A. 2017 Supp. 21-
24 5604(b), and amendments thereto, aggravated incest; K.S.A. 21-3608,
25 prior to its repeal, or K.S.A. 2017 Supp. 21-5601(a), and amendments
26 thereto, endangering a child; K.S.A. 21-3609, prior to its repeal, or K.S.A.
27 2017 Supp. 21-5602, and amendments thereto, abuse of a child; or which
28 would constitute an attempt to commit a violation of any of the offenses
29 specified in this subsection.

30 (c) Notwithstanding any other law to the contrary, for any offender
31 who is required to register as provided in the Kansas offender registration
32 act, K.S.A. 22-4901 et seq., and amendments thereto, there shall be no
33 expungement of any conviction or any part of the offender's criminal
34 record while the offender is required to register as provided in the Kansas
35 offender registration act.

36 (d) When a petition for expungement is filed, the court shall set a date
37 for a hearing on the petition and shall give notice thereof to the county or
38 district attorney. The petition shall state: (1) The juvenile's full name; (2)
39 the full name of the juvenile as reflected in the court record, if different
40 than (1); (3) the juvenile's sex and date of birth; (4) the offense for which
41 the juvenile was adjudicated; (5) the date of the trial; and (6) the identity
42 of the trial court. Except as otherwise provided by law, a petition for
43 expungement shall be accompanied by a docket fee in the amount of \$176.

1 On and after July 1, 2017, through June 30, 2019, the supreme court may
2 impose a charge, not to exceed \$19 per case, to fund the costs of non-
3 judicial personnel. All petitions for expungement shall be docketed in the
4 original action. Any person who may have relevant information about the
5 petitioner may testify at the hearing. The court may inquire into the
6 background of the petitioner.

7 (e) (1) After hearing, the court shall order the expungement of the
8 records and files if the court finds that:

9 (A) (i) The juvenile has reached 23 years of age or that two years
10 have elapsed since the final discharge;

11 (ii) one year has elapsed since the final discharge for an adjudication
12 concerning acts committed by a juvenile which, if committed by an adult,
13 would constitute a violation of K.S.A. 2017 Supp. 21-6419, and
14 amendments thereto; or

15 (iii) the juvenile is a victim of human trafficking, aggravated human
16 trafficking or commercial sexual exploitation of a child, the adjudication
17 concerned acts committed by the juvenile as a result of such victimization,
18 including, but not limited to, acts which, if committed by an adult, would
19 constitute a violation of K.S.A. 2017 Supp. 21-6203 or 21-6419, and
20 amendments thereto, and the hearing on expungement occurred on or after
21 the date of final discharge. The provisions of this clause shall not allow an
22 expungement of records or files concerning acts described in subsection
23 (b);

24 (B) since the final discharge of the juvenile, the juvenile has not been
25 convicted of a felony or of a misdemeanor other than a traffic offense or
26 adjudicated as a juvenile offender under the revised Kansas juvenile justice
27 code and no proceedings are pending seeking such a conviction or
28 adjudication; and

29 (C) the circumstances and behavior of the petitioner warrant
30 expungement.

31 (2) The court may require that all court costs, fees and restitution
32 shall be paid.

33 (f) Upon entry of an order expunging records or files, the offense
34 which the records or files concern shall be treated as if it never occurred,
35 except that upon conviction of a crime or adjudication in a subsequent
36 action under this code the offense may be considered in determining the
37 sentence to be imposed. The petitioner, the court and all law enforcement
38 officers and other public offices and agencies shall properly reply on
39 inquiry that no record or file exists with respect to the juvenile. Inspection
40 of the expunged files or records thereafter may be permitted by order of
41 the court upon petition by the person who is the subject thereof. The
42 inspection shall be limited to inspection by the person who is the subject of
43 the files or records and the person's designees.

1 (g) A certified copy of any order made pursuant to subsection (a) or
2 (d) shall be sent to the Kansas bureau of investigation, which shall notify
3 every juvenile or criminal justice agency which may possess records or
4 files ordered to be expunged. If the agency fails to comply with the order
5 within a reasonable time after its receipt, such agency may be adjudged in
6 contempt of court and punished accordingly.

7 (h) The court shall inform any juvenile who has been adjudicated a
8 juvenile offender of the provisions of this section.

9 (i) Nothing in this section shall be construed to prohibit the
10 maintenance of information relating to an offense after records or files
11 concerning the offense have been expunged if the information is kept in a
12 manner that does not enable identification of the juvenile.

13 (j) Nothing in this section shall be construed to permit or require
14 expungement of files or records related to a child support order registered
15 pursuant to the revised Kansas juvenile justice code.

16 (k) Whenever the records or files of any adjudication have been
17 expunged under the provisions of this section, the custodian of the records
18 or files of adjudication relating to that offense shall not disclose the
19 existence of such records or files, except when requested by:

20 (1) The person whose record was expunged;

21 (2) a private detective agency or a private patrol operator, and the
22 request is accompanied by a statement that the request is being made in
23 conjunction with an application for employment with such agency or
24 operator by the person whose record has been expunged;

25 (3) a court, upon a showing of a subsequent conviction of the person
26 whose record has been expunged;

27 (4) the secretary for aging and disability services, or a designee of the
28 secretary, for the purpose of obtaining information relating to employment
29 in an institution, as defined in K.S.A. 76-12a01, and amendments thereto,
30 of the Kansas department for aging and disability services of any person
31 whose record has been expunged;

32 (5) a person entitled to such information pursuant to the terms of the
33 expungement order;

34 (6) the Kansas lottery, and the request is accompanied by a statement
35 that the request is being made to aid in determining qualifications for
36 employment with the Kansas lottery or for work in sensitive areas within
37 the Kansas lottery as deemed appropriate by the executive director of the
38 Kansas lottery;

39 (7) the governor or the Kansas racing commission, or a designee of
40 the commission, and the request is accompanied by a statement that the
41 request is being made to aid in determining qualifications for executive
42 director of the commission, for employment with the commission, for
43 work in sensitive areas in parimutuel racing as deemed appropriate by the

1 executive director of the commission or for licensure, renewal of licensure
2 or continued licensure by the commission;

3 (8) the Kansas sentencing commission; or

4 (9) the Kansas bureau of investigation, for the purposes of:

5 (A) Completing a person's criminal history record information within
6 the central repository in accordance with K.S.A. 22-4701 et seq., and
7 amendments thereto; or

8 (B) providing information or documentation to the federal bureau of
9 investigation, in connection with the national instant criminal background
10 check system, to determine a person's qualification to possess a firearm.

11 (l) The provisions of subsection (k)(9) shall apply to all records
12 created prior to, on and after July 1, 2011.

13 ~~Sec. 8.~~ **10.** K.S.A. 2017 Supp. 75-52,148 is hereby amended to read
14 as follows: 75-52,148. (a) The department of corrections shall be required
15 to review and report on the following serious offenses committed by sex
16 offenders, as defined by K.S.A. 22-4902, and amendments thereto, while
17 such offenders are in the custody of the secretary of corrections:

18 (1) Murder in the first degree, as defined in K.S.A. 2017 Supp. 21-
19 5402, and amendments thereto;

20 (2) murder in the second degree, as defined in K.S.A. 2017 Supp. 21-
21 5403, and amendments thereto;

22 (3) capital murder, as defined in K.S.A. 2017 Supp. 21-5401, and
23 amendments thereto;

24 (4) rape, as defined in K.S.A. 2017 Supp. 21-5503, and amendments
25 thereto;

26 (5) aggravated criminal sodomy, as defined in ~~subsection (b) of~~
27 K.S.A. 2017 Supp. 21-5504(b), and amendments thereto;

28 (6) sexual exploitation of a child, as defined in K.S.A. 2017 Supp. 21-
29 5510, and amendments thereto;

30 (7) kidnapping as defined in ~~subsection (a) of~~ K.S.A. 2017 Supp. 21-
31 5408(a), and amendments thereto;

32 (8) aggravated kidnapping, as defined in ~~subsection (b) of~~ K.S.A.
33 2017 Supp. 21-5408(b), and amendments thereto;

34 (9) criminal restraint, as defined in K.S.A. 2017 Supp. 21-5411, and
35 amendments thereto;

36 (10) indecent solicitation of a child, as defined in ~~subsection (a) of~~
37 K.S.A. 2017 Supp. 21-5508(a), and amendments thereto;

38 (11) aggravated indecent solicitation of a child, as defined in
39 ~~subsection (b) of~~ K.S.A. 2017 Supp. 21-5508(b), and amendments thereto;

40 (12) indecent liberties with a child, as defined in ~~subsection (a) of~~
41 K.S.A. 2017 Supp. 21-5506(a), and amendments thereto;

42 (13) aggravated indecent liberties with a child, as defined in
43 ~~subsection (b) of~~ K.S.A. 2017 Supp. 21-5506(b), and amendments thereto;

- 1 (14) criminal sodomy, as defined in ~~subsection (a)~~ of K.S.A. 2017
2 Supp. 21-5504(a), and amendments thereto;
- 3 (15) child abuse, as defined in K.S.A. 2017 Supp. 21-5602, and
4 amendments thereto;
- 5 (16) aggravated robbery, as defined in ~~subsection (b)~~ of K.S.A. 2017
6 Supp. 21-5420(b), and amendments thereto;
- 7 (17) burglary, as defined in ~~subsection (a)~~ of K.S.A. 2017 Supp. 21-
8 5807(a), and amendments thereto;
- 9 (18) aggravated burglary, as defined in ~~subsection (b)~~ of K.S.A. 2017
10 Supp. 21-5807(b), and amendments thereto;
- 11 (19) theft, as defined in K.S.A. 2017 Supp. 21-5801, and amendments
12 thereto;
- 13 (20) vehicular homicide, as defined in K.S.A. 2017 Supp. 21-5406,
14 and amendments thereto;
- 15 (21) involuntary manslaughter while driving under the influence, as
16 defined in ~~subsection (a)(3)~~ of K.S.A. 2017 Supp. 21-5405(a)(3) or (a)(5),
17 and amendments thereto; or
- 18 (22) stalking, as defined in K.S.A. 2017 Supp. 21-5427, and
19 amendments thereto.
- 20 (b) The secretary of corrections shall submit such report to the
21 speaker of the house of representatives and the president of the senate
22 annually, beginning January 1, 2007.
- 23 Sec. ~~9~~. **11.** K.S.A. 2017 Supp. 8-262, 8-2,144, **8-1013**, 8-1025, 8-
24 1567, 21-5405, **21-5413**, 21-6811, 38-2312 and 75-52,148 are hereby
25 repealed.
- 26 Sec. ~~10~~. **12.** This act shall take effect and be in force from and after
27 its publication in the statute book.