

House Substitute for SENATE BILL No. 374

By Committee on Judiciary

3-26

1 AN ACT concerning driving under the influence; relating to testing;
2 administrative penalties; crimes, punishment and criminal procedure;
3 amending K.S.A. 2017 Supp. 8-235, 8-241, 8-262, 8-285, 8-2,142, 8-
4 2,144, 8-1001, 8-1008, 8-1013, 8-1014, 8-1501, 8-1567, 12-4106, 12-
5 4120, 12-4413, 12-4414, 12-4415, 12-4416, 12-4516, 12-4517, 21-
6 5203, 21-6604, 21-6614, 21-6804, 21-6811, 22-2802, 22-2908, 22-
7 2909, 22-2910, 22-3716, 22-4704, 60-427 and 74-2012 and repealing
8 the existing sections; also repealing K.S.A. 2017 Supp. 8-1025 and 12-
9 4516f.

10
11 *Be it enacted by the Legislature of the State of Kansas:*

12 Section 1. K.S.A. 2017 Supp. 8-235 is hereby amended to read as
13 follows: 8-235. (a) No person, except those expressly exempted, shall
14 drive any motor vehicle upon a highway in this state unless such person
15 has a valid driver's license. No person shall receive a driver's license
16 unless and until such person surrenders or with the approval of the
17 division, lists to the division all valid licenses in such person's possession
18 issued to such person by any other jurisdiction. All surrendered licenses or
19 the information listed on foreign licenses shall be returned by the division
20 to the issuing department, together with information that the licensee is
21 now licensed in a new jurisdiction. No person shall be permitted to have
22 more than one valid license at any time.

23 (b) Any person licensed under the motor vehicle drivers' license act
24 may exercise the privilege granted upon all streets and highways in this
25 state and shall not be required to obtain any other license to exercise such
26 privilege by any local authority. Nothing herein shall prevent cities from
27 requiring licenses of persons who drive taxicabs or municipally franchised
28 transit systems for hire upon city streets, to protect the public from drivers
29 whose character or habits make them unfit to transport the public. If a
30 license is denied, the applicant may appeal such decision to the district
31 court of the county in which such city is located by filing within 14 days
32 after such denial, a notice of appeal with the clerk of the district court and
33 by filing a copy of such notice with the city clerk of the involved city. The
34 city clerk shall certify a copy of such decision of the city governing body
35 to the clerk of the district court and the matter shall be docketed as any
36 other cause and the applicant shall be granted a trial of such person's

1 character and habits. The matter shall be heard by the court de novo in
2 accordance with the code of civil procedure. The cost of such appeal shall
3 be assessed in such manner as the court may direct.

4 (c) Any person operating in this state a motor vehicle, except a
5 motorcycle, which is registered in this state other than under a temporary
6 permit, pursuant to K.S.A. 8-2409, and amendments thereto, shall be the
7 holder of a driver's license which is classified for the operation of such
8 motor vehicle, and any person operating in this state a motorcycle which is
9 registered in this state shall be the holder of a class M driver's license,
10 except that any person operating in this state a motorcycle which is
11 registered under a temporary permit, pursuant to K.S.A. 8-2409, and
12 amendments thereto, shall be the holder of a driver's license for any class
13 of motor vehicles.

14 (d) No person shall drive any motorized bicycle upon a highway of
15 this state unless such person: (1) Has a valid driver's license which entitles
16 the licensee to drive a motor vehicle in any class or classes; (2) is at least
17 15 years of age and has passed the written and visual examinations
18 required for obtaining a class C driver's license, in which case the division
19 shall issue to such person a class C license which clearly indicates such
20 license is valid only for the operation of motorized bicycles; (3) has had
21 their driving privileges suspended, for a violation other than a violation of
22 K.S.A. 8-2,144, and amendments thereto, or a second or subsequent
23 violation of K.S.A. 8-1567 or 8-1567a or ~~K.S.A. 2017 Supp. 8-1025~~, and
24 amendments thereto, and such person: (A) Has completed the mandatory
25 period of suspension as provided in K.S.A. 8-1014, and amendments
26 thereto; and (B) has made application and submitted a \$40 nonrefundable
27 application fee to the division for the issuance of a class C license for the
28 operation of motorized bicycles, in accordance with paragraph (2), in
29 which case the division shall issue to such person a class C license which
30 clearly indicates such license is valid only for the operation of motorized
31 bicycles; or (4) has had their driving privileges revoked under K.S.A. 8-
32 286, and amendments thereto, has not had a test refusal or test failure or
33 alcohol or drug-related conviction, as those terms are defined in K.S.A. 8-
34 1013, and amendments thereto, in the last five years, has not been
35 convicted of a violation of K.S.A. 8-1568(b), and amendments thereto, in
36 the last five years and has made application to the division for issuance of
37 a class C license for the operation of motorized bicycles, in accordance
38 with paragraph (2), in which case the division shall issue such person a
39 class C license which clearly indicates such license is valid only for the
40 operation of motorized bicycles. As used in this subsection, "motorized
41 bicycle" shall have the meaning ascribed to it in K.S.A. 8-126, and
42 amendments thereto.

43 (e) All moneys received under subsection (d) from the nonrefundable

1 application fee shall be applied by the division of vehicles for the
2 additional administrative costs to implement restricted driving privileges.
3 The division shall remit all restricted driving privilege application fees to
4 the state treasurer in accordance with the provisions of K.S.A. 75-4215,
5 and amendments thereto. Upon receipt of each such remittance, the state
6 treasurer shall deposit the entire amount in the state treasury to the credit
7 of the division of vehicles operating fund.

8 (f) Violation of this section shall constitute a class B misdemeanor.

9 Sec. 2. K.S.A. 2017 Supp. 8-241 is hereby amended to read as
10 follows: 8-241. (a) Except as provided in K.S.A. 8-2,125 through 8-2,142,
11 and amendments thereto, any person licensed to operate a motor vehicle in
12 this state shall submit to an examination whenever: (1) The division of
13 vehicles has good cause to believe that such person is incompetent or
14 otherwise not qualified to be licensed; or (2) the division of vehicles has
15 suspended such person's license pursuant to K.S.A. 8-1014, and
16 amendments thereto, as the result of a test refusal, test failure or conviction
17 for a violation of K.S.A. 8-1567, and amendments thereto, or a violation of
18 a city ordinance or county resolution prohibiting the acts prohibited by
19 K.S.A. 8-1567, and amendments thereto, except that no person shall have
20 to submit to and successfully complete an examination more than once as
21 the result of separate suspensions arising out of the same occurrence.

22 (b) When a person is required to submit to an examination pursuant
23 to subsection (a)(1), the fee for such examination shall be in the amount
24 provided by K.S.A. 8-240, and amendments thereto. When a person is
25 required to submit to an examination pursuant to subsection (a)(2), the fee
26 for such examination shall be \$25. In addition, any person required to
27 submit to an examination pursuant to subsection (a)(2) as the result of a
28 test failure, a conviction for a violation of K.S.A. 8-1567, and amendments
29 thereto, or a violation of a city ordinance or county resolution prohibiting
30 the acts prohibited by K.S.A. 8-1567, and amendments thereto, shall be
31 required, at the time of examination, to pay a reinstatement fee of \$200
32 after the first occurrence, \$400 after the second occurrence, \$600 after the
33 third occurrence and \$800 after the fourth or subsequent occurrence; and
34 as a result of a test refusal, ~~a conviction for a violation of K.S.A. 2017~~
35 ~~Supp. 8-1025, and amendments thereto, or a violation of a city ordinance~~
36 ~~or county resolution prohibiting the acts prohibited by K.S.A. 2017 Supp.~~
37 ~~8-1025, and amendments thereto;~~ shall be required, at the time of
38 examination, to pay a reinstatement fee of \$600 after the first occurrence,
39 \$900 after the second occurrence, \$1,200 after the third occurrence and
40 \$1,500 after the fourth or subsequent occurrence.

41 (1) All examination fees collected pursuant to this section shall be
42 remitted to the state treasurer, in accordance with the provisions of K.S.A.
43 75-4215, and amendments thereto, who shall deposit the entire amount in

1 the state treasury and credit 80% to the state highway fund and 20% shall
2 be disposed of as provided in K.S.A. 8-267, and amendments thereto.

3 (2) On and after July 1, 2014, through June 30, 2018, all
4 reinstatement fees collected pursuant to this section shall be remitted to the
5 state treasurer, in accordance with the provisions of K.S.A. 75-4215, and
6 amendments thereto, who shall deposit the entire amount in the state
7 treasury and credit 26% to the community alcoholism and intoxication
8 programs fund created pursuant to K.S.A. 41-1126, and amendments
9 thereto, 12% to the juvenile alternatives to detention fund created by
10 K.S.A. 79-4803, and amendments thereto, 12% to the forensic laboratory
11 and materials fee fund created by K.S.A. 28-176, and amendments thereto,
12 17% to the driving under the influence fund created by K.S.A. 75-5660,
13 and amendments thereto, and 33% to the judicial branch nonjudicial salary
14 adjustment fund created by K.S.A. 20-1a15, and amendments thereto.
15 Moneys credited to the forensic laboratory and materials fee fund as
16 provided herein shall be used to supplement existing appropriations and
17 shall not be used to supplant general fund appropriations to the Kansas
18 bureau of investigation.

19 (3) On and after July 1, 2018, all reinstatement fees collected
20 pursuant to this section shall be remitted to the state treasurer, in
21 accordance with the provisions of K.S.A. 75-4215, and amendments
22 thereto, who shall deposit the entire amount in the state treasury and credit
23 35% to the community alcoholism and intoxication programs fund created
24 pursuant to K.S.A. 41-1126, and amendments thereto, 20% to the juvenile
25 alternatives to detention fund created by K.S.A. 79-4803, and amendments
26 thereto, 20% to the forensic laboratory and materials fee fund created by
27 K.S.A. 28-176, and amendments thereto, and 25% to the driving under the
28 influence fund created by K.S.A. 75-5660, and amendments thereto.
29 Moneys credited to the forensic laboratory and materials fee fund as
30 provided herein shall be used to supplement existing appropriations and
31 shall not be used to supplant general fund appropriations to the Kansas
32 bureau of investigation.

33 (c) When an examination is required pursuant to subsection (a), at
34 least five days' written notice of the examination shall be given to the
35 licensee. The examination administered hereunder shall be at least
36 equivalent to the examination required by K.S.A. 8-247(e), and
37 amendments thereto, with such additional tests as the division deems
38 necessary. Upon the conclusion of such examination, the division shall
39 take action as may be appropriate and may suspend or revoke the license
40 of such person or permit the licensee to retain such license, or may issue a
41 license subject to restrictions as permitted under K.S.A. 8-245, and
42 amendments thereto.

43 (d) Refusal or neglect of the licensee to submit to an examination as

1 required by this section shall be grounds for suspension or revocation of
2 the license.

3 (e) The division may issue a driver's license with a DUI-IID
4 designation for a licensee that is operating under ignition interlock
5 restrictions required by K.S.A. 8-1014, and amendments thereto. The
6 reexamination requirement in subsection (a)(2) shall not require
7 reexamination and payment of reinstatement fees until the end of the
8 licensee's ignition interlock restriction period. If the applicant's Kansas
9 driver's license has been expired for one year or more, the applicant must
10 complete a reexamination and pay any applicable reinstatement fees before
11 qualifying for a driver's license with an ignition interlock designation. All
12 other requirements for issuance and renewal of a driver's license under
13 K.S.A. 8-240, and amendments thereto, shall continue to apply. The
14 renewal periods and other requirements in K.S.A. 8-247, and amendments
15 thereto, shall apply. The fees charged for the driver's license with ignition
16 interlock designation shall include: (1) The fee amounts set out in K.S.A.
17 8-240(f), and amendments thereto; (2) fees prescribed by the secretary of
18 revenue and required in K.S.A. 8-243(a), and amendments thereto; and (3)
19 a \$10 fee to the DUI-IID designation fund. There is hereby created in the
20 state treasury the DUI-IID designation fund. All moneys credited to the
21 DUI-IID designation fund shall be used by the department of revenue only
22 for the purpose of funding the administration and oversight of state
23 certified ignition interlock manufacturers and their service providers.

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

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

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

39 (4) Except as otherwise provided by subsection (c), if a person: (A) Is
40 convicted of a violation of this section, committed while the person's
41 privilege to drive or privilege to obtain a driver's license was suspended or
42 revoked for a violation of K.S.A. 8-2,144 or 8-1567 ~~or K.S.A. 2017 Supp.~~
43 ~~8-1025~~, and amendments thereto, or any ordinance of any city or

1 resolution of any county or a law of another state, which ordinance or
2 resolution or law prohibits the acts prohibited by those statutes; and (B) is
3 or has been also convicted of a violation of K.S.A. 8-2,144 or 8-1567 ~~or~~
4 ~~K.S.A. 2017 Supp. 8-1025~~, and amendments thereto, or any ordinance of
5 any city or resolution of any county or law of another state, which
6 ordinance or resolution or law prohibits the acts prohibited by those
7 statutes, committed while the person's privilege to drive or privilege to
8 obtain a driver's license was so suspended or revoked, the person shall not
9 be eligible for suspension of sentence, probation or parole until the person
10 has served at least 90 days' imprisonment, and any fine imposed on such
11 person shall be in addition to such a term of imprisonment.

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

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

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

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

28 (C) was convicted of vehicular homicide, K.S.A. 21-3405, prior to its
29 repeal, or K.S.A. 2017 Supp. 21-5406, and amendments thereto,
30 involuntary manslaughter while driving under the influence of alcohol or
31 drugs, K.S.A. 21-3442, prior to its repeal, or involuntary manslaughter as
32 defined in ~~subsection (a)(3) of~~ K.S.A. 2017 Supp. 21-5405(a)(3), and
33 amendments thereto, or any other murder or manslaughter crime resulting
34 from the operation of a motor vehicle; or

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

37 (2) The person convicted shall not be eligible for release on
38 probation, suspension or reduction of sentence or parole until the person
39 has served at least 90 days' imprisonment. The 90 days' imprisonment
40 mandated by this subsection may be served in a work release program only
41 after such person has served 48 consecutive hours' imprisonment, provided
42 such work release program requires such person to return to confinement
43 at the end of each day in the work release program. The court may place

1 the person convicted under a house arrest program pursuant to K.S.A.
2 2017 Supp. 21-6609, and amendments thereto, or any municipal ordinance
3 to serve the remainder of the minimum sentence only after such person has
4 served 48 consecutive hours' imprisonment.

5 (d) For the purposes of determining whether a conviction is a first,
6 second, third or subsequent conviction in sentencing under this section,
7 "conviction" includes a conviction of a violation of any ordinance of any
8 city or resolution of any county or a law of another state which is in
9 substantial conformity with this section.

10 Sec. 4. K.S.A. 2017 Supp. 8-285 is hereby amended to read as
11 follows: 8-285. Except as otherwise provided in this section, as used in
12 this act, the words and phrases defined in K.S.A. 8-234a, and amendments
13 thereto, shall have the meanings ascribed to them therein. The term
14 "habitual violator" means any resident or nonresident person who, within
15 the immediately preceding five years, has been convicted in this or any
16 other state:

17 (a) Three or more times of:

18 (1) Vehicular homicide, as defined by K.S.A. 21-3405, prior to its
19 repeal, or K.S.A. 2017 Supp. 21-5406, and amendments thereto, or as
20 prohibited by any ordinance of any city in this state, any resolution of any
21 county in this state or any law of another state which is in substantial
22 conformity with that statute;

23 (2) violating K.S.A. 8-1567, and amendments thereto, or violating an
24 ordinance of any city in this state, any resolution of any county in this state
25 or any law of another state, which ordinance, resolution or law declares to
26 be unlawful the acts prohibited by that statute;

27 (3) driving while the privilege to operate a motor vehicle on the
28 public highways of this state has been canceled, suspended or revoked, as
29 prohibited by K.S.A. 8-262, and amendments thereto, or while such
30 person's privilege to obtain a driver's license is suspended or revoked
31 pursuant to K.S.A. 8-252a, and amendments thereto, or, as prohibited by
32 any ordinance of any city in this state, any resolution of any county in this
33 state or any law of another state which is in substantial conformity with
34 those statutes;

35 (4) perjury resulting from a violation of K.S.A. 8-261a, and
36 amendments thereto, or resulting from the violation of a law of another
37 state which is in substantial conformity with that statute;

38 (5) violating the provisions of the fifth clause of K.S.A. 8-142, and
39 amendments thereto, relating to fraudulent applications, or violating the
40 provisions of a law of another state which is in substantial conformity with
41 that statute;

42 (6) any crime punishable as a felony, if a motor vehicle was used in
43 the perpetration of the crime;

1 (7) failing to stop at the scene of an accident and perform the duties
 2 required by K.S.A. 8-1602 through 8-1604, and amendments thereto, or
 3 required by any ordinance of any city in this state, any resolution of any
 4 county in this state or a law of another state which is in substantial
 5 conformity with those statutes; *or*

6 (8) violating the provisions of K.S.A. 40-3104, and amendments
 7 thereto, relating to motor vehicle liability insurance coverage, or an
 8 ordinance of any city in this state or a resolution of any county in this state
 9 which is in substantial conformity with such statute; ~~or~~

10 ~~(9) violating K.S.A. 2017 Supp. 8-1025, and amendments thereto, or~~
 11 ~~violating an ordinance of any city in this state, a resolution of any county~~
 12 ~~in this state or any law of another state which ordinance, resolution or law~~
 13 ~~declares to be unlawful the acts prohibited by that statute.~~

14 (b) Three or more times, either singly or in combination, of any of the
 15 offenses enumerated in subsection (a).

16 For the purpose of ~~subsections subsection (a)(2) and (a)(9)~~, in addition
 17 to the definition of "conviction" otherwise provided by law, conviction
 18 includes, but is not limited to, a diversion agreement entered into in lieu of
 19 further criminal proceedings, or a plea of nolo contendere, on a complaint,
 20 indictment, information, citation or notice to appear alleging a violation of
 21 K.S.A. 8-1567 ~~or K.S.A. 2017 Supp. 8-1025~~, and amendments thereto, or
 22 an ordinance of a city in this state, a resolution of a county in this state or
 23 law of another state, which ordinance or law prohibits the acts prohibited
 24 by those statutes.

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

29 (1) While operating a commercial motor vehicle:

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

32 (B) the person is convicted of violating ~~subsection (b)~~ of K.S.A. 8-
 33 2,132(b), and amendments thereto;

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

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

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

40 (2) while operating a noncommercial motor vehicle:

41 (A) The person is convicted of a violation of K.S.A. 8-1567 ~~or K.S.A.~~
 42 ~~2017 Supp. 8-1025~~, and amendments thereto, or of a violation of an
 43 ordinance of any city in this state, a resolution of any county in this state

1 or any law of another state, which ordinance or law declares to be
2 unlawful the acts prohibited by that statute; or

3 (B) the person's test refusal or test failure, as defined in K.S.A. 8-
4 1013, and amendments thereto; or

5 (3) while operating any motor vehicle:

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

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

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

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

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

21 (e) A person is disqualified from driving a commercial motor vehicle
22 for life who uses a commercial motor vehicle or noncommercial motor
23 vehicle in the commission of any felony involving the manufacture,
24 distribution or dispensing of a controlled substance, or possession with
25 intent to manufacture, distribute or dispense a controlled substance.

26 (f) A person is disqualified from driving a commercial motor vehicle
27 for a period of not less than 60 days if convicted of two serious traffic
28 violations, or 120 days if convicted of three or more serious traffic
29 violations, committed in a commercial motor vehicle arising from separate
30 incidents occurring within a three-year period. Any disqualification period
31 under this paragraph shall be in addition to any other previous period of
32 disqualification. The beginning date for any three-year period within a ten-
33 year period, required by this subsection, shall be the issuance date of the
34 citation which resulted in a conviction.

35 (g) A person is disqualified from driving a commercial motor vehicle
36 for a period of not less than 60 days if convicted of two serious traffic
37 violations, or 120 days if convicted of three or more serious traffic
38 violations, committed in a noncommercial motor vehicle arising from
39 separate incidents occurring within a three-year period, if such convictions
40 result in the revocation, cancellation or suspension of the person's driving
41 privileges.

42 (h) (1) A person who is convicted of operating a commercial motor
43 vehicle in violation of an out-of-service order shall be disqualified from

1 driving a commercial motor vehicle for a period of not less than:

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

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

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

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

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

20 (B) three years nor more than five years if the person has a prior
21 conviction for violating an out-of-service order in a separate incident and
22 such prior offense was committed within the 10 years immediately
23 preceding the date of the present violation.

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

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

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

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

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

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

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

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

43 (A) Sixty days if the driver is convicted of a first violation of a

1 railroad-highway grade crossing violation;

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

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

8 (j) After suspending, revoking or canceling a commercial driver's
9 license, the division shall update its records to reflect that action within 10
10 days. After suspending, revoking or canceling a nonresident commercial
11 driver's privileges, the division shall notify the licensing authority of the
12 state which issued the commercial driver's license or nonresident
13 commercial driver's license within 10 days. The notification shall include
14 both the disqualification and the violation that resulted in the
15 disqualification, suspension, revocation or cancellation.

16 (k) Upon receiving notification from the licensing authority of
17 another state, that it has disqualified a commercial driver's license holder
18 licensed by this state, or has suspended, revoked or canceled such
19 commercial driver's license holder's commercial driver's license, the
20 division shall record such notification and the information such
21 notification provides on the driver's record.

22 (l) Upon suspension, revocation, cancellation or disqualification of a
23 commercial driver's license under this act, the license shall be immediately
24 surrendered to the division if still in the licensee's possession. If otherwise
25 eligible, and upon payment of the required fees, the licensee may be issued
26 a noncommercial driver's license for the period of suspension, revocation,
27 cancellation or disqualification of the commercial driver's license under
28 the same identifier number.

29 (m) As used in this section, "test refusal" means a person's refusal to
30 submit to and complete a test requested pursuant to K.S.A. 8-2,145, and
31 amendments thereto; "test failure" means a person's submission to and
32 completion of a test which determines that the person's alcohol
33 concentration is .04 or greater, pursuant to K.S.A. 8-2,145, and
34 amendments thereto.

35 Sec. 6. K.S.A. 2017 Supp. 8-2,144 is hereby amended to read as
36 follows: 8-2,144. (a) Driving a commercial motor vehicle under the
37 influence is operating or attempting to operate any commercial motor
38 vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, within this
39 state while:

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

43 (2) the alcohol concentration in the person's blood or breath, as

1 measured within three hours of the time of driving a commercial motor
2 vehicle, is 0.04 or more; or

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

6 (b) (1) Driving a commercial motor vehicle 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, suspension or reduction of sentence or parole or
14 other release;

15 (B) on a second conviction a class A, nonperson misdemeanor. The
16 person convicted shall be sentenced to not less than 90 days nor more than
17 one year's imprisonment and fined not less than \$1,250 nor more than
18 \$1,750. The person convicted shall serve at least five consecutive days'
19 imprisonment before the person is granted probation, suspension or
20 reduction of sentence or parole or is otherwise released. The five days'
21 imprisonment mandated by this subsection may be served in a work
22 release program only after such person has served 48 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 120 hours of confinement. Such 120 hours of
27 confinement shall be a period of at least 48 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 five days'
32 imprisonment mandated by this subsection only after such person has
33 served 48 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 120 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 120 hours; and

40 (C) on a third or subsequent conviction a nonperson felony. The
41 person convicted shall be sentenced to not less than 90 days nor more than
42 one year's imprisonment and fined not less than \$1,750 nor more than
43 \$2,500. The person convicted shall not be eligible for release on probation,

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

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

1 management and mental health counseling as needed. The
2 multidisciplinary team shall include the designated care coordination
3 agency, the supervision officer, the aging and disability services
4 department designated treatment provider and the offender. *An offender*
5 *for whom a warrant has been issued by the court alleging a violation of*
6 *such supervision shall be considered a fugitive from justice if it is found*
7 *that the warrant cannot be served. If it is found the offender has violated*
8 *the provisions of this supervision, the court shall determine whether the*
9 *time from the issuing of the warrant to the date of the court's*
10 *determination of an alleged violation, or any part of it, shall be counted as*
11 *time served on supervision. Any violation of the conditions of such*
12 *supervision may subject such person to revocation of supervision and*
13 *imprisonment in jail for the remainder of the period of imprisonment, the*
14 *remainder of the supervision period, or any combination or portion*
15 *thereof. The term of supervision may be extended at the court's discretion*
16 *beyond one year, and any violation of the conditions of such extended term*
17 *of supervision may subject such person to the revocation of supervision*
18 *and imprisonment in jail of up to the remainder of the original sentence,*
19 *not the term of the extended supervision.*

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

26 (c) Any person *18 years of age or older* convicted of a violation of
27 this section, or a violation of a city ordinance or county resolution
28 prohibiting the acts prohibited by this section, who had one or more
29 children under the age of ~~14~~ 18 years in the vehicle at the time of the
30 offense shall have such person's punishment enhanced by one month of
31 imprisonment. This imprisonment shall be served consecutively to any
32 other minimum mandatory penalty imposed for a violation of this section,
33 or a violation of a city ordinance or county resolution prohibiting the acts
34 prohibited by this section. Any enhanced penalty imposed shall not exceed
35 the maximum sentence allowable by law. During the service of the
36 enhanced penalty, the judge may order the person on house arrest, work
37 release or other conditional release.

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

42 (e) The court may establish the terms and time for payment of any
43 fines, fees, assessments and costs imposed pursuant to this section. Any

1 assessment and costs shall be required to be paid not later than 90 days
2 after imposed, and any remainder of the fine shall be paid prior to the final
3 release of the defendant by the court.

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

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

20 (h) The court shall electronically report every conviction of a
21 violation of this section ~~and every diversion agreement entered into in lieu~~
22 ~~of further criminal proceedings on a complaint alleging a violation of this~~
23 ~~section~~ to the division. Prior to sentencing under the provisions of this
24 section, the court shall request and shall receive from the: (1) Division a
25 record of all prior convictions obtained against such person for any
26 violation of any of the motor vehicle laws of this state; and (2) Kansas
27 bureau of investigation central repository all criminal history record
28 information concerning such person.

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

36 (j) (1) Nothing contained in this section shall be construed as
37 preventing any city from enacting ordinances, or any county from adopting
38 resolutions, declaring acts prohibited or made unlawful by this section as
39 unlawful or prohibited in such city or county and prescribing penalties for
40 violation thereof.

41 (2) The minimum penalty prescribed by any such ordinance or
42 resolution shall not be less than the minimum penalty prescribed by this
43 section for the same violation, and the maximum penalty in any such

1 ordinance or resolution shall not exceed the maximum penalty prescribed
2 for the same violation.

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

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

14 (2) If the elements of such ordinance violation are the same as the
15 elements of a violation of this section that would constitute, and be
16 punished as, a felony, the city attorney shall refer the violation to the
17 appropriate county or district attorney for prosecution. The county or
18 district attorney shall accept such referral and pursue a disposition of such
19 violation, and shall not refer any such violation back to the city attorney.

20 (l) No plea bargaining agreement shall be entered into nor shall any
21 judge approve a plea bargaining agreement entered into for the purpose of
22 permitting a person charged with a violation of this section, or a violation
23 of any ordinance of a city or resolution of any county in this state which
24 prohibits the acts prohibited by this section, to avoid the mandatory
25 penalties established by this section or by the ordinance or resolution.

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

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

32 ~~(1) Convictions for a violation of K.S.A. 8-1567, and amendments~~
33 ~~thereto, or a violation of an ordinance of any city or resolution of any~~
34 ~~county which prohibits the acts that such section prohibits, or entering into~~
35 ~~a diversion agreement in lieu of further criminal proceedings on a~~
36 ~~complaint alleging any such violations, shall be taken into account, but~~
37 ~~only convictions or diversions occurring on or after July 1, 2001. Nothing~~
38 ~~in this provision shall be construed as preventing any court from~~
39 ~~considering any convictions or diversions occurring during the person's~~
40 ~~lifetime in determining the sentence to be imposed within the limits~~
41 ~~provided for a first, second, third, fourth or subsequent offense;~~

42 ~~(2) any convictions for a violation of the following sections occurring~~
43 ~~during a person's lifetime shall be taken into account: (A) This section; (B)~~

1 refusing to submit to a test to determine the presence of alcohol or drugs,
2 K.S.A. 2017 Supp. 8-1025, and amendments thereto; (C) operating a
3 vessel under the influence of alcohol or drugs, K.S.A. 32-1131, and
4 amendments thereto; (D) involuntary manslaughter while driving under
5 the influence of alcohol or drugs, K.S.A. 21-3442, prior to its repeal, or
6 K.S.A. 2017 Supp. 21-5405(a)(3), and amendments thereto; (E)
7 aggravated battery as described in K.S.A. 2017 Supp. 21-5413(b)(3), and
8 amendments thereto; and (F) aggravated vehicular homicide, K.S.A. 21-
9 3405a, prior to its repeal, or vehicular battery, K.S.A. 21-3405b, prior to its
10 repeal, if the crime was committed while committing a violation of K.S.A.
11 8-1567, and amendments thereto;

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

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

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

27 (1) *Convictions for a violation of K.S.A. 8-1567, and amendments*
28 *thereto, or a violation of an ordinance of any city or resolution of any*
29 *county that prohibits the acts that such section prohibits, or entering into a*
30 *diversion agreement in lieu of further criminal proceedings on a complaint*
31 *alleging any such violations, shall be taken into account, but only*
32 *convictions or diversions occurring on or after July 1, 2001. Nothing in*
33 *this subsection shall be construed as preventing any court from*
34 *considering any convictions or diversions occurring during the person's*
35 *lifetime in determining the sentence to be imposed within the limits*
36 *provided for a first, second, third, fourth or subsequent offense;*

37 (2) *any convictions for a violation of the following sections occurring*
38 *during a person's lifetime shall be taken into account: (A) This section;*
39 *(B) operating a vessel under the influence of alcohol or drugs, K.S.A. 32-*
40 *1131, and amendments thereto; (C) involuntary manslaughter while*
41 *driving under the influence of alcohol or drugs, K.S.A. 21-3442, prior to*
42 *its repeal, or K.S.A. 2017 Supp. 21-5405(a)(3) or (a)(5), and amendments*
43 *thereto; (D) aggravated battery as described in K.S.A. 2017 Supp. 21-*

1 5413(b)(3) or (b)(4), and amendments thereto; and (E) aggravated
 2 vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular
 3 battery, K.S.A. 21-3405b, prior to its repeal, if the crime was committed
 4 while committing a violation of K.S.A. 8-1567, and amendments thereto;

5 (3) "conviction" includes: (A) Entering into a diversion agreement in
 6 lieu of further criminal proceedings on a complaint alleging an offense
 7 described in subsection (n)(2); and (B) conviction of a violation of an
 8 ordinance of a city in this state, a resolution of a county in this state or
 9 any law of another jurisdiction that would constitute an offense that is
 10 comparable to the offense described in subsection (n)(1) or (n)(2);

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

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

16 (o) For the purposes of determining whether an offense is
 17 comparable, the following shall be considered:

18 (1) The name of the out-of-jurisdiction offense;

19 (2) the elements of the out-of-jurisdiction offense; and

20 (3) whether the out-of-jurisdiction offense prohibits similar conduct
 21 to the conduct prohibited by the closest approximate Kansas offense.

22 (p) For the purpose of this section:

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

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

29 (3) "drug" includes toxic vapors as such term is defined in K.S.A.
 30 2017 Supp. 21-5712, and amendments thereto.

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

38 Sec. 7. K.S.A. 2017 Supp. 8-1001 is hereby amended to read as
 39 follows: 8-1001. (a) Any person who operates or attempts to operate a
 40 vehicle within this state ~~is deemed to have given consent~~ may be
 41 requested, subject to the provisions of this article, to submit to one or more
 42 tests of the person's blood, breath, urine or other bodily substance to
 43 determine the presence of alcohol or drugs. The testing ~~deemed consented~~

1 to herein shall include all quantitative and qualitative tests for alcohol and
2 drugs. ~~A person who is dead or unconscious shall be deemed not to have~~
3 ~~withdrawn the person's consent to such test or tests, which shall be~~
4 ~~administered in the manner provided by this section~~ *The test must be*
5 *administered at the direction of a law enforcement officer, and the law*
6 *enforcement officer shall determine which manner of test is to be*
7 *conducted or requested.*

8 (b) (1) ~~A law enforcement officer shall request a person to submit to a~~
9 ~~test or tests deemed consented to under subsection (a):~~ (1) ~~If, at the time of~~
10 ~~the request, the officer has reasonable grounds to believe the person was~~
11 ~~operating or attempting to operate a vehicle while under the influence of~~
12 ~~alcohol or drugs, or both~~ *One or more tests may be required of a person*
13 *when, at the time of the request, a law enforcement officer has probable*
14 *cause to believe the person has committed a violation of K.S.A. 8-1567(a),*
15 *and amendments thereto, or to believe that the person was driving a*
16 *commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments*
17 *thereto, while having alcohol or other drugs in such person's system, or*
18 *was to believe the person is under the age of 21 years and was operating or*
19 *attempting to operate a vehicle while having alcohol or other drugs in such*
20 *person's system; and one of the following conditions exists: (A) The*
21 *person has been arrested or otherwise taken into custody for any violation*
22 *of any state statute, county resolution or city ordinance; or (B) the person*
23 *has been involved in a motor vehicle accident or collision resulting in*
24 *property damage or, personal injury other than serious injury; or (2) if the*
25 *person was operating or attempting to operate a vehicle and such vehicle*
26 *has been involved in an accident or collision resulting in serious injury or*
27 *death of any person and the operator could be cited for any traffic offense,*
28 *as defined in K.S.A. 8-2117, and amendments thereto. The traffic offense*
29 *violation shall constitute probable cause for purposes of paragraph (2). The*
30 *test or tests under paragraph (2) shall not be required if a law enforcement*
31 *officer has reasonable grounds to believe the actions of the operator did*
32 *not contribute to the accident or collision or death.*

33 (2) The law enforcement officer directing administration of the test or
34 tests may act on personal knowledge or on the basis of the collective
35 information available to law enforcement officers involved in the ~~accident~~
36 investigation or arrest.

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

40 (1) *There is no right to consult with an attorney regarding whether to*
41 *submit to testing, but, after the completion of the testing, the person may*
42 *request and has the right to consult with an attorney and may secure*
43 *additional testing;*

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

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

8 (4) *the results of the testing may be used against the person at any*
9 *trial or hearing on a charge arising out of the operation or attempted*
10 *operation of a vehicle while under the influence of alcohol or drugs, or*
11 *both.*

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

14 (1) *If the person refuses to submit to and complete the test or tests, or*
15 *if the person fails a test, the person's driving privileges will be suspended*
16 *for a period of at least 30 days and up to one year;*

17 (2) *the results of the testing may be used against the person at any*
18 *trial or hearing on a charge arising out of the operation or attempted*
19 *operation of a vehicle while under the influence of alcohol or drugs, or*
20 *both; and*

21 (3) *after the completion of the testing, the person may request and*
22 *has the right to consult with an attorney and may secure additional*
23 *testing.*

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

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

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

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

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

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

6 (h) If a law enforcement officer ~~requests a person to submit to a test~~
7 *is authorized to collect one or more tests* of blood under this section, the
8 withdrawal of blood at the direction of the officer may be performed only
9 by: (1) A person licensed to practice medicine and surgery, licensed as a
10 physician assistant, or a person acting under the direction of any such
11 licensed person; (2) a registered nurse or a licensed practical nurse; (3) any
12 qualified medical technician, including, but not limited to, an emergency
13 medical technician-intermediate, mobile intensive care technician, an
14 emergency medical technician-intermediate defibrillator, an advanced
15 emergency medical technician or a paramedic, as those terms are defined
16 in K.S.A. 65-6112, and amendments thereto, authorized by medical
17 protocol; or (4) a phlebotomist.

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

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

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

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

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

42 ~~(f)~~ Such sample or samples shall be an independent sample and not be
43 a portion of a sample collected for medical purposes. The person collecting

1 the blood sample shall complete the collection portion of a document, *if*
2 provided by law enforcement.

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

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

14 ~~(i)~~(k) If a law enforcement officer requests a person to submit to a test
15 *is authorized to collect one or more tests* of urine ~~under this section~~, the
16 collection of the urine sample shall be supervised by: (1) A person licensed
17 to practice medicine and surgery, licensed as a physician assistant, or a
18 person acting under the direction of any such licensed person; (2) a
19 registered nurse or a licensed practical nurse; or (3) a law enforcement
20 officer of the same sex as the person being tested. The collection of the
21 urine sample shall be conducted out of the view of any person other than
22 the persons supervising the collection of the sample and the person being
23 tested, unless the right to privacy is waived by the person being tested.
24 When possible, the supervising person shall be a law enforcement officer.
25 The results of qualitative testing for drug presence shall be admissible in
26 evidence and questions of accuracy or reliability shall go to the weight
27 rather than the admissibility of the evidence. If the person is medically
28 unable to provide a urine sample in such manner due to the injuries or
29 treatment of the injuries, the same authorization and procedure as used for
30 the collection of blood in subsections ~~(d) and (e)~~ (g) and (i) shall apply to
31 the collection of a urine sample.

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

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

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

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

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

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

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

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

17 ~~(5) if the person refuses to submit to and complete any test of breath,~~
18 ~~blood or urine hereafter requested by a law enforcement officer, the~~
19 ~~person's driving privileges will be suspended for one year for the first or~~
20 ~~subsequent occurrence;~~

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

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

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

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

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

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

39 ~~(4)(m) If a law enforcement officer has reasonable grounds probable~~
40 ~~cause to believe that the person has been driving a commercial motor~~
41 ~~vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while~~
42 ~~having alcohol or other drugs in such person's system, the person shall also~~
43 ~~be provided the oral and written notice pursuant to K.S.A. 8-2,145, and~~

1 amendments thereto. Any failure to give the notices required by K.S.A. 8-
2 2,145, and amendments thereto, shall not invalidate any action taken as a
3 result of the requirements of this section. If a law enforcement officer has
4 ~~reasonable grounds~~ *probable cause* to believe that the person has been
5 operating or attempting to operate a vehicle while having alcohol or other
6 drugs in such person's system and such person was under 21 years of age,
7 the person also shall be given the notices required by K.S.A. 8-1567a, and
8 amendments thereto. Any failure to give the notices required by K.S.A. 8-
9 1567a, and amendments thereto, shall not invalidate any action taken as a
10 result of the requirements of this section.

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

17 (n) The person's refusal shall be admissible in evidence against the
18 person at any trial on a charge arising out of the alleged operation or
19 attempted operation of a vehicle while under the influence of alcohol or
20 drugs, or both. ~~The person's refusal shall be admissible in evidence against~~
21 ~~the person at any trial on a charge arising out of the alleged violation of~~
22 ~~K.S.A. 2017 Supp. 8-1025, and amendments thereto.~~

23 (o) If a law enforcement officer had ~~reasonable grounds~~ *probable*
24 *cause* to believe the person had been driving a commercial motor vehicle,
25 as defined in K.S.A. 8-2,128, and amendments thereto, and the test results
26 show a blood or breath alcohol concentration of .04 or greater, the person
27 shall be disqualified from driving a commercial motor vehicle, pursuant to
28 K.S.A. 8-2,142, and amendments thereto. If a law enforcement officer had
29 ~~reasonable grounds~~ *probable cause* to believe the person had been driving
30 ~~a commercial motor vehicle, as defined in K.S.A. 8-2,128, and~~
31 ~~amendments thereto, and the test results show a blood or breath alcohol~~
32 ~~concentration of .08 or greater any motor vehicle, the person fails a test, as~~
33 ~~defined in K.S.A. 8-1013(h), and amendments thereto, or the person~~
34 ~~refuses a test, the person's driving privileges shall be subject to suspension,~~
35 ~~or suspension and restriction, pursuant to this section, in addition to being~~
36 ~~disqualified from driving a commercial motor vehicle pursuant to K.S.A.~~
37 ~~8-2,142, and amendments thereto.~~

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

1 ~~under the authority of K.S.A. 22-2501, and amendments thereto.~~

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

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

8 ~~(s)(r)~~ No test results shall be suppressed because of ~~technical~~
9 irregularities *not affecting the substantial rights of the accused* in the
10 consent or notice ~~required~~ *authorized* pursuant to this act. *Failure to*
11 *provide any or all of the notices set forth in subsection (c) or (d) shall not*
12 *be an issue or defense in any action other than an administrative action*
13 *regarding the subject's driving privileges.*

14 ~~(+)(s)~~ Nothing in this section shall be construed to limit the
15 admissibility at any trial of alcohol or drug concentration testing results
16 obtained pursuant to a search warrant *or other judicially recognized*
17 *exception to the warrant requirement.*

18 ~~(+)(t)~~ Upon the request of any person submitting to testing under this
19 section, a report of the results of the testing shall be made available to such
20 person *when available.*

21 ~~(+)(u)~~ This act is remedial law and shall be liberally construed to
22 promote public health, safety and welfare.

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

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

28 ~~(2) renders a person unconscious;~~

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

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

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

34 Sec. 8. K.S.A. 2017 Supp. 8-1008 is hereby amended to read as
35 follows: 8-1008. (a) As used in this section, "provider" means: (1) A
36 professional licensed by the behavioral sciences regulatory board to
37 diagnose and treat mental or substance use disorders at the independent
38 level who is compliant with the requirements set forth by the secretary for
39 aging and disability services as described in subsection (f); or (2) a
40 professional licensed by the behavioral sciences regulatory board who is
41 working in an alcohol and drug treatment facility licensed by the secretary
42 for aging and disability services as meeting the requirements described in
43 subsection (f).

1 (b) A provider shall provide:

2 (1) Alcohol and drug evaluations, prior to sentencing, of any person
3 who is convicted of a violation of K.S.A. 8-2,144 or 8-1567 ~~or K.S.A.~~
4 ~~2017 Supp. 8-1025~~, and amendments thereto, or the ordinance of a city or
5 resolution of a county in this state which prohibits the acts prohibited by
6 those statutes; and

7 (2) alcohol and drug evaluations of persons whom the prosecutor
8 considers for eligibility or finds eligible to enter a diversion agreement in
9 lieu of further criminal proceedings on a complaint alleging a violation of
10 K.S.A. 8-1567 ~~or K.S.A. 2017 Supp. 8-1025~~, and amendments thereto, or
11 the ordinance of a city or resolution of a county in this state which
12 prohibits the acts prohibited by that statute.

13 (c) A provider shall be capable of providing, within the judicial
14 district: (1) The evaluations required under subsection (b); (2) the alcohol
15 and drug evaluation report required under subsection (d) or (e); (3) the
16 follow-up duties specified under subsection (d) or (e) for persons who
17 prepare the alcohol and drug evaluation report; and (4) any other functions
18 and duties specified by law. The secretary for aging and disability services
19 shall provide each judicial district with an electronic list of providers, and,
20 except as provided further, such list shall be used when selecting a
21 provider to be used as described in subsections (d) and (e). The secretary
22 for aging and disability services shall also make all such lists publicly
23 available on the official website of the Kansas department for aging and
24 disability services. Any provider performing services in any judicial
25 district under this section prior to July 1, 2011, may continue to perform
26 those services until July 1, 2013.

27 (d) (1) Except as provided further, prior to sentencing, an alcohol and
28 drug evaluation shall be conducted on any person who is convicted of a
29 violation of K.S.A. 8-2,144 or 8-1567 ~~or K.S.A. 2017 Supp. 8-1025~~, and
30 amendments thereto, or the ordinance of a city or resolution of a county in
31 this state which prohibits the acts prohibited by those statutes. The alcohol
32 and drug evaluation report shall be made available to and shall be
33 considered by the court prior to sentencing. Except as provided further, the
34 court shall order that the cost of any alcohol and drug evaluation for any
35 person shall be paid by such person to the provider at the time of service.
36 If the court finds that such person is indigent, the provider shall agree to
37 accept payment as ordered by the court and the court shall order that the
38 cost of any alcohol and drug evaluation be paid to the provider by such
39 person as part of the judgment. The cost of any such evaluation shall be
40 not less than \$150.

41 (2) The provisions of this subsection shall not apply to any person
42 convicted pursuant to ~~subsection (b)(1)(C) of K.S.A. 8-2,144, subsection~~
43 ~~(b)(1)(C), (b)(1)(D) or (b)(1)(E) of (b)(1)(C) or K.S.A. 8-1567 or~~

1 ~~subsection (b)(1)(B), (b)(1)(C) or (b)(1)(D) of K.S.A. 2017 Supp. 8-1025~~
2 ~~(b)(1)(B), (b)(1)(C) or (b)(1)(D), and amendments thereto.~~

3 (e) An alcohol and drug evaluation shall be conducted on any person
4 whom the prosecutor considers for eligibility or finds eligible to enter a
5 diversion agreement in lieu of further criminal proceedings on a complaint
6 alleging a violation of K.S.A. 8-1567 ~~or K.S.A. 2017 Supp. 8-1025~~, and
7 amendments thereto, or the ordinance of a city or resolution of a county in
8 this state which prohibits the acts prohibited by that statute. The alcohol
9 and drug evaluation report shall be made available to the prosecuting
10 attorney and shall be considered by the prosecuting attorney. The cost of
11 any alcohol and drug evaluation for any person shall be paid by such
12 person to the provider at the time of service, and shall be not less than
13 \$150.

14 (f) On and after July 1, 2013, all alcohol and drug evaluations
15 conducted pursuant to this section shall utilize a standardized substance
16 use evaluation approved by the secretary for aging and disability services
17 and be submitted in a format approved by the secretary for aging and
18 disability services. On or before July 1, 2013, the secretary for aging and
19 disability services shall promulgate rules and regulations to implement this
20 section.

21 Sec. 9. K.S.A. 2017 Supp. 8-1013 is hereby amended to read as
22 follows: 8-1013. As used in K.S.A. 8-1001 through ~~8-1010, 8-1011, 8-~~
23 ~~1012, 8-1014, 8-1015, 8-1016, 8-1017 and 8-1018~~, and amendments
24 thereto, ~~and this section:~~

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

27 (b) (1) "Alcohol or drug-related conviction" means any of the
28 following: (A) Conviction of vehicular battery or aggravated vehicular
29 homicide, if the crime is committed while committing a violation of
30 K.S.A. 8-1567, and amendments thereto, or the ordinance of a city or
31 resolution of a county in this state which prohibits any acts prohibited by
32 that statute, or conviction of a violation of K.S.A. 8-2,144 or 8-1567 ~~or~~
33 ~~K.S.A. 2017 Supp. 8-1025~~, and amendments thereto, or conviction of a
34 violation of aggravated battery as described in ~~subsection (b)(3) of~~ K.S.A.
35 2017 Supp. 21-5413(b)(3), and amendments thereto; (B) conviction of a
36 violation of a law of another state which would constitute a crime
37 described in subsection (b)(1)(A) if committed in this state; (C) conviction
38 of a violation of an ordinance of a city in this state or a resolution of a
39 county in this state which would constitute a crime described in subsection
40 (b)(1)(A), whether or not such conviction is in a court of record; or (D)
41 conviction of an act which was committed on a military reservation and
42 which would constitute a violation of K.S.A. 8-2,144 or 8-1567 ~~or K.S.A.~~
43 ~~2017 Supp. 8-1025~~, and amendments thereto, or would constitute a crime

1 described in subsection (b)(1)(A) if committed off a military reservation in
2 this state.

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

10 (c) "Division" means the division of vehicles of the department of
11 revenue.

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

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

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

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

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

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

35 (j) "Law enforcement officer" has the meaning provided by K.S.A.
36 2017 Supp. 21-5111, and amendments thereto, and includes any person
37 authorized by law to make an arrest on a military reservation for an act
38 which would constitute a violation of K.S.A. 8-1567 ~~or K.S.A. 2017 Supp.~~
39 ~~8-1025~~, and amendments thereto, if committed off a military reservation in
40 this state.

41 Sec. 10. K.S.A. 2017 Supp. 8-1014 is hereby amended to read as
42 follows: 8-1014. (a) Except as provided by subsection (e) and K.S.A. 8-
43 2,142, and amendments thereto, if a person refuses a test, the division,

1 pursuant to K.S.A. 8-1002, and amendments thereto, shall:

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

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

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

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

18 (5) on the person's fifth or subsequent occurrence, suspend the
19 person's driving privileges for one year and at the end of the suspension,
20 restrict the person's driving privileges for 10 years to driving only a motor
21 vehicle equipped with an ignition interlock device.

22 (b) (1) Except as provided by subsections (b)(2) and (e) and K.S.A. 8-
23 2,142, and amendments thereto, if a person fails a test or has an alcohol or
24 drug-related conviction in this state, the division shall:

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

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

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

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

41 (E) on the person's fifth or subsequent occurrence, suspend the
42 person's driving privileges for one year and at the end of the suspension,
43 restrict the person's driving privileges for 10 years to driving only a motor

1 vehicle equipped with an ignition interlock device.

2 (2) Except as provided by subsection (e) and K.S.A. 8-2,142, and
3 amendments thereto, if a person fails a test or has an alcohol or drug-
4 related conviction in this state and the person's blood or breath alcohol
5 concentration is 0.15 or greater, the division shall:

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

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

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

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

22 (E) on the person's fifth or subsequent occurrence, suspend the
23 person's driving privileges for one year and at the end of the suspension,
24 restrict the person's driving privileges for 10 years to driving only a motor
25 vehicle equipped with an ignition interlock device.

26 (3) Whenever a person's driving privileges have been restricted to
27 driving only a motor vehicle equipped with an ignition interlock device for
28 10 years under this section, such person may petition any district court for
29 relief from such restriction after five years of such restriction have been
30 served. The court shall consider, but not be limited to, whether: (A) Such
31 person's driving privileges have been restricted, suspended, revoked or
32 disqualified pursuant to another action by the division or a court; and (B)
33 such person proves installation, maintenance and use of an ignition
34 interlock device approved by the division throughout the five-year period.
35 If the court finds that the person's driving privileges should be restored,
36 then the court shall electronically report such order to the division. The
37 division, upon receiving such order, shall restore such person's driving
38 privileges, unless such person's driving privileges have been restricted,
39 suspended, revoked or disqualified pursuant to another action by the
40 division or a court.

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

1 imposed pursuant to subsection (b).

2 (d) Whenever the division is notified by a provider, as defined in
3 K.S.A. 8-1008, and amendments thereto, or a court that the person has
4 failed to follow any recommendation made by the provider or otherwise
5 ordered by a court for a conviction of a violation of K.S.A. 8-1567-~~or~~
6 ~~K.S.A. 2017 Supp. 8-1025~~, and amendments thereto, the division shall
7 suspend the person's driving privileges until the division receives notice of
8 the person's completion of such recommendation.

9 (e) Except as provided in K.S.A. 8-2,142, and amendments thereto, if
10 a person's driving privileges are subject to suspension pursuant to this
11 section for a test refusal, test failure or alcohol or drug-related conviction
12 arising from the same arrest, the period of such suspension shall not
13 exceed the longest applicable period authorized by subsection (a) or (b),
14 and such suspension periods shall not be added together or otherwise
15 imposed consecutively. In addition, in determining the period of such
16 suspension as authorized by subsection (a) or (b), such person shall receive
17 credit for any period of time for which such person's driving privileges
18 were suspended while awaiting any hearing or final order authorized by
19 this act.

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

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

33 (g) The provisions of subsections (a), (b) and (c), as amended by this
34 act and section 14 of chapter 105 of the 2011 Session Laws of Kansas,
35 may be applied retroactively only if requested by a person who has had
36 such person's driving privileges suspended or restricted pursuant to
37 subsection (a), (b) or (c) prior to such amendment. Such person may apply
38 to the division to have the penalties applied retroactively, as provided
39 under ~~subsection (g)~~ of K.S.A. 8-1015(g), and amendments thereto.

40 (h) When modifying penalties pursuant to subsection (g), the division
41 shall credit any suspension or revocation time in excess of one year which
42 was imposed and served prior to retroactive application of the provisions
43 of subsections (a), (b) and (c), as amended by this act and section 14 of

1 chapter 105 of the 2011 Session Laws of Kansas, toward the required
2 ignition interlock restriction period imposed pursuant to the retroactive
3 application of such provisions if: (1) The person's driving record indicates
4 no driving by the person during the applicable suspension or revocation
5 period; and (2) the person completes a form prescribed by the division
6 indicating that the person did not drive during the applicable suspension or
7 revocation period.

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

11 Sec. 11. K.S.A. 2017 Supp. 8-1501 is hereby amended to read as
12 follows: 8-1501. The provisions of this article relating to the operation of
13 vehicles refer exclusively to the operation of vehicles upon highways
14 except:

15 (a) Where a different place is specifically referred to in a given
16 section; and

17 (b) The provisions of K.S.A. 8-1566 ~~to through~~ 8-1568, ~~inclusive,~~
18 ~~K.S.A. 2017 Supp. 8-1025~~ and the provisions of article 10 of chapter 8 of
19 the Kansas Statutes Annotated, and amendments thereto, shall apply upon
20 highways and elsewhere throughout the state.

21 Sec. 12. K.S.A. 2017 Supp. 8-1567 is hereby amended to read as
22 follows: 8-1567. (a) Driving under the influence is operating or attempting
23 to operate any vehicle within this state while:

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

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

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

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

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

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

39 (A) On a first conviction a class B, nonperson misdemeanor. The
40 person convicted shall be sentenced to not less than 48 consecutive hours
41 nor more than six months' imprisonment, or in the court's discretion 100
42 hours of public service, and fined not less than \$750 nor more than \$1,000.
43 The person convicted shall serve at least 48 consecutive hours'

1 imprisonment or 100 hours of public service either before or as a condition
2 of any grant of probation or suspension, reduction of sentence or parole.
3 The court may place the person convicted under a house arrest program
4 pursuant to K.S.A. 2017 Supp. 21-6609, and amendments thereto, to serve
5 the remainder of the sentence only after such person has served 48
6 consecutive hours' imprisonment;

7 (B) on a second conviction a class A, nonperson misdemeanor. The
8 person convicted shall be sentenced to not less than 90 days nor more than
9 one year's imprisonment and fined not less than \$1,250 nor more than
10 \$1,750. The person convicted shall serve at least five consecutive days'
11 imprisonment before the person is granted probation, suspension or
12 reduction of sentence or parole or is otherwise released. The five days'
13 imprisonment mandated by this subsection may be served in a work
14 release program only after such person has served 48 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 120 hours of confinement. Such 120 hours of
19 confinement shall be a period of at least 48 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 five days'
24 imprisonment mandated by this subsection only after such person has
25 served 48 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 120 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 120 hours;

32 (C) on a third conviction a class A, nonperson misdemeanor, except
33 as provided in subsection (b)(1)(D). The person convicted shall be
34 sentenced to not less than 90 days nor more than one year's imprisonment
35 and fined not less than \$1,750 nor more than \$2,500. The person convicted
36 shall not be eligible for release on probation, suspension or reduction of
37 sentence or parole until the person has served at least 90 days'
38 imprisonment. The 90 days' imprisonment mandated by this subsection
39 may be served in a work release program only after such person has served
40 48 consecutive hours' imprisonment, provided such work release program
41 requires such person to return to confinement at the end of each day in the
42 work release program. The person convicted, if placed into a work release
43 program, shall serve a minimum of 2,160 hours of confinement. Such

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

14 (D) on a third conviction a nonperson felony if the person has a prior
15 conviction which occurred within the preceding 10 years, not including
16 any period of incarceration. The person convicted shall be sentenced to not
17 less than 90 days nor more than one year's imprisonment and fined not less
18 than \$1,750 nor more than \$2,500. The person convicted shall not be
19 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 48 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 48 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 48 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; and

40 (E) on a fourth or subsequent conviction a nonperson felony. The
41 person convicted shall be sentenced to not less than 90 days nor more than
42 one year's imprisonment and fined \$2,500. The person convicted shall not
43 be eligible for release on probation, suspension or reduction of sentence or

1 parole until the person has served at least 90 days' imprisonment. The 90
2 days' imprisonment mandated by this subsection may be served in a work
3 release program only after such person has served 72 consecutive hours'
4 imprisonment, provided such work release program requires such person
5 to return to confinement at the end of each day in the work release
6 program. The person convicted, if placed into a work release program,
7 shall serve a minimum of 2,160 hours of confinement. Such 2,160 hours of
8 confinement shall be a period of at least 72 consecutive hours of
9 imprisonment followed by confinement hours at the end of and continuing
10 to the beginning of the offender's work day. The court may place the
11 person convicted under a house arrest program pursuant to K.S.A. 2017
12 Supp. 21-6609, and amendments thereto, to serve the 90 days'
13 imprisonment mandated by this subsection only after such person has
14 served 72 consecutive hours' imprisonment. The person convicted, if
15 placed under house arrest, shall be monitored by an electronic monitoring
16 device, which verifies the offender's location. The offender shall serve a
17 minimum of 2,160 hours of confinement within the boundaries of the
18 offender's residence. Any exceptions to remaining within the boundaries of
19 the offender's residence provided for in the house arrest agreement shall
20 not be counted as part of the 2,160 hours.

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

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

43 (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 *18 years of age or older* convicted of violating this
7 section or an ordinance which prohibits the acts that this section prohibits
8 who had one or more children under the age of ~~14~~ 18 years in the vehicle
9 at the time of the offense shall have such person's punishment enhanced by
10 one month of imprisonment. This imprisonment must be served
11 consecutively to any other minimum mandatory penalty imposed for a
12 violation of this section or an ordinance which prohibits the acts that this
13 section prohibits. Any enhanced penalty imposed shall not exceed the
14 maximum sentence allowable by law. During the service of the enhanced
15 penalty, the judge may order the person on house arrest, work release or
16 other conditional release.

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

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

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

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

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

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

42 (h) The court shall electronically report every conviction of a
43 violation of this section and every diversion agreement entered into in lieu

1 of further criminal proceedings on a complaint alleging a violation of this
2 section to the division, *including any finding regarding the alcohol*
3 *concentration in the offender's blood or breath.* Prior to sentencing under
4 the provisions of this section, the court shall request and shall receive from
5 the division a record of all prior convictions obtained against such person
6 for any violations of any of the motor vehicle laws of this state.

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

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

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

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

1 ~~(4) multiple convictions of any crime described in subsection (i)(1) or~~
2 ~~(i)(2) arising from the same arrest shall only be counted as one conviction;~~

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

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

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

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

32 (3) *"conviction" includes: (A) Entering into a diversion agreement in*
33 *lieu of further criminal proceedings on a complaint alleging an offense*
34 *described in subsection (i)(2); and (B) conviction of a violation of an*
35 *ordinance of a city in this state, a resolution of a county in this state or*
36 *any law of another jurisdiction that would constitute an offense that is*
37 *comparable to the offense described in subsection (i)(1) or (i)(2);*

38 (4) *multiple convictions of any crime described in subsection (i)(1) or*
39 *(i)(2) arising from the same arrest shall only be counted as one*
40 *conviction;*

41 (5) *it is irrelevant whether an offense occurred before or after*
42 *conviction for a previous offense; and*

43 (6) *a person may enter into a diversion agreement in lieu of further*

1 *criminal proceedings for a violation of this section or an ordinance that*
2 *prohibits the acts of this section only once during the person's lifetime.*

3 (j) *For the purposes of determining whether an offense is*
4 *comparable, the following shall be considered:*

5 (1) *The name of the out-of-jurisdiction offense;*

6 (2) *the elements of the out-of-jurisdiction offense; and*

7 (3) *whether the out-of-jurisdiction offense prohibits similar conduct*
8 *to the conduct prohibited by the closest approximate Kansas offense.*

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

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

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

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

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

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

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

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

42 (2) If the elements of such ordinance violation are the same as the
43 elements of a violation of this section that would constitute, and be

1 punished as, a felony, the city attorney shall refer the violation to the
2 appropriate county or district attorney for prosecution.

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

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

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

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

23 (3) "drug" includes toxic vapors as such term is defined in K.S.A.
24 2017 Supp. 21-5712, and amendments thereto.

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

34 (2) On and after July 1, 2011, the amount of \$250 from each fine
35 imposed pursuant to this section shall be remitted by the clerk of the
36 district court to the state treasurer in accordance with the provisions of
37 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
38 remittance, the state treasurer shall credit the entire amount to the
39 community corrections supervision fund established by K.S.A. 2017 Supp.
40 75-52,113, and amendments thereto.

41 Sec. 13. K.S.A. 2017 Supp. 12-4106 is hereby amended to read as
42 follows: 12-4106. (a) The municipal judge shall have the power to
43 administer the oaths and enforce all orders, rules and judgments made by

1 such municipal judge, and may fine or imprison for contempt in the same
2 manner and to the same extent as a judge of the district court.

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

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

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

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

28 (f) In all cases alleging a violation of a city ordinance prohibiting the
29 acts prohibited by K.S.A. 8-2,144, 8-1567 or 32-1131 or K.S.A. 2017
30 Supp.—~~8-1025~~, 21-6419 or 21-6421, and amendments thereto, the
31 municipal court judge shall ensure that the municipal court reports the
32 filing and disposition of such case to the Kansas bureau of investigation
33 central repository, and, on and after July 1, 2014, reports the filing and
34 disposition of such case electronically to the Kansas bureau of
35 investigation central repository.

36 (g) In all cases in which a fine is imposed for a violation of a city
37 ordinance prohibiting the acts prohibited by K.S.A. 8-2,144 or 8-1567 or
38 K.S.A. 2017 Supp.—~~8-1025~~ or 21-6421, and amendments thereto, the
39 municipal court judge shall ensure that the municipal court remits the
40 appropriate amount of such fine to the state treasurer as provided in K.S.A.
41 2017 Supp. 12-4120, and amendments thereto.

42 Sec. 14. K.S.A. 2017 Supp. 12-4120 is hereby amended to read as
43 follows: 12-4120. (a) On and after July 1, 2012, the amount of \$250 from

1 each fine imposed for a violation of a city ordinance prohibiting the acts
2 prohibited by K.S.A. 8-1567 or 8-2,144 or ~~K.S.A. 2017 Supp. 8-1025~~, and
3 amendments thereto, shall be remitted by the judge or clerk of the
4 municipal court to the state treasurer in accordance with the provisions of
5 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
6 remittance, the state treasurer shall credit the entire amount to the
7 community corrections supervision fund established by K.S.A. 2017 Supp.
8 75-52,113, and amendments thereto.

9 (b) One-half of each fine imposed for a violation of a city ordinance
10 prohibiting the acts prohibited by K.S.A. 2017 Supp. 21-6421, and
11 amendments thereto, shall be remitted by the judge or clerk of the
12 municipal court to the state treasurer in accordance with the provisions of
13 K.S.A. 75-4215, and amendments thereto, and the remainder shall be
14 remitted as otherwise permitted by law. Upon receipt of each such
15 remittance, the state treasurer shall credit the entire amount to the human
16 trafficking victim assistance fund established by K.S.A. 2017 Supp. 75-
17 758, and amendments thereto.

18 (c) On and after July 1, 2017, the amount of \$20 from each fine
19 imposed for a violation of a city ordinance requiring the use of safety belts
20 for those individuals required by K.S.A. 8-2503(a)(1), and amendments
21 thereto, shall be remitted by the judge or clerk of the municipal court to the
22 state treasurer in accordance with the provisions of K.S.A. 75-4215, and
23 amendments thereto. Upon receipt of each such remittance, the state
24 treasurer shall credit the entire amount to the seat belt safety fund
25 established by K.S.A. 2017 Supp. 8-1,181, and amendments thereto.

26 Sec. 15. K.S.A. 2017 Supp. 12-4413 is hereby amended to read as
27 follows: 12-4413. As used in K.S.A. 8-1009 and 12-4413 ~~to through~~ 12-
28 4418, ~~inclusive and amendments thereto~~:

29 (a) "City attorney" means a city attorney of a city of this state.

30 (b) "Complaint" means complaint, citation or notice to appear in a
31 municipal court.

32 (c) "Diversion" means referral of a defendant in a criminal case
33 charging an alcohol related offense to a supervised performance program
34 prior to adjudication.

35 (d) "Diversion agreement" means the specification of formal terms
36 and conditions which a defendant must fulfill in order to have the charges
37 against such person dismissed.

38 (e) "Alcohol related offense" means violation of an ordinance of a
39 city of this state that prohibits the acts prohibited by K.S.A. 8-1567 ~~or~~
40 ~~K.S.A. 2017 Supp. 8-1025~~, and amendments thereto, or violation of such
41 statute.

42 Sec. 16. K.S.A. 2017 Supp. 12-4414 is hereby amended to read as
43 follows: 12-4414. (a) Except as provided in K.S.A. 8-1567 ~~and K.S.A.~~

1 2017 Supp. ~~8-1025~~, and amendments thereto, after a complaint has been
2 filed charging a defendant with violation of an alcohol or drug related
3 offense and prior to conviction thereof, and after the city attorney has
4 considered the factors listed in K.S.A. 12-4415, and amendments thereto,
5 if it appears to the city attorney that diversion of the defendant would be in
6 the interests of justice and of benefit to the defendant and the community,
7 the city attorney may propose a diversion agreement to the defendant. The
8 terms of each diversion agreement shall be established by the city attorney
9 in accordance with K.S.A. 12-4416, and amendments thereto.

10 (b) Each city attorney shall adopt written policies and guidelines for
11 the implementation of a diversion program in accordance with K.S.A. 8-
12 1009 and 12-4412 ~~to through~~ 12-4417, ~~inclusive~~, and amendments thereto.
13 Such policies and guidelines shall provide for a diversion conference and
14 other procedures in those cases where the city attorney elects to offer
15 diversion in lieu of further criminal proceedings on the complaint.

16 (c) Each defendant shall be informed in writing of the diversion
17 program and the policies and guidelines adopted by the city attorney. The
18 city attorney may require any defendant requesting diversion to provide
19 information regarding prior criminal charges, education, work experience
20 and training, family, residence in the community, medical history,
21 including any psychiatric or psychological treatment or counseling, and
22 other information relating to the diversion program. In all cases, the
23 defendant shall be present and shall have the right to be represented by
24 counsel at the diversion conference with the city attorney.

25 Sec. 17. K.S.A. 2017 Supp. 12-4415 is hereby amended to read as
26 follows: 12-4415. (a) In determining whether diversion of a defendant is in
27 the interests of justice and of benefit to the defendant and the community,
28 the city attorney shall consider at least the following factors among all
29 factors considered:

30 (1) The nature of the crime charged and the circumstances
31 surrounding it;

32 (2) any special characteristics or circumstances of the defendant;

33 (3) whether the defendant is a first-time offender of an alcohol related
34 offense and if the defendant has previously participated in diversion,
35 according to the certification of the division of vehicles of the state
36 department of revenue;

37 (4) whether there is a probability that the defendant will cooperate
38 with and benefit from diversion;

39 (5) whether there is a probability that the defendant committed such
40 crime as a result of an injury, including major depressive disorder,
41 polytrauma, post-traumatic stress disorder or traumatic brain injury,
42 connected to service in a combat zone, as defined in section 112 of the
43 federal internal revenue code of 1986, in the armed forces of the United

1 States of America;

2 (6) if subsection (a)(5) applies to the defendant, whether there is a
3 probability that the defendant will cooperate with and benefit from
4 inpatient or outpatient treatment from any treatment facility or program
5 operated by the United States department of defense, the United States
6 department of veterans affairs or the Kansas national guard with the
7 consent of the defendant, as a condition of diversion;

8 (7) whether the available diversion program is appropriate to the
9 needs of the defendant;

10 (8) the impact of the diversion of the defendant upon the community;

11 (9) recommendations, if any, of the involved law enforcement
12 agency;

13 (10) recommendations, if any, of the victim;

14 (11) provisions for restitution; and

15 (12) any mitigating circumstances.

16 (b) A city attorney shall not enter into a diversion agreement in lieu of
17 further criminal proceedings on a complaint alleging an alcohol related
18 offense if the defendant:

19 (1) Has previously participated in diversion of an alcohol related
20 offense;

21 (2) has previously been convicted of or pleaded nolo contendere to an
22 alcohol related offense in this state or has previously been convicted of or
23 pleaded nolo contendere to a violation of K.S.A. 8-2,144 or 8-1567 ~~or~~
24 ~~K.S.A. 2017 Supp. 8-1025~~, and amendments thereto, or of a law of another
25 state, or of a political subdivision thereof, which prohibits the acts
26 prohibited by those statutes; or

27 (3) during the time of the alleged alcohol related offense was
28 involved in a motor vehicle accident or collision resulting in personal
29 injury or death.

30 (c) "Major depressive disorder," "polytrauma," "post-traumatic stress
31 disorder" and "traumatic brain injury" shall mean the same as such terms
32 are defined in K.S.A. 2017 Supp. 21-6630, and amendments thereto.

33 Sec. 18. K.S.A. 2017 Supp. 12-4416 is hereby amended to read as
34 follows: 12-4416. (a) A diversion agreement shall provide that if the
35 defendant fulfills the obligations of the program described therein, as
36 determined by the city attorney, the city attorney shall act to have the
37 criminal charges against the defendant dismissed with prejudice. The
38 diversion agreement shall include specifically the waiver of all rights
39 under the law or the constitution of Kansas or of the United States to
40 counsel, a speedy arraignment, a speedy trial, and the right to trial by jury.
41 The diversion agreement may include, but is not limited to, provisions
42 concerning payment of restitution, including court costs and diversion
43 costs, residence in a specified facility, maintenance of gainful employment,

1 and participation in programs offering medical, educational, vocational,
2 social and psychological services, corrective and preventive guidance and
3 other rehabilitative services. The diversion agreement shall state:

- 4 (1) The defendant's full name;
 - 5 (2) the defendant's full name at the time the complaint was filed, if
6 different from the defendant's current name;
 - 7 (3) the defendant's sex, race and date of birth;
 - 8 (4) the crime with which the defendant is charged;
 - 9 (5) the date the complaint was filed; and
 - 10 (6) the municipal court with which the agreement is filed.
- 11 (b) If a diversion agreement is entered into in lieu of further criminal
12 proceedings on a complaint alleging a violation of a city ordinance
13 prohibiting the acts prohibited by K.S.A. 2017 Supp. 21-6421, and
14 amendments thereto, the agreement:
- 15 (1) Shall include a requirement that the defendant pay a fine specified
16 by the agreement in an amount equal to an amount authorized by K.S.A.
17 2017 Supp. 21-6421, and amendments thereto; and
 - 18 (2) may include a requirement that the defendant enter into and
19 complete a suitable educational or treatment program regarding
20 commercial sexual exploitation.
- 21 (c) If a diversion agreement is entered into in lieu of further criminal
22 proceedings on a complaint alleging an alcohol related offense, the
23 diversion agreement shall include a stipulation, agreed to by the defendant
24 and the city attorney, of the facts upon which the charge is based and a
25 provision that if the defendant fails to fulfill the terms of the specific
26 diversion agreement and the criminal proceedings on the complaint are
27 resumed, the proceedings, including any proceedings on appeal, shall be
28 conducted on the record of the stipulation of facts relating to the
29 complaint. In addition, the agreement shall include a requirement that the
30 defendant:
- 31 (1) Pay a fine specified by the agreement in an amount equal to an
32 amount authorized by K.S.A. 8-1567 ~~or K.S.A. 2017 Supp. 8-1025~~, and
33 amendments thereto, for a first offense or, in lieu of payment of the fine,
34 perform community service specified by the agreement, consonant with
35 K.S.A. 8-1567 ~~or K.S.A. 2017 Supp. 8-1025~~, and amendments thereto; and
 - 36 (2) participate in an alcohol and drug evaluation conducted by a
37 licensed provider pursuant to K.S.A. 8-1008, and amendments thereto, and
38 follow any recommendation made by the provider after such evaluation.
- 39 (d) If the person entering into a diversion agreement is a nonresident,
40 the city attorney shall transmit a copy of the diversion agreement to the
41 division. The division shall forward a copy of the diversion agreement to
42 the motor vehicle administrator of the person's state of residence.
- 43 (e) If the city attorney elects to offer diversion in lieu of further

1 criminal proceedings on the complaint and the defendant agrees to all of
2 the terms of the proposed agreement, the diversion agreement shall be
3 filed with the municipal court and the municipal court shall stay further
4 proceedings on the complaint. If the defendant declines to accept
5 diversion, the municipal court shall resume the criminal proceedings on
6 the complaint.

7 (f) The city attorney shall forward to the division of vehicles of the
8 state department of revenue a copy of the diversion agreement at the time
9 such agreement is filed with the municipal court. The copy of the
10 agreement shall be made available upon request to any county, district or
11 city attorney or court.

12 Sec. 19. K.S.A. 2017 Supp. 12-4516 is hereby amended to read as
13 follows: 12-4516. (a) (1) Except as provided in subsections (b), (c), (d), (e)
14 and (f), any person who has been convicted of a violation of a city
15 ordinance of this state may petition the convicting court for the
16 expungement of such conviction and related arrest records if three or more
17 years have elapsed since the person:

18 (A) Satisfied the sentence imposed; or

19 (B) was discharged from probation, parole or a suspended sentence.

20 (2) Except as provided in subsections (b), (c), (d), (e) and (f), any
21 person who has fulfilled the terms of a diversion agreement based on a
22 violation of a city ordinance of this state may petition the court for the
23 expungement of such diversion agreement and related arrest records if
24 three or more years have elapsed since the terms of the diversion
25 agreement were fulfilled.

26 (b) Any person convicted of a violation of any ordinance that is
27 prohibited by either K.S.A. 2017 Supp. 12-16,134(a) or (b), and
28 amendments thereto, and which was adopted prior to July 1, 2014, or who
29 entered into a diversion agreement in lieu of further criminal proceedings
30 for such violation, may petition the convicting court for the expungement
31 of such conviction or diversion agreement and related arrest records.

32 (c) Any person convicted of the violation of a city ordinance which
33 would also constitute a violation of K.S.A. 21-3512, prior to its repeal, or a
34 violation of K.S.A. 2017 Supp. 21-6419, and amendments thereto, or who
35 entered into a diversion agreement in lieu of further criminal proceedings
36 for such violation, may petition the convicting court for the expungement
37 of such conviction or diversion agreement and related arrest records if:

38 (1) One or more years have elapsed since the person satisfied the
39 sentence imposed or the terms of a diversion agreement or was discharged
40 from probation, parole, conditional release or a suspended sentence; and

41 (2) such person can prove they were acting under coercion caused by
42 the act of another. For purposes of this subsection, "coercion" means:
43 Threats of harm or physical restraint against any person; a scheme, plan or

1 pattern intended to cause a person to believe that failure to perform an act
2 would result in bodily harm or physical restraint against any person; or the
3 abuse or threatened abuse of the legal process.

4 (d) No person may petition for expungement until five or more years
5 have elapsed since the person satisfied the sentence imposed or the terms
6 of a diversion agreement or was discharged from probation, parole,
7 conditional release or a suspended sentence, if such person was convicted
8 of the violation of a city ordinance which would also constitute:

9 (1) Vehicular homicide, as defined by K.S.A. 21-3405, prior to its
10 repeal, or K.S.A. 2017 Supp. 21-5406, and amendments thereto;

11 (2) driving while the privilege to operate a motor vehicle on the
12 public highways of this state has been canceled, suspended or revoked, as
13 prohibited by K.S.A. 8-262, and amendments thereto;

14 (3) perjury resulting from a violation of K.S.A. 8-261a, and
15 amendments thereto;

16 (4) a violation of the provisions of K.S.A. 8-142 *Fifth*, and
17 amendments thereto, relating to fraudulent applications;

18 (5) any crime punishable as a felony wherein a motor vehicle was
19 used in the perpetration of such crime;

20 (6) failing to stop at the scene of an accident and perform the duties
21 required by K.S.A. 8-1602, 8-1603, prior to its repeal, or 8-1604, and
22 amendments thereto;

23 (7) a violation of the provisions of K.S.A. 40-3104, and amendments
24 thereto, relating to motor vehicle liability insurance coverage; or

25 (8) a violation of K.S.A. 21-3405b, prior to its repeal.

26 (e) (1) No person may petition for expungement until five or more
27 years have elapsed since the person satisfied the sentence imposed or the
28 terms of a diversion agreement or was discharged from probation, parole,
29 conditional release or a suspended sentence, if such person was convicted
30 of a first violation of a city ordinance which would also constitute a first
31 violation of K.S.A. 8-1567 ~~or K.S.A. 2017 Supp. 8-1025~~, and amendments
32 thereto.

33 (2) No person may petition for expungement until 10 or more years
34 have elapsed since the person satisfied the sentence imposed or was
35 discharged from probation, parole, conditional release or a suspended
36 sentence, if such person was convicted of a second or subsequent violation
37 of a city ordinance which would also constitute a second or subsequent
38 violation of K.S.A. 8-1567 ~~or K.S.A. 2017 Supp. 8-1025~~, and amendments
39 thereto.

40 (3) The provisions of this subsection shall apply to all violations
41 committed on or after July 1, 2006.

42 (f) There shall be no expungement of convictions or diversions for a
43 violation of a city ordinance which would also constitute a violation of

1 K.S.A. 8-2,144, and amendments thereto.

2 (g) (1) When a petition for expungement is filed, the court shall set a
3 date for a hearing of such petition and shall cause notice of such hearing to
4 be given to the prosecuting attorney and the arresting law enforcement
5 agency. The petition shall state the:

6 (A) Defendant's full name;

7 (B) full name of the defendant at the time of arrest, conviction or
8 diversion, if different than the defendant's current name;

9 (C) defendant's sex, race and date of birth;

10 (D) crime for which the defendant was arrested, convicted or
11 diverted;

12 (E) date of the defendant's arrest, conviction or diversion; and

13 (F) identity of the convicting court, arresting law enforcement agency
14 or diverting authority.

15 (2) A municipal court may prescribe a fee to be charged as costs for a
16 person petitioning for an order of expungement pursuant to this section.

17 (3) Any person who may have relevant information about the
18 petitioner may testify at the hearing. The court may inquire into the
19 background of the petitioner and shall have access to any reports or
20 records relating to the petitioner that are on file with the secretary of
21 corrections or the prisoner review board.

22 (h) At the hearing on the petition, the court shall order the petitioner's
23 arrest record, conviction or diversion expunged if the court finds that:

24 (1) The petitioner has not been convicted of a felony in the past two
25 years and no proceeding involving any such crime is presently pending or
26 being instituted against the petitioner;

27 (2) the circumstances and behavior of the petitioner warrant the
28 expungement; and

29 (3) the expungement is consistent with the public welfare.

30 (i) When the court has ordered an arrest record, conviction or
31 diversion expunged, the order of expungement shall state the information
32 required to be contained in the petition. The clerk of the court shall send a
33 certified copy of the order of expungement to the Kansas bureau of
34 investigation which shall notify the federal bureau of investigation, the
35 secretary of corrections and any other criminal justice agency which may
36 have a record of the arrest, conviction or diversion. If the case was
37 appealed from municipal court, the clerk of the district court shall send a
38 certified copy of the order of expungement to the municipal court. The
39 municipal court shall order the case expunged once the certified copy of
40 the order of expungement is received. After the order of expungement is
41 entered, the petitioner shall be treated as not having been arrested,
42 convicted or diverted of the crime, except that:

43 (1) Upon conviction for any subsequent crime, the conviction that

1 was expunged may be considered as a prior conviction in determining the
2 sentence to be imposed;

3 (2) the petitioner shall disclose that the arrest, conviction or diversion
4 occurred if asked about previous arrests, convictions or diversions:

5 (A) In any application for licensure as a private detective, private
6 detective agency, certification as a firearms trainer pursuant to K.S.A.
7 2017 Supp. 75-7b21, and amendments thereto, or employment as a
8 detective with a private detective agency, as defined by K.S.A. 75-7b01,
9 and amendments thereto; as security personnel with a private patrol
10 operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with
11 an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of
12 the Kansas department for aging and disability services;

13 (B) in any application for admission, or for an order of reinstatement,
14 to the practice of law in this state;

15 (C) to aid in determining the petitioner's qualifications for
16 employment with the Kansas lottery or for work in sensitive areas within
17 the Kansas lottery as deemed appropriate by the executive director of the
18 Kansas lottery;

19 (D) to aid in determining the petitioner's qualifications for executive
20 director of the Kansas racing and gaming commission, for employment
21 with the commission or for work in sensitive areas in parimutuel racing as
22 deemed appropriate by the executive director of the commission, or to aid
23 in determining qualifications for licensure or renewal of licensure by the
24 commission;

25 (E) to aid in determining the petitioner's qualifications for the
26 following under the Kansas expanded lottery act: (i) Lottery gaming
27 facility manager or prospective manager, racetrack gaming facility
28 manager or prospective manager, licensee or certificate holder; or (ii) an
29 officer, director, employee, owner, agent or contractor thereof;

30 (F) upon application for a commercial driver's license under K.S.A.
31 8-2,125 through 8-2,142, and amendments thereto;

32 (G) to aid in determining the petitioner's qualifications to be an
33 employee of the state gaming agency;

34 (H) to aid in determining the petitioner's qualifications to be an
35 employee of a tribal gaming commission or to hold a license issued
36 pursuant to a tribal-state gaming compact;

37 (I) in any application for registration as a broker-dealer, agent,
38 investment adviser or investment adviser representative all as defined in
39 K.S.A. 17-12a102, and amendments thereto;

40 (J) in any application for employment as a law enforcement officer, as
41 defined in K.S.A. 22-2202 or 74-5602, and amendments thereto;

42 (K) for applications received on and after July 1, 2006, to aid in
43 determining the petitioner's qualifications for a license to carry a concealed

1 weapon pursuant to the personal and family protection act, K.S.A. 2017
2 Supp. 75-7c01 et seq., and amendments thereto; or

3 (L) for applications received on and after July 1, 2016, to aid in
4 determining the petitioner's qualifications for a license to act as a bail
5 enforcement agent pursuant to K.S.A. 2017 Supp. 75-7e01 through 75-
6 7e09 and K.S.A. 2017 Supp. 50-6,141, and amendments thereto;

7 (3) the court, in the order of expungement, may specify other
8 circumstances under which the arrest, conviction or diversion is to be
9 disclosed; and

10 (4) the conviction may be disclosed in a subsequent prosecution for
11 an offense which requires as an element of such offense a prior conviction
12 of the type expunged.

13 (j) Whenever a person is convicted of an ordinance violation, pleads
14 guilty and pays a fine for such a violation, is placed on parole or probation
15 or is granted a suspended sentence for such a violation, the person shall be
16 informed of the ability to expunge the arrest records or conviction.
17 Whenever a person enters into a diversion agreement, the person shall be
18 informed of the ability to expunge the diversion.

19 (k) Subject to the disclosures required pursuant to subsection (i), in
20 any application for employment, license or other civil right or privilege, or
21 any appearance as a witness, a person whose arrest records, conviction or
22 diversion of an offense has been expunged under this statute may state that
23 such person has never been arrested, convicted or diverted of such offense.

24 (l) Whenever the record of any arrest, conviction or diversion has
25 been expunged under the provisions of this section or under the provisions
26 of any other existing or former statute, the custodian of the records of
27 arrest, conviction, diversion and incarceration relating to that crime shall
28 not disclose the existence of such records, except when requested by:

29 (1) The person whose record was expunged;

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

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

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

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

43 (6) a prosecuting attorney, and such request is accompanied by a

1 statement that the request is being made in conjunction with a prosecution
2 of an offense that requires a prior conviction as one of the elements of such
3 offense;

4 (7) the supreme court, the clerk or disciplinary administrator thereof,
5 the state board for admission of attorneys or the state board for discipline
6 of attorneys, and the request is accompanied by a statement that the
7 request is being made in conjunction with an application for admission, or
8 for an order of reinstatement, to the practice of law in this state by the
9 person whose record has been expunged;

10 (8) the Kansas lottery, and the request is accompanied by a statement
11 that the request is being made to aid in determining qualifications for
12 employment with the Kansas lottery or for work in sensitive areas within
13 the Kansas lottery as deemed appropriate by the executive director of the
14 Kansas lottery;

15 (9) the governor or the Kansas racing and gaming commission, or a
16 designee of the commission, and the request is accompanied by a
17 statement that the request is being made to aid in determining
18 qualifications for executive director of the commission, for employment
19 with the commission, for work in sensitive areas in parimutuel racing as
20 deemed appropriate by the executive director of the commission or for
21 licensure, renewal of licensure or continued licensure by the commission;

22 (10) the Kansas racing and gaming commission, or a designee of the
23 commission, and the request is accompanied by a statement that the
24 request is being made to aid in determining qualifications of the following
25 under the Kansas expanded lottery act:

26 (A) Lottery gaming facility managers and prospective managers,
27 racetrack gaming facility managers and prospective managers, licensees
28 and certificate holders; and

29 (B) their officers, directors, employees, owners, agents and
30 contractors;

31 (11) the state gaming agency, and the request is accompanied by a
32 statement that the request is being made to aid in determining
33 qualifications:

34 (A) To be an employee of the state gaming agency; or

35 (B) to be an employee of a tribal gaming commission or to hold a
36 license issued pursuant to a tribal-state gaming compact;

37 (12) the Kansas securities commissioner, or a designee of the
38 commissioner, and the request is accompanied by a statement that the
39 request is being made in conjunction with an application for registration as
40 a broker-dealer, agent, investment adviser or investment adviser
41 representative by such agency and the application was submitted by the
42 person whose record has been expunged;

43 (13) the attorney general, and the request is accompanied by a

1 statement that the request is being made to aid in determining
2 qualifications for a license to:

3 (A) Carry a concealed weapon pursuant to the personal and family
4 protection act; or

5 (B) act as a bail enforcement agent pursuant to K.S.A. 2017 Supp.
6 75-7e01 through 75-7e09 and K.S.A. 2017 Supp. 50-6,141, and
7 amendments thereto;

8 (14) the Kansas sentencing commission;

9 (15) the Kansas commission on peace officers' standards and training
10 and the request is accompanied by a statement that the request is being
11 made to aid in determining certification eligibility as a law enforcement
12 officer pursuant to K.S.A. 74-5601 et seq., and amendments thereto; or

13 (16) a law enforcement agency and the request is accompanied by a
14 statement that the request is being made to aid in determining eligibility
15 for employment as a law enforcement officer as defined by K.S.A. 22-
16 2202, and amendments thereto.

17 Sec. 20. K.S.A. 2017 Supp. 12-4517 is hereby amended to read as
18 follows: 12-4517. (a) (1) The municipal court judge shall ensure that all
19 persons convicted of violating municipal ordinance provisions that
20 prohibit conduct comparable to a class A or B misdemeanor or assault as
21 defined in ~~subsection (a) of~~ K.S.A. 2017 Supp. 21-5412(a), and
22 amendments thereto, under a Kansas criminal statute are fingerprinted and
23 processed.

24 (2) The municipal court judge shall ensure that all persons arrested or
25 charged with a violation of a city ordinance prohibiting the acts prohibited
26 by K.S.A. 8-2,144 or 8-1567 ~~or K.S.A. 2017 Supp. 8-1025~~, and
27 amendments thereto, are fingerprinted and processed at the time of
28 booking or first appearance, whichever occurs first.

29 (b) The municipal court judge shall order the individual to be
30 fingerprinted at an appropriate location as determined by the municipal
31 court judge. Failure of the person to be fingerprinted after court order
32 issued by the municipal judge shall constitute contempt of court. To
33 reimburse the city or other entity for costs associated with fingerprinting,
34 the municipal court judge may assess reasonable court costs, in addition to
35 other court costs imposed by the state or municipality.

36 Sec. 21. K.S.A. 2017 Supp. 21-5203 is hereby amended to read as
37 follows: 21-5203. A person may be guilty of a crime without having a
38 culpable mental state if the crime is:

39 (a) A misdemeanor, cigarette or tobacco infraction or traffic infraction
40 and the statute defining the crime clearly indicates a legislative purpose to
41 impose absolute liability for the conduct described;

42 (b) a felony and the statute defining the crime clearly indicates a
43 legislative purpose to impose absolute liability for the conduct described;

- 1 (c) a violation of K.S.A. 8-1567 or 8-1567a, and amendments thereto;
- 2 (d) a violation of K.S.A. 8-2,144, and amendments thereto;
- 3 ~~(e) a violation of K.S.A. 2017 Supp. 8-1025, and amendments~~
- 4 ~~thereto; or~~
- 5 ~~(f)~~(e) a violation of K.S.A. 22-4901 et seq., and amendments thereto.
- 6 Sec. 22. K.S.A. 2017 Supp. 21-6604 is hereby amended to read as
- 7 follows: 21-6604. (a) Whenever any person has been found guilty of a
- 8 crime, the court may adjudge any of the following:
- 9 (1) Commit the defendant to the custody of the secretary of
- 10 corrections if the current crime of conviction is a felony and the sentence
- 11 presumes imprisonment, or the sentence imposed is a dispositional
- 12 departure to imprisonment; or, if confinement is for a misdemeanor, to jail
- 13 for the term provided by law;
- 14 (2) impose the fine applicable to the offense and may impose the
- 15 provisions of subsection (q);
- 16 (3) release the defendant on probation if the current crime of
- 17 conviction and criminal history fall within a presumptive nonprison
- 18 category or through a departure for substantial and compelling reasons
- 19 subject to such conditions as the court may deem appropriate. In felony
- 20 cases except for violations of K.S.A. 8-1567; ~~or 8-2,144 and K.S.A. 2017~~
- 21 ~~Supp. 8-1025~~, and amendments thereto, the court may include
- 22 confinement in a county jail not to exceed 60 days, which need not be
- 23 served consecutively, as a condition of an original probation sentence;
- 24 (4) assign the defendant to a community correctional services
- 25 program as provided in K.S.A. 75-5291, and amendments thereto, or
- 26 through a departure for substantial and compelling reasons subject to such
- 27 conditions as the court may deem appropriate, including orders requiring
- 28 full or partial restitution;
- 29 (5) assign the defendant to a conservation camp for a period not to
- 30 exceed six months as a condition of probation followed by a six-month
- 31 period of follow-up through adult intensive supervision by a community
- 32 correctional services program, if the offender successfully completes the
- 33 conservation camp program;
- 34 (6) assign the defendant to a house arrest program pursuant to K.S.A.
- 35 2017 Supp. 21-6609, and amendments thereto;
- 36 (7) order the defendant to attend and satisfactorily complete an
- 37 alcohol or drug education or training program as provided by K.S.A. 2017
- 38 Supp. 21-6602(c), and amendments thereto;
- 39 (8) order the defendant to repay the amount of any reward paid by
- 40 any crime stoppers chapter, individual, corporation or public entity which
- 41 materially aided in the apprehension or conviction of the defendant; repay
- 42 the amount of any costs and expenses incurred by any law enforcement
- 43 agency in the apprehension of the defendant, if one of the current crimes

1 of conviction of the defendant includes escape from custody or aggravated
2 escape from custody, as defined in K.S.A. 2017 Supp. 21-5911, and
3 amendments thereto; repay expenses incurred by a fire district, fire
4 department or fire company responding to a fire which has been
5 determined to be arson or aggravated arson as defined in K.S.A. 2017
6 Supp. 21-5812, and amendments thereto, if the defendant is convicted of
7 such crime; repay the amount of any public funds utilized by a law
8 enforcement agency to purchase controlled substances from the defendant
9 during the investigation which leads to the defendant's conviction; or repay
10 the amount of any medical costs and expenses incurred by any law
11 enforcement agency or county. Such repayment of the amount of any such
12 costs and expenses incurred by a county, law enforcement agency, fire
13 district, fire department or fire company or any public funds utilized by a
14 law enforcement agency shall be deposited and credited to the same fund
15 from which the public funds were credited to prior to use by the county,
16 law enforcement agency, fire district, fire department or fire company;

17 (9) order the defendant to pay the administrative fee authorized by
18 K.S.A. 22-4529, and amendments thereto, unless waived by the court;

19 (10) order the defendant to pay a domestic violence special program
20 fee authorized by K.S.A. 20-369, and amendments thereto;

21 (11) if the defendant is convicted of a misdemeanor or convicted of a
22 felony specified in K.S.A. 2017 Supp. 21-6804(i), and amendments
23 thereto, assign the defendant to work release program, other than a
24 program at a correctional institution under the control of the secretary of
25 corrections as defined in K.S.A. 75-5202, and amendments thereto,
26 provided such work release program requires such defendant to return to
27 confinement at the end of each day in the work release program. On a
28 second or subsequent conviction of K.S.A. 8-1567, and amendments
29 thereto, an offender placed into a work release program shall serve the
30 total number of hours of confinement mandated by that section;

31 (12) order the defendant to pay the full amount of unpaid costs
32 associated with the conditions of release of the appearance bond under
33 K.S.A. 22-2802, and amendments thereto;

34 (13) impose any appropriate combination of (1), (2), (3), (4), (5), (6),
35 (7), (8), (9), (10), (11) and (12); or

36 (14) suspend imposition of sentence in misdemeanor cases.

37 (b) (1) In addition to or in lieu of any of the above, the court shall
38 order the defendant to pay restitution, which shall include, but not be
39 limited to, damage or loss caused by the defendant's crime, unless the
40 court finds compelling circumstances which would render a plan of
41 restitution unworkable. In regard to a violation of K.S.A. 2017 Supp. 21-
42 6107, and amendments thereto, such damage or loss shall include, but not
43 be limited to, attorney fees and costs incurred to repair the credit history or

1 rating of the person whose personal identification documents were
2 obtained and used in violation of such section, and to satisfy a debt, lien or
3 other obligation incurred by the person whose personal identification
4 documents were obtained and used in violation of such section. In regard
5 to a violation of K.S.A. 2017 Supp. 21-5801, 21-5807 or 21-5813, and
6 amendments thereto, such damage or loss shall include the cost of repair or
7 replacement of the property that was damaged, the reasonable cost of any
8 loss of production, crops and livestock, reasonable labor costs of any kind,
9 reasonable material costs of any kind and any reasonable costs that are
10 attributed to equipment that is used to abate or repair the damage to the
11 property. If the court finds a plan of restitution unworkable, the court shall
12 state on the record in detail the reasons therefor.

13 (2) If the court orders restitution, the restitution shall be a judgment
14 against the defendant which may be collected by the court by garnishment
15 or other execution as on judgments in civil cases. If, after 60 days from the
16 date restitution is ordered by the court, a defendant is found to be in
17 noncompliance with the plan established by the court for payment of
18 restitution, and the victim to whom restitution is ordered paid has not
19 initiated proceedings in accordance with K.S.A. 60-4301 et seq., and
20 amendments thereto, the court shall assign an agent procured by the
21 attorney general pursuant to K.S.A. 75-719, and amendments thereto, to
22 collect the restitution on behalf of the victim. The chief judge of each
23 judicial district may assign such cases to an appropriate division of the
24 court for the conduct of civil collection proceedings.

25 (c) In addition to or in lieu of any of the above, the court shall order
26 the defendant to submit to and complete an alcohol and drug evaluation,
27 and pay a fee therefor, when required by K.S.A. 2017 Supp. 21-6602(d),
28 and amendments thereto.

29 (d) In addition to any of the above, the court shall order the defendant
30 to reimburse the county general fund for all or a part of the expenditures
31 by the county to provide counsel and other defense services to the
32 defendant. Any such reimbursement to the county shall be paid only after
33 any order for restitution has been paid in full. In determining the amount
34 and method of payment of such sum, the court shall take account of the
35 financial resources of the defendant and the nature of the burden that
36 payment of such sum will impose. A defendant who has been required to
37 pay such sum and who is not willfully in default in the payment thereof
38 may at any time petition the court which sentenced the defendant to waive
39 payment of such sum or any unpaid portion thereof. If it appears to the
40 satisfaction of the court that payment of the amount due will impose
41 manifest hardship on the defendant or the defendant's immediate family,
42 the court may waive payment of all or part of the amount due or modify
43 the method of payment.

1 (e) In releasing a defendant on probation, the court shall direct that
2 the defendant be under the supervision of a court services officer. If the
3 court commits the defendant to the custody of the secretary of corrections
4 or to jail, the court may specify in its order the amount of restitution to be
5 paid and the person to whom it shall be paid if restitution is later ordered
6 as a condition of parole, conditional release or postrelease supervision.

7 (f) (1) When a new felony is committed while the offender is
8 incarcerated and serving a sentence for a felony, or while the offender is on
9 probation, assignment to a community correctional services program,
10 parole, conditional release or postrelease supervision for a felony, a new
11 sentence shall be imposed consecutively pursuant to the provisions of
12 K.S.A. 2017 Supp. 21-6606, and amendments thereto, and the court may
13 sentence the offender to imprisonment for the new conviction, even when
14 the new crime of conviction otherwise presumes a nonprison sentence. In
15 this event, imposition of a prison sentence for the new crime does not
16 constitute a departure.

17 (2) When a new felony is committed during a period of time during
18 which the defendant would have been on probation, assignment to a
19 community correctional services program, parole, conditional release or
20 postrelease supervision for a felony had the defendant not been granted
21 release by the court pursuant to K.S.A. 2017 Supp. 21-6608(d), and
22 amendments thereto, or the prisoner review board pursuant to K.S.A. 22-
23 3717, and amendments thereto, the court may sentence the offender to
24 imprisonment for the new conviction, even when the new crime of
25 conviction otherwise presumes a nonprison sentence. In this event,
26 imposition of a prison sentence for the new crime does not constitute a
27 departure.

28 (3) When a new felony is committed while the offender is
29 incarcerated in a juvenile correctional facility pursuant to K.S.A. 38-1671,
30 prior to its repeal, or K.S.A. 2017 Supp. 38-2373, and amendments
31 thereto, for an offense, which if committed by an adult would constitute
32 the commission of a felony, upon conviction, the court shall sentence the
33 offender to imprisonment for the new conviction, even when the new
34 crime of conviction otherwise presumes a nonprison sentence. In this
35 event, imposition of a prison sentence for the new crime does not
36 constitute a departure. The conviction shall operate as a full and complete
37 discharge from any obligations, except for an order of restitution, imposed
38 on the offender arising from the offense for which the offender was
39 committed to a juvenile correctional facility.

40 (4) When a new felony is committed while the offender is on release
41 for a felony pursuant to the provisions of article 28 of chapter 22 of the
42 Kansas Statutes Annotated, and amendments thereto, or similar provisions
43 of the laws of another jurisdiction, a new sentence may be imposed

1 consecutively pursuant to the provisions of K.S.A. 2017 Supp. 21-6606,
2 and amendments thereto, and the court may sentence the offender to
3 imprisonment for the new conviction, even when the new crime of
4 conviction otherwise presumes a nonprison sentence. In this event,
5 imposition of a prison sentence for the new crime does not constitute a
6 departure.

7 (g) Prior to imposing a dispositional departure for a defendant whose
8 offense is classified in the presumptive nonprison grid block of either
9 sentencing guideline grid, prior to sentencing a defendant to incarceration
10 whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing
11 guidelines grid for nondrug crimes, in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I
12 of the sentencing guidelines grid for drug crimes committed prior to July
13 1, 2012, or in grid blocks 4-E, 4-F, 4-G, 4-H or 4-I of the sentencing
14 guidelines grid for drug crimes committed on or after July 1, 2012, prior to
15 sentencing a defendant to incarceration whose offense is classified in grid
16 blocks 4-E or 4-F of the sentencing guidelines grid for drug crimes
17 committed prior to July 1, 2012, or in grid blocks 5-C, 5-D, 5-E or 5-F of
18 the sentencing guidelines grid for drug crimes committed on or after July
19 1, 2012, and whose offense does not meet the requirements of K.S.A. 2017
20 Supp. 21-6824, and amendments thereto, prior to revocation of a
21 nonprison sanction of a defendant whose offense is classified in grid
22 blocks 4-E or 4-F of the sentencing guidelines grid for drug crimes
23 committed prior to July 1, 2012, or in grid blocks 5-C, 5-D, 5-E or 5-F of
24 the sentencing guidelines grid for drug crimes committed on or after July
25 1, 2012, and whose offense does not meet the requirements of K.S.A. 2017
26 Supp. 21-6824, and amendments thereto, or prior to revocation of a
27 nonprison sanction of a defendant whose offense is classified in the
28 presumptive nonprison grid block of either sentencing guideline grid or
29 grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug
30 crimes, in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing
31 guidelines grid for drug crimes committed prior to July 1, 2012, or in grid
32 blocks 4-E, 4-F, 4-G, 4-H or 4-I of the sentencing guidelines grid for drug
33 crimes committed on or after July 1, 2012, the court shall consider
34 placement of the defendant in the Labette correctional conservation camp,
35 conservation camps established by the secretary of corrections pursuant to
36 K.S.A. 75-52,127, and amendments thereto, or a community intermediate
37 sanction center. Pursuant to this subsection the defendant shall not be
38 sentenced to imprisonment if space is available in a conservation camp or
39 community intermediate sanction center and the defendant meets all of the
40 conservation camp's or community intermediate sanction center's
41 placement criteria unless the court states on the record the reasons for not
42 placing the defendant in a conservation camp or community intermediate
43 sanction center.

1 (h) In committing a defendant to the custody of the secretary of
2 corrections, the court shall fix a term of confinement within the limits
3 provided by law. In those cases where the law does not fix a term of
4 confinement for the crime for which the defendant was convicted, the
5 court shall fix the term of such confinement.

6 (i) In addition to any of the above, the court shall order the defendant
7 to reimburse the state general fund for all or part of the expenditures by the
8 state board of indigents' defense services to provide counsel and other
9 defense services to the defendant. In determining the amount and method
10 of payment of such sum, the court shall take account of the financial
11 resources of the defendant and the nature of the burden that payment of
12 such sum will impose. A defendant who has been required to pay such sum
13 and who is not willfully in default in the payment thereof may at any time
14 petition the court which sentenced the defendant to waive payment of such
15 sum or any unpaid portion thereof. If it appears to the satisfaction of the
16 court that payment of the amount due will impose manifest hardship on the
17 defendant or the defendant's immediate family, the court may waive
18 payment of all or part of the amount due or modify the method of
19 payment. The amount of attorney fees to be included in the court order for
20 reimbursement shall be the amount claimed by appointed counsel on the
21 payment voucher for indigents' defense services or the amount prescribed
22 by the board of indigents' defense services reimbursement tables as
23 provided in K.S.A. 22-4522, and amendments thereto, whichever is less.

24 (j) This section shall not deprive the court of any authority conferred
25 by any other Kansas statute to decree a forfeiture of property, suspend or
26 cancel a license, remove a person from office or impose any other civil
27 penalty as a result of conviction of crime.

28 (k) An application for or acceptance of probation or assignment to a
29 community correctional services program shall not constitute an
30 acquiescence in the judgment for purpose of appeal, and any convicted
31 person may appeal from such conviction, as provided by law, without
32 regard to whether such person has applied for probation, suspended
33 sentence or assignment to a community correctional services program.

34 (l) The secretary of corrections is authorized to make direct
35 placement to the Labette correctional conservation camp or a conservation
36 camp established by the secretary pursuant to K.S.A. 75-52,127, and
37 amendments thereto, of an inmate sentenced to the secretary's custody if
38 the inmate:

39 (1) Has been sentenced to the secretary for a probation revocation, as
40 a departure from the presumptive nonimprisonment grid block of either
41 sentencing grid, for an offense which is classified in grid blocks 5-H, 5-I
42 or 6-G of the sentencing guidelines grid for nondrug crimes, in grid blocks
43 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes

1 committed prior to July 1, 2012, in grid blocks 4-E, 4-F, 4-G, 4-H or 4-I of
2 the sentencing guidelines grid for drug crimes committed on or after July
3 1, 2012, or for an offense which is classified in grid blocks 4-E or 4-F of
4 the sentencing guidelines grid for drug crimes committed prior to July 1,
5 2012, or in grid blocks 5-C, 5-D, 5-E or 5-F of the sentencing guidelines
6 grid for drug crimes committed on or after July 1, 2012, and such offense
7 does not meet the requirements of K.S.A. 2017 Supp. 21-6824, and
8 amendments thereto; and

9 (2) otherwise meets admission criteria of the camp.

10 If the inmate successfully completes a conservation camp program, the
11 secretary of corrections shall report such completion to the sentencing
12 court and the county or district attorney. The inmate shall then be assigned
13 by the court to six months of follow-up supervision conducted by the
14 appropriate community corrections services program. The court may also
15 order that supervision continue thereafter for the length of time authorized
16 by K.S.A. 2017 Supp. 21-6608, and amendments thereto.

17 (m) When it is provided by law that a person shall be sentenced
18 pursuant to K.S.A. 1993 Supp. 21-4628, prior to its repeal, the provisions
19 of this section shall not apply.

20 (n) (1) Except as provided by K.S.A. 2017 Supp. 21-6630 and 21-
21 6805(f), and amendments thereto, in addition to any of the above, for
22 felony violations of K.S.A. 2017 Supp. 21-5706, and amendments thereto,
23 the court shall require the defendant who meets the requirements
24 established in K.S.A. 2017 Supp. 21-6824, and amendments thereto, to
25 participate in a certified drug abuse treatment program, as provided in
26 K.S.A. 2017 Supp. 75-52,144, and amendments thereto, including, but not
27 limited to, an approved after-care plan. The amount of time spent
28 participating in such program shall not be credited as service on the
29 underlying prison sentence.

30 (2) If the defendant fails to participate in or has a pattern of
31 intentional conduct that demonstrates the defendant's refusal to comply
32 with or participate in the treatment program, as established by judicial
33 finding, the defendant shall be subject to sanction or revocation pursuant
34 to the provisions of K.S.A. 22-3716, and amendments thereto. If the
35 defendant's probation is revoked, the defendant shall serve the underlying
36 prison sentence as established in K.S.A. 2017 Supp. 21-6805, and
37 amendments thereto.

38 (A) Except as provided in subsection (n)(2)(B), for those offenders
39 who are convicted on or after July 1, 2003, but prior to July 1, 2013, upon
40 completion of the underlying prison sentence, the offender shall not be
41 subject to a period of postrelease supervision.

42 (B) Offenders whose crime of conviction was committed on or after
43 July 1, 2013, and whose probation is revoked pursuant to K.S.A. 22-

1 3716(c), and amendments thereto, or whose underlying prison term expires
2 while serving a sanction pursuant to K.S.A. 22-3716(c)(1)(C) or (c)(1)(D),
3 and amendments thereto, shall serve a period of postrelease supervision
4 upon the completion of the underlying prison term.

5 (o) (1) Except as provided in paragraph (3), in addition to any other
6 penalty or disposition imposed by law, upon a conviction for unlawful
7 possession of a controlled substance or controlled substance analog in
8 violation of K.S.A. 2017 Supp. 21-5706, and amendments thereto, in
9 which the trier of fact makes a finding that the unlawful possession
10 occurred while transporting the controlled substance or controlled
11 substance analog in any vehicle upon a highway or street, the offender's
12 driver's license or privilege to operate a motor vehicle on the streets and
13 highways of this state shall be suspended for one year.

14 (2) Upon suspension of a license pursuant to this subsection, the court
15 shall require the person to surrender the license to the court, which shall
16 transmit the license to the division of motor vehicles of the department of
17 revenue, to be retained until the period of suspension expires. At that time,
18 the licensee may apply to the division for return of the license. If the
19 license has expired, the person may apply for a new license, which shall be
20 issued promptly upon payment of the proper fee and satisfaction of other
21 conditions established by law for obtaining a license unless another
22 suspension or revocation of the person's privilege to operate a motor
23 vehicle is in effect.

24 (3) (A) In lieu of suspending the driver's license or privilege to
25 operate a motor vehicle on the highways of this state of any person as
26 provided in paragraph (1), the judge of the court in which such person was
27 convicted may enter an order which places conditions on such person's
28 privilege of operating a motor vehicle on the highways of this state, a
29 certified copy of which such person shall be required to carry any time
30 such person is operating a motor vehicle on the highways of this state. Any
31 such order shall prescribe the duration of the conditions imposed, which in
32 no event shall be for a period of more than one year.

33 (B) Upon entering an order restricting a person's license hereunder,
34 the judge shall require such person to surrender such person's driver's
35 license to the judge who shall cause it to be transmitted to the division of
36 vehicles, together with a copy of the order. Upon receipt thereof, the
37 division of vehicles shall issue without charge a driver's license which
38 shall indicate on its face that conditions have been imposed on such
39 person's privilege of operating a motor vehicle and that a certified copy of
40 the order imposing such conditions is required to be carried by the person
41 for whom the license was issued any time such person is operating a motor
42 vehicle on the highways of this state. If the person convicted is a
43 nonresident, the judge shall cause a copy of the order to be transmitted to

1 the division and the division shall forward a copy of it to the motor vehicle
2 administrator of such person's state of residence. Such judge shall furnish
3 to any person whose driver's license has had conditions imposed on it
4 under this paragraph a copy of the order, which shall be recognized as a
5 valid Kansas driver's license until such time as the division shall issue the
6 restricted license provided for in this paragraph.

7 (C) Upon expiration of the period of time for which conditions are
8 imposed pursuant to this subsection, the licensee may apply to the division
9 for the return of the license previously surrendered by such licensee. In the
10 event such license has expired, such person may apply to the division for a
11 new license, which shall be issued immediately by the division upon
12 payment of the proper fee and satisfaction of the other conditions
13 established by law, unless such person's privilege to operate a motor
14 vehicle on the highways of this state has been suspended or revoked prior
15 thereto. If any person shall violate any of the conditions imposed under
16 this paragraph, such person's driver's license or privilege to operate a
17 motor vehicle on the highways of this state shall be revoked for a period of
18 not less than 60 days nor more than one year by the judge of the court in
19 which such person is convicted of violating such conditions.

20 (4) As used in this subsection, "highway" and "street" mean the same
21 as in K.S.A. 8-1424 and 8-1473, and amendments thereto.

22 (p) In addition to any of the above, for any criminal offense that
23 includes the domestic violence designation pursuant to K.S.A. 2017 Supp.
24 22-4616, and amendments thereto, the court shall require the defendant to:
25 (1) Undergo a domestic violence offender assessment conducted by a
26 certified batterer intervention program; and (2) follow all
27 recommendations made by such program, unless otherwise ordered by the
28 court or the department of corrections. The court may order a domestic
29 violence offender assessment and any other evaluation prior to sentencing
30 if the assessment or evaluation would assist the court in determining an
31 appropriate sentence. The entity completing the assessment or evaluation
32 shall provide the assessment or evaluation and recommendations to the
33 court and the court shall provide the domestic violence offender
34 assessment to any entity responsible for supervising such defendant. A
35 defendant ordered to undergo a domestic violence offender assessment
36 shall be required to pay for the assessment and, unless otherwise ordered
37 by the court or the department of corrections, for completion of all
38 recommendations.

39 (q) In imposing a fine, the court may authorize the payment thereof in
40 installments. In lieu of payment of any fine imposed, the court may order
41 that the person perform community service specified by the court. The
42 person shall receive a credit on the fine imposed in an amount equal to \$5
43 for each full hour spent by the person in the specified community service.

1 The community service ordered by the court shall be required to be
2 performed by the later of one year after the fine is imposed or one year
3 after release from imprisonment or jail, or by an earlier date specified by
4 the court. If by the required date the person performs an insufficient
5 amount of community service to reduce to zero the portion of the fine
6 required to be paid by the person, the remaining balance shall become due
7 on that date. If conditional reduction of any fine is rescinded by the court
8 for any reason, then pursuant to the court's order the person may be
9 ordered to perform community service by one year after the date of such
10 rescission or by an earlier date specified by the court. If by the required
11 date the person performs an insufficient amount of community service to
12 reduce to zero the portion of the fine required to be paid by the person, the
13 remaining balance of the fine shall become due on that date. All credits for
14 community service shall be subject to review and approval by the court.

15 (r) In addition to any other penalty or disposition imposed by law, for
16 any defendant sentenced to imprisonment pursuant to K.S.A. 21-4643,
17 prior to its repeal, or K.S.A. 2017 Supp. 21-6627, and amendments
18 thereto, for crimes committed on or after July 1, 2006, the court shall order
19 that the defendant be electronically monitored upon release from
20 imprisonment for the duration of the defendant's natural life and that the
21 defendant shall reimburse the state for all or part of the cost of such
22 monitoring as determined by the prisoner review board.

23 (s) Whenever the court has released the defendant on probation
24 pursuant to subsection (a)(3), the defendant's supervising court services
25 officer, with the concurrence of the chief court services officer, may
26 impose the violation sanctions as provided in K.S.A. 22-3716(c)(1)(B),
27 and amendments thereto, without further order of the court, unless:

28 (1) The court has specifically withheld this authority in its sentencing
29 order; or

30 (2) the defendant, after being apprised of the right to a revocation
31 hearing before the court pursuant to K.S.A. 22-3716(b), and amendments
32 thereto, refuses to waive such right.

33 (t) Whenever the court has assigned the defendant to a community
34 correctional services program pursuant to subsection (a)(4), the defendant's
35 community corrections officer, with the concurrence of the community
36 corrections director, may impose the violation sanctions as provided in
37 K.S.A. 22-3716(c)(1)(B), and amendments thereto, without further order
38 of the court unless:

39 (1) The court has specifically withheld this authority in its sentencing
40 order; or

41 (2) the defendant, after being apprised of the right to a revocation
42 hearing before the court pursuant to K.S.A. 22-3716(b), and amendments
43 thereto, refuses to waive such right.

1 Sec. 23. K.S.A. 2017 Supp. 21-6614 is hereby amended to read as
2 follows: 21-6614. (a) (1) Except as provided in subsections (b), (c), (d), (e)
3 and (f), any person convicted in this state of a traffic infraction, cigarette
4 or tobacco infraction, misdemeanor or a class D or E felony, or for crimes
5 committed on or after July 1, 1993, any nongrid felony or felony ranked in
6 severity levels 6 through 10 of the nondrug grid, or for crimes committed
7 on or after July 1, 1993, but prior to July 1, 2012, any felony ranked in
8 severity level 4 of the drug grid, or for crimes committed on or after July
9 1, 2012, any felony ranked in severity level 5 of the drug grid may petition
10 the convicting court for the expungement of such conviction or related
11 arrest records if three or more years have elapsed since the person: (A)
12 Satisfied the sentence imposed; or (B) was discharged from probation, a
13 community correctional services program, parole, postrelease supervision,
14 conditional release or a suspended sentence.

15 (2) Except as provided in subsections (b), (c), (d), (e) and (f), any
16 person who has fulfilled the terms of a diversion agreement may petition
17 the district court for the expungement of such diversion agreement and
18 related arrest records if three or more years have elapsed since the terms of
19 the diversion agreement were fulfilled.

20 (b) Any person convicted of prostitution, as defined in K.S.A. 21-
21 3512, prior to its repeal, convicted of a violation of K.S.A. 2017 Supp. 21-
22 6419, and amendments thereto, or who entered into a diversion agreement
23 in lieu of further criminal proceedings for such violation, may petition the
24 convicting court for the expungement of such conviction or diversion
25 agreement and related arrest records if:

26 (1) One or more years have elapsed since the person satisfied the
27 sentence imposed or the terms of a diversion agreement or was discharged
28 from probation, a community correctional services program, parole,
29 postrelease supervision, conditional release or a suspended sentence; and

30 (2) such person can prove they were acting under coercion caused by
31 the act of another. For purposes of this subsection, "coercion" means:
32 Threats of harm or physical restraint against any person; a scheme, plan or
33 pattern intended to cause a person to believe that failure to perform an act
34 would result in bodily harm or physical restraint against any person; or the
35 abuse or threatened abuse of the legal process.

36 (c) Except as provided in subsections (e) and (f), no person may
37 petition for expungement until five or more years have elapsed since the
38 person satisfied the sentence imposed or the terms of a diversion
39 agreement or was discharged from probation, a community correctional
40 services program, parole, postrelease supervision, conditional release or a
41 suspended sentence, if such person was convicted of a class A, B or C
42 felony, or for crimes committed on or after July 1, 1993, if convicted of an
43 off-grid felony or any felony ranked in severity levels 1 through 5 of the

1 nondrug grid, or for crimes committed on or after July 1, 1993, but prior to
2 July 1, 2012, any felony ranked in severity levels 1 through 3 of the drug
3 grid, or for crimes committed on or after July 1, 2012, any felony ranked
4 in severity levels 1 through 4 of the drug grid, or:

5 (1) Vehicular homicide, as defined in K.S.A. 21-3405, prior to its
6 repeal, or K.S.A. 2017 Supp. 21-5406, and amendments thereto, or as
7 prohibited by any law of another state which is in substantial conformity
8 with that statute;

9 (2) driving while the privilege to operate a motor vehicle on the
10 public highways of this state has been canceled, suspended or revoked, as
11 prohibited by K.S.A. 8-262, and amendments thereto, or as prohibited by
12 any law of another state which is in substantial conformity with that
13 statute;

14 (3) perjury resulting from a violation of K.S.A. 8-261a, and
15 amendments thereto, or resulting from the violation of a law of another
16 state which is in substantial conformity with that statute;

17 (4) violating the provisions of K.S.A. 8-142 *Fifth*, and amendments
18 thereto, relating to fraudulent applications or violating the provisions of a
19 law of another state which is in substantial conformity with that statute;

20 (5) any crime punishable as a felony wherein a motor vehicle was
21 used in the perpetration of such crime;

22 (6) failing to stop at the scene of an accident and perform the duties
23 required by K.S.A. 8-1602, 8-1603, prior to its repeal, or 8-1604, and
24 amendments thereto, or required by a law of another state which is in
25 substantial conformity with those statutes;

26 (7) violating the provisions of K.S.A. 40-3104, and amendments
27 thereto, relating to motor vehicle liability insurance coverage; or

28 (8) a violation of K.S.A. 21-3405b, prior to its repeal.

29 (d) (1) No person may petition for expungement until five or more
30 years have elapsed since the person satisfied the sentence imposed or the
31 terms of a diversion agreement or was discharged from probation, a
32 community correctional services program, parole, postrelease supervision,
33 conditional release or a suspended sentence, if such person was convicted
34 of a first violation of K.S.A. 8-1567 ~~or K.S.A. 2017 Supp. 8-1025~~, and
35 amendments thereto, including any diversion for such violation.

36 (2) No person may petition for expungement until 10 or more years
37 have elapsed since the person satisfied the sentence imposed or was
38 discharged from probation, a community correctional services program,
39 parole, postrelease supervision, conditional release or a suspended
40 sentence, if such person was convicted of a second or subsequent violation
41 of K.S.A. 8-1567 ~~or K.S.A. 2017 Supp. 8-1025~~, and amendments thereto.

42 (3) Except as provided further, the provisions of this subsection shall
43 apply to all violations committed on or after July 1, 2006. The provisions

1 of subsection (d)(2) shall not apply to violations committed on or after
2 July 1, 2014, but prior to July 1, 2015.

3 (e) There shall be no expungement of convictions for the following
4 offenses or of convictions for an attempt to commit any of the following
5 offenses:

6 (1) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A.
7 2017 Supp. 21-5503, and amendments thereto;

8 (2) indecent liberties with a child or aggravated indecent liberties
9 with a child, as defined in K.S.A. 21-3503 or 21-3504, prior to their repeal,
10 or K.S.A. 2017 Supp. 21-5506, and amendments thereto;

11 (3) criminal sodomy, as defined in K.S.A. 21-3505(a)(2) or (a)(3),
12 prior to its repeal, or K.S.A. 2017 Supp. 21-5504(a)(3) or (a)(4), and
13 amendments thereto;

14 (4) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior
15 to its repeal, or K.S.A. 2017 Supp. 21-5504, and amendments thereto;

16 (5) indecent solicitation of a child or aggravated indecent solicitation
17 of a child, as defined in K.S.A. 21-3510 or 21-3511, prior to their repeal,
18 or K.S.A. 2017 Supp. 21-5508, and amendments thereto;

19 (6) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior
20 to its repeal, or K.S.A. 2017 Supp. 21-5510, and amendments thereto;

21 (7) internet trading in child pornography or aggravated internet
22 trading in child pornography, as defined in K.S.A. 2017 Supp. 21-5514,
23 and amendments thereto;

24 (8) aggravated incest, as defined in K.S.A. 21-3603, prior to its
25 repeal, or K.S.A. 2017 Supp. 21-5604, and amendments thereto;

26 (9) endangering a child or aggravated endangering a child, as defined
27 in K.S.A. 21-3608 or 21-3608a, prior to their repeal, or K.S.A. 2017 Supp.
28 21-5601, and amendments thereto;

29 (10) abuse of a child, as defined in K.S.A. 21-3609, prior to its repeal,
30 or K.S.A. 2017 Supp. 21-5602, and amendments thereto;

31 (11) capital murder, as defined in K.S.A. 21-3439, prior to its repeal,
32 or K.S.A. 2017 Supp. 21-5401, and amendments thereto;

33 (12) murder in the first degree, as defined in K.S.A. 21-3401, prior to
34 its repeal, or K.S.A. 2017 Supp. 21-5402, and amendments thereto;

35 (13) murder in the second degree, as defined in K.S.A. 21-3402, prior
36 to its repeal, or K.S.A. 2017 Supp. 21-5403, and amendments thereto;

37 (14) voluntary manslaughter, as defined in K.S.A. 21-3403, prior to
38 its repeal, or K.S.A. 2017 Supp. 21-5404, and amendments thereto;

39 (15) involuntary manslaughter, as defined in K.S.A. 21-3404, prior to
40 its repeal, or K.S.A. 2017 Supp. 21-5405, and amendments thereto;

41 (16) sexual battery, as defined in K.S.A. 21-3517, prior to its repeal,
42 or K.S.A. 2017 Supp. 21-5505, and amendments thereto, when the victim
43 was less than 18 years of age at the time the crime was committed;

1 (17) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to
2 its repeal, or K.S.A. 2017 Supp. 21-5505, and amendments thereto;

3 (18) a violation of K.S.A. 8-2,144, and amendments thereto,
4 including any diversion for such violation; or

5 (19) any conviction for any offense in effect at any time prior to July
6 1, 2011, that is comparable to any offense as provided in this subsection.

7 (f) Notwithstanding any other law to the contrary, for any offender
8 who is required to register as provided in the Kansas offender registration
9 act, K.S.A. 22-4901 et seq., and amendments thereto, there shall be no
10 expungement of any conviction or any part of the offender's criminal
11 record while the offender is required to register as provided in the Kansas
12 offender registration act.

13 (g) (1) When a petition for expungement is filed, the court shall set a
14 date for a hearing of such petition and shall cause notice of such hearing to
15 be given to the prosecutor and the arresting law enforcement agency. The
16 petition shall state the:

17 (A) Defendant's full name;

18 (B) full name of the defendant at the time of arrest, conviction or
19 diversion, if different than the defendant's current name;

20 (C) defendant's sex, race and date of birth;

21 (D) crime for which the defendant was arrested, convicted or
22 diverted;

23 (E) date of the defendant's arrest, conviction or diversion; and

24 (F) identity of the convicting court, arresting law enforcement
25 authority or diverting authority.

26 (2) Except as otherwise provided by law, a petition for expungement
27 shall be accompanied by a docket fee in the amount of \$176. On and after
28 July 1, 2017, through June 30, 2019, the supreme court may impose a
29 charge, not to exceed \$19 per case, to fund the costs of non-judicial
30 personnel. The charge established in this section shall be the only fee
31 collected or moneys in the nature of a fee collected for the case. Such
32 charge shall only be established by an act of the legislature and no other
33 authority is established by law or otherwise to collect a fee.

34 (3) All petitions for expungement shall be docketed in the original
35 criminal action. Any person who may have relevant information about the
36 petitioner may testify at the hearing. The court may inquire into the
37 background of the petitioner and shall have access to any reports or
38 records relating to the petitioner that are on file with the secretary of
39 corrections or the prisoner review board.

40 (h) At the hearing on the petition, the court shall order the petitioner's
41 arrest record, conviction or diversion expunged if the court finds that:

42 (1) The petitioner has not been convicted of a felony in the past two
43 years and no proceeding involving any such crime is presently pending or

1 being instituted against the petitioner;

2 (2) the circumstances and behavior of the petitioner warrant the
3 expungement; and

4 (3) the expungement is consistent with the public welfare.

5 (i) When the court has ordered an arrest record, conviction or
6 diversion expunged, the order of expungement shall state the information
7 required to be contained in the petition. The clerk of the court shall send a
8 certified copy of the order of expungement to the Kansas bureau of
9 investigation which shall notify the federal bureau of investigation, the
10 secretary of corrections and any other criminal justice agency which may
11 have a record of the arrest, conviction or diversion. If the case was
12 appealed from municipal court, the clerk of the district court shall send a
13 certified copy of the order of expungement to the municipal court. The
14 municipal court shall order the case expunged once the certified copy of
15 the order of expungement is received. After the order of expungement is
16 entered, the petitioner shall be treated as not having been arrested,
17 convicted or diverted of the crime, except that:

18 (1) Upon conviction for any subsequent crime, the conviction that
19 was expunged may be considered as a prior conviction in determining the
20 sentence to be imposed;

21 (2) the petitioner shall disclose that the arrest, conviction or diversion
22 occurred if asked about previous arrests, convictions or diversions:

23 (A) In any application for licensure as a private detective, private
24 detective agency, certification as a firearms trainer pursuant to K.S.A.
25 2017 Supp. 75-7b21, and amendments thereto, or employment as a
26 detective with a private detective agency, as defined by K.S.A. 75-7b01,
27 and amendments thereto; as security personnel with a private patrol
28 operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with
29 an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of
30 the Kansas department for aging and disability services;

31 (B) in any application for admission, or for an order of reinstatement,
32 to the practice of law in this state;

33 (C) to aid in determining the petitioner's qualifications for
34 employment with the Kansas lottery or for work in sensitive areas within
35 the Kansas lottery as deemed appropriate by the executive director of the
36 Kansas lottery;

37 (D) to aid in determining the petitioner's qualifications for executive
38 director of the Kansas racing and gaming commission, for employment
39 with the commission or for work in sensitive areas in parimutuel racing as
40 deemed appropriate by the executive director of the commission, or to aid
41 in determining qualifications for licensure or renewal of licensure by the
42 commission;

43 (E) to aid in determining the petitioner's qualifications for the

1 following under the Kansas expanded lottery act: (i) Lottery gaming
2 facility manager or prospective manager, racetrack gaming facility
3 manager or prospective manager, licensee or certificate holder; or (ii) an
4 officer, director, employee, owner, agent or contractor thereof;

5 (F) upon application for a commercial driver's license under K.S.A.
6 8-2,125 through 8-2,142, and amendments thereto;

7 (G) to aid in determining the petitioner's qualifications to be an
8 employee of the state gaming agency;

9 (H) to aid in determining the petitioner's qualifications to be an
10 employee of a tribal gaming commission or to hold a license issued
11 pursuant to a tribal-state gaming compact;

12 (I) in any application for registration as a broker-dealer, agent,
13 investment adviser or investment adviser representative all as defined in
14 K.S.A. 17-12a102, and amendments thereto;

15 (J) in any application for employment as a law enforcement officer as
16 defined in K.S.A. 22-2202 or 74-5602, and amendments thereto;

17 (K) for applications received on and after July 1, 2006, to aid in
18 determining the petitioner's qualifications for a license to carry a concealed
19 weapon pursuant to the personal and family protection act, K.S.A. 2017
20 Supp. 75-7c01 et seq., and amendments thereto; or

21 (L) for applications received on and after July 1, 2017, to aid in
22 determining the petitioner's qualifications for a license to act as a bail
23 enforcement agent pursuant to K.S.A. 2017 Supp. 75-7e01 through 75-
24 7e09 and K.S.A. 2017 Supp. 50-6,141, and amendments thereto;

25 (3) the court, in the order of expungement, may specify other
26 circumstances under which the conviction is to be disclosed;

27 (4) the conviction may be disclosed in a subsequent prosecution for
28 an offense which requires as an element of such offense a prior conviction
29 of the type expunged; and

30 (5) upon commitment to the custody of the secretary of corrections,
31 any previously expunged record in the possession of the secretary of
32 corrections may be reinstated and the expungement disregarded, and the
33 record continued for the purpose of the new commitment.

34 (j) Whenever a person is convicted of a crime, pleads guilty and pays
35 a fine for a crime, is placed on parole, postrelease supervision or
36 probation, is assigned to a community correctional services program, is
37 granted a suspended sentence or is released on conditional release, the
38 person shall be informed of the ability to expunge the arrest records or
39 conviction. Whenever a person enters into a diversion agreement, the
40 person shall be informed of the ability to expunge the diversion.

41 (k) (1) Subject to the disclosures required pursuant to subsection (i),
42 in any application for employment, license or other civil right or privilege,
43 or any appearance as a witness, a person whose arrest records, conviction

1 or diversion of a crime has been expunged under this statute may state that
2 such person has never been arrested, convicted or diverted of such crime.

3 (2) Notwithstanding the provisions of subsection (k)(1), and except as
4 provided in K.S.A. 2017 Supp. 21-6304(a)(3)(A), and amendments
5 thereto, the expungement of a prior felony conviction does not relieve the
6 individual of complying with any state or federal law relating to the use,
7 shipment, transportation, receipt or possession of firearms by persons
8 previously convicted of a felony.

9 (1) Whenever the record of any arrest, conviction or diversion has
10 been expunged under the provisions of this section or under the provisions
11 of any other existing or former statute, the custodian of the records of
12 arrest, conviction, diversion and incarceration relating to that crime shall
13 not disclose the existence of such records, except when requested by:

14 (1) The person whose record was expunged;

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

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

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

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

28 (6) a prosecutor, and such request is accompanied by a statement that
29 the request is being made in conjunction with a prosecution of an offense
30 that requires a prior conviction as one of the elements of such offense;

31 (7) the supreme court, the clerk or disciplinary administrator thereof,
32 the state board for admission of attorneys or the state board for discipline
33 of attorneys, and the request is accompanied by a statement that the
34 request is being made in conjunction with an application for admission, or
35 for an order of reinstatement, to the practice of law in this state by the
36 person whose record has been expunged;

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

42 (9) the governor or the Kansas racing and gaming commission, or a
43 designee of the commission, and the request is accompanied by a

- 1 statement that the request is being made to aid in determining
2 qualifications for executive director of the commission, for employment
3 with the commission, for work in sensitive areas in parimutuel racing as
4 deemed appropriate by the executive director of the commission or for
5 licensure, renewal of licensure or continued licensure by the commission;
- 6 (10) the Kansas racing and gaming commission, or a designee of the
7 commission, and the request is accompanied by a statement that the
8 request is being made to aid in determining qualifications of the following
9 under the Kansas expanded lottery act: (A) Lottery gaming facility
10 managers and prospective managers, racetrack gaming facility managers
11 and prospective managers, licensees and certificate holders; and (B) their
12 officers, directors, employees, owners, agents and contractors;
- 13 (11) the Kansas sentencing commission;
- 14 (12) the state gaming agency, and the request is accompanied by a
15 statement that the request is being made to aid in determining
16 qualifications: (A) To be an employee of the state gaming agency; or (B)
17 to be an employee of a tribal gaming commission or to hold a license
18 issued pursuant to a tribal-gaming compact;
- 19 (13) the Kansas securities commissioner or a designee of the
20 commissioner, and the request is accompanied by a statement that the
21 request is being made in conjunction with an application for registration as
22 a broker-dealer, agent, investment adviser or investment adviser
23 representative by such agency and the application was submitted by the
24 person whose record has been expunged;
- 25 (14) the Kansas commission on peace officers' standards and training
26 and the request is accompanied by a statement that the request is being
27 made to aid in determining certification eligibility as a law enforcement
28 officer pursuant to K.S.A. 74-5601 et seq., and amendments thereto;
- 29 (15) a law enforcement agency and the request is accompanied by a
30 statement that the request is being made to aid in determining eligibility
31 for employment as a law enforcement officer as defined by K.S.A. 22-
32 2202, and amendments thereto;
- 33 (16) the attorney general and the request is accompanied by a
34 statement that the request is being made to aid in determining
35 qualifications for a license to:
- 36 (A) Carry a concealed weapon pursuant to the personal and family
37 protection act; or
- 38 (B) act as a bail enforcement agent pursuant to K.S.A. 2017 Supp.
39 75-7e01 through 75-7e09 and K.S.A. 2017 Supp. 50-6,141, and
40 amendments thereto; or
- 41 (17) the Kansas bureau of investigation for the purposes of:
- 42 (A) Completing a person's criminal history record information within
43 the central repository, in accordance with K.S.A. 22-4701 et seq., and

1 amendments thereto; or

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

5 (m) The provisions of subsection (l)(17) shall apply to records
6 created prior to, on and after July 1, 2011.

7 Sec. 24. K.S.A. 2017 Supp. 21-6804 is hereby amended to read as
8 follows: 21-6804. (a) The provisions of this section shall be applicable to
9 the sentencing guidelines grid for nondrug crimes. The following
10 sentencing guidelines grid shall be applicable to nondrug felony crimes:

SENTENCING RANGE - NONDRUG OFFENSES

Category	A	B	C	D	E	F	G	H	I
Severity Level	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2 + Misdemeanors	1 Misdemeanor No Record
I	653 020 592	618 586 554	285 272 258	267 253 240	246 234 221	226 214 203	203 195 184	186 176 166	165 155 147
II	493 467 442	460 438 416	216 205 194	200 190 181	184 174 165	168 160 152	154 146 138	138 131 123	123 117 109
III	247 233 221	228 216 206	107 102 96	100 94 89	92 88 82	83 79 74	77 72 68	71 66 61	61 59 55
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	34 32 31
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 22	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	7 6 5

LEGEND
Presumptive Probation
Presumptive Imprisonment

1 (b) Sentences expressed in the sentencing guidelines grid for nondrug
2 crimes represent months of imprisonment.

3 (c) The sentencing guidelines grid is a two-dimensional crime
4 severity and criminal history classification tool. The grid's vertical axis is
5 the crime severity scale which classifies current crimes of conviction. The
6 grid's horizontal axis is the criminal history scale which classifies criminal
7 histories.

8 (d) The sentencing guidelines grid for nondrug crimes as provided in
9 this section defines presumptive punishments for felony convictions,
10 subject to the sentencing court's discretion to enter a departure sentence.
11 The appropriate punishment for a felony conviction should depend on the
12 severity of the crime of conviction when compared to all other crimes and
13 the offender's criminal history.

14 (e) (1) The sentencing court has discretion to sentence at any place
15 within the sentencing range. In the usual case it is recommended that the
16 sentencing judge select the center of the range and reserve the upper and
17 lower limits for aggravating and mitigating factors insufficient to warrant a
18 departure.

19 (2) In presumptive imprisonment cases, the sentencing court shall
20 pronounce the complete sentence which shall include the:

21 (A) Prison sentence;

22 (B) maximum potential reduction to such sentence as a result of good
23 time; and

24 (C) period of postrelease supervision at the sentencing hearing.
25 Failure to pronounce the period of postrelease supervision shall not negate
26 the existence of such period of postrelease supervision.

27 (3) In presumptive nonprison cases, the sentencing court shall
28 pronounce the:

29 (A) Prison sentence; and

30 (B) duration of the nonprison sanction at the sentencing hearing.

31 (f) Each grid block states the presumptive sentencing range for an
32 offender whose crime of conviction and criminal history place such
33 offender in that grid block. If an offense is classified in a grid block below
34 the dispositional line, the presumptive disposition shall be
35 nonimprisonment. If an offense is classified in a grid block above the
36 dispositional line, the presumptive disposition shall be imprisonment. If an
37 offense is classified in grid blocks 5-H, 5-I or 6-G, the court may impose
38 an optional nonprison sentence as provided in subsection (q).

39 (g) The sentence for a violation of K.S.A. 21-3415, prior to its repeal,
40 aggravated battery against a law enforcement officer committed prior to
41 July 1, 2006, or a violation of K.S.A. 2017 Supp. 21-5412(d), and
42 amendments thereto, aggravated assault against a law enforcement officer,
43 which places the defendant's sentence in grid block 6-H or 6-I shall be

1 presumed imprisonment. The court may impose an optional nonprison
2 sentence as provided in subsection (q).

3 (h) When a firearm is used to commit any person felony, the
4 offender's sentence shall be presumed imprisonment. The court may
5 impose an optional nonprison sentence as provided in subsection (q).

6 (i) (1) The sentence for the violation of the felony provision of ~~K.S.A.~~
7 ~~2017 Supp. 8-1025~~, K.S.A. 8-2,144, ~~K.S.A.~~ and 8-1567; and K.S.A. 2017
8 Supp. 21-5414(b)(3), ~~K.S.A. 2017 Supp. 21-5823(b)(3)~~ and (b)(4), ~~K.S.A.~~
9 ~~2017 Supp. 21-6412~~ and ~~K.S.A. 2017 Supp. 21-6416~~, and amendments
10 thereto, shall be as provided by the specific mandatory sentencing
11 requirements of that section and shall not be subject to the provisions of
12 this section or K.S.A. 2017 Supp. 21-6807, and amendments thereto.

13 (2) If because of the offender's criminal history classification the
14 offender is subject to presumptive imprisonment or if the judge departs
15 from a presumptive probation sentence and the offender is subject to
16 imprisonment, the provisions of this section and K.S.A. 2017 Supp. 21-
17 6807, and amendments thereto, shall apply and the offender shall not be
18 subject to the mandatory sentence as provided in K.S.A. 2017 Supp. 21-
19 5823, and amendments thereto.

20 (3) Notwithstanding the provisions of any other section, the term of
21 imprisonment imposed for the violation of the felony provision of ~~K.S.A.~~
22 ~~2017 Supp. 8-1025~~, K.S.A. 8-2,144, ~~K.S.A.~~ and 8-1567; and K.S.A. 2017
23 Supp. 21-5414(b)(3), ~~K.S.A. 2017 Supp. 21-5823(b)(3)~~ and (b)(4), ~~K.S.A.~~
24 ~~2017 Supp. 21-6412~~ and ~~K.S.A. 2017 Supp. 21-6416~~, and amendments
25 thereto, shall not be served in a state facility in the custody of the secretary
26 of corrections, except that the term of imprisonment for felony violations
27 of ~~K.S.A. 2017 Supp. 8-1025~~ or K.S.A. 8-2,144 or ~~K.S.A. 8-1567~~, and
28 amendments thereto, may be served in a state correctional facility
29 designated by the secretary of corrections if the secretary determines that
30 substance abuse treatment resources and facility capacity is available. The
31 secretary's determination regarding the availability of treatment resources
32 and facility capacity shall not be subject to review. Prior to imposing any
33 sentence pursuant to this subsection, the court may consider assigning the
34 defendant to a house arrest program pursuant to K.S.A. 2017 Supp. 21-
35 6609, and amendments thereto.

36 (j) (1) The sentence for any persistent sex offender whose current
37 convicted crime carries a presumptive term of imprisonment shall be
38 double the maximum duration of the presumptive imprisonment term. The
39 sentence for any persistent sex offender whose current conviction carries a
40 presumptive nonprison term shall be presumed imprisonment and shall be
41 double the maximum duration of the presumptive imprisonment term.

42 (2) Except as otherwise provided in this subsection, as used in this
43 subsection, "persistent sex offender" means a person who:

1 (A) (i) Has been convicted in this state of a sexually violent crime, as
2 defined in K.S.A. 22-3717, and amendments thereto; and

3 (ii) at the time of the conviction under subsection (j)(2)(A)(i) has at
4 least one conviction for a sexually violent crime, as defined in K.S.A. 22-
5 3717, and amendments thereto, in this state or comparable felony under
6 the laws of another state, the federal government or a foreign government;
7 or

8 (B) (i) has been convicted of rape, as defined in K.S.A. 21-3502,
9 prior to its repeal, or K.S.A. 2017 Supp. 21-5503, and amendments
10 thereto; and

11 (ii) at the time of the conviction under subsection (j)(2)(B)(i) has at
12 least one conviction for rape in this state or comparable felony under the
13 laws of another state, the federal government or a foreign government.

14 (3) Except as provided in subsection (j)(2)(B), the provisions of this
15 subsection shall not apply to any person whose current convicted crime is
16 a severity level 1 or 2 felony.

17 (k) (1) If it is shown at sentencing that the offender committed any
18 felony violation for the benefit of, at the direction of, or in association with
19 any criminal street gang, with the specific intent to promote, further or
20 assist in any criminal conduct by gang members, the offender's sentence
21 shall be presumed imprisonment. The court may impose an optional
22 nonprison sentence as provided in subsection (q).

23 (2) As used in this subsection, "criminal street gang" means any
24 organization, association or group of three or more persons, whether
25 formal or informal, having as one of its primary activities:

26 (A) The commission of one or more person felonies; or

27 (B) the commission of felony violations of article 57 of chapter 21 of
28 the Kansas Statutes Annotated, and amendments thereto, K.S.A. 2010
29 Supp. 21-36a01 through 21-36a17, prior to their transfer, or any felony
30 violation of any provision of the uniform controlled substances act prior to
31 July 1, 2009; and

32 (C) its members have a common name or common identifying sign or
33 symbol; and

34 (D) its members, individually or collectively, engage in or have
35 engaged in the commission, attempted commission, conspiracy to commit
36 or solicitation of two or more person felonies or felony violations of article
37 57 of chapter 21 of the Kansas Statutes Annotated, and amendments
38 thereto, K.S.A. 2010 Supp. 21-36a01 through 21-36a17, prior to their
39 transfer, any felony violation of any provision of the uniform controlled
40 substances act prior to July 1, 2009, or any substantially similar offense
41 from another jurisdiction.

42 (l) Except as provided in subsection (o), the sentence for a violation
43 of K.S.A. 2017 Supp. 21-5807(a)(1), and amendments thereto, or any

1 attempt or conspiracy, as defined in K.S.A. 2017 Supp. 21-5301 and 21-
2 5302, and amendments thereto, to commit such offense, when such person
3 being sentenced has a prior conviction for a violation of K.S.A. 21-3715(a)
4 or (b), prior to its repeal, 21-3716, prior to its repeal, K.S.A. 2017 Supp.
5 21-5807(a)(1) or (a)(2); or ~~K.S.A. 2017 Supp.~~ 21-5807(b), and
6 amendments thereto, or any attempt or conspiracy to commit such offense,
7 shall be presumptive imprisonment.

8 (m) The sentence for a violation of K.S.A. 22-4903 or K.S.A. 2017
9 Supp. 21-5913(a)(2), and amendments thereto, shall be presumptive
10 imprisonment. If an offense under such sections is classified in grid blocks
11 5-E, 5-F, 5-G, 5-H or 5-I, the court may impose an optional nonprison
12 sentence as provided in subsection (q).

13 (n) The sentence for a violation of criminal deprivation of property, as
14 defined in K.S.A. 2017 Supp. 21-5803, and amendments thereto, when
15 such property is a motor vehicle, and when such person being sentenced
16 has any combination of two or more prior convictions of K.S.A. 21-
17 3705(b), prior to its repeal, or of criminal deprivation of property, as
18 defined in K.S.A. 2017 Supp. 21-5803, and amendments thereto, when
19 such property is a motor vehicle, shall be presumptive imprisonment. Such
20 sentence shall not be considered a departure and shall not be subject to
21 appeal.

22 (o) The sentence for a felony violation of theft of property as defined
23 in K.S.A. 2017 Supp. 21-5801, and amendments thereto, or burglary as
24 defined in K.S.A. 2017 Supp. 21-5807(a), and amendments thereto, when
25 such person being sentenced has no prior convictions for a violation of
26 K.S.A. 21-3701 or 21-3715, prior to their repeal, or theft of property as
27 defined in K.S.A. 2017 Supp. 21-5801, and amendments thereto, or
28 burglary as defined in K.S.A. 2017 Supp. 21-5807(a), and amendments
29 thereto; or the sentence for a felony violation of theft of property as
30 defined in K.S.A. 2017 Supp. 21-5801, and amendments thereto, when
31 such person being sentenced has one or two prior felony convictions for a
32 violation of K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal, or
33 theft of property as defined in K.S.A. 2017 Supp. 21-5801, and
34 amendments thereto, or burglary or aggravated burglary as defined in
35 K.S.A. 2017 Supp. 21-5807, and amendments thereto; or the sentence for a
36 felony violation of burglary as defined in K.S.A. 2017 Supp. 21-5807(a),
37 and amendments thereto, when such person being sentenced has one prior
38 felony conviction for a violation of K.S.A. 21-3701, 21-3715 or 21-3716,
39 prior to their repeal, or theft of property as defined in K.S.A. 2017 Supp.
40 21-5801, and amendments thereto, or burglary or aggravated burglary as
41 defined in K.S.A. 2017 Supp. 21-5807, and amendments thereto, shall be
42 the sentence as provided by this section, except that the court may order an
43 optional nonprison sentence for a defendant to participate in a drug

1 treatment program, including, but not limited to, an approved after-care
2 plan, if the court makes the following findings on the record:

3 (1) Substance abuse was an underlying factor in the commission of
4 the crime;

5 (2) substance abuse treatment in the community is likely to be more
6 effective than a prison term in reducing the risk of offender recidivism;
7 and

8 (3) participation in an intensive substance abuse treatment program
9 will serve community safety interests.

10 A defendant sentenced to an optional nonprison sentence under this
11 subsection shall be supervised by community correctional services. The
12 provisions of K.S.A. 2017 Supp. 21-6824(f)(1), and amendments thereto,
13 shall apply to a defendant sentenced under this subsection. The sentence
14 under this subsection shall not be considered a departure and shall not be
15 subject to appeal.

16 (p) The sentence for a felony violation of theft of property as defined
17 in K.S.A. 2017 Supp. 21-5801, and amendments thereto, when such
18 person being sentenced has any combination of three or more prior felony
19 convictions for violations of K.S.A. 21-3701, 21-3715 or 21-3716, prior to
20 their repeal, or theft of property as defined in K.S.A. 2017 Supp. 21-5801,
21 and amendments thereto, or burglary or aggravated burglary as defined in
22 K.S.A. 2017 Supp. 21-5807, and amendments thereto; or the sentence for a
23 violation of burglary as defined in K.S.A. 2017 Supp. 21-5807(a), and
24 amendments thereto, when such person being sentenced has any
25 combination of two or more prior convictions for violations of K.S.A. 21-
26 3701, 21-3715 and 21-3716, prior to their repeal, or theft of property as
27 defined in K.S.A. 2017 Supp. 21-5801, and amendments thereto, or
28 burglary or aggravated burglary as defined in K.S.A. 2017 Supp. 21-5807,
29 and amendments thereto, shall be presumed imprisonment and the
30 defendant shall be sentenced to prison as provided by this section, except
31 that the court may recommend that an offender be placed in the custody of
32 the secretary of corrections, in a facility designated by the secretary to
33 participate in an intensive substance abuse treatment program, upon
34 making the following findings on the record:

35 (1) Substance abuse was an underlying factor in the commission of
36 the crime;

37 (2) substance abuse treatment with a possibility of an early release
38 from imprisonment is likely to be more effective than a prison term in
39 reducing the risk of offender recidivism; and

40 (3) participation in an intensive substance abuse treatment program
41 with the possibility of an early release from imprisonment will serve
42 community safety interests by promoting offender reformation.

43 The intensive substance abuse treatment program shall be determined

1 by the secretary of corrections, but shall be for a period of at least four
2 months. Upon the successful completion of such intensive treatment
3 program, the offender shall be returned to the court and the court may
4 modify the sentence by directing that a less severe penalty be imposed in
5 lieu of that originally adjudged within statutory limits. If the offender's
6 term of imprisonment expires, the offender shall be placed under the
7 applicable period of postrelease supervision. The sentence under this
8 subsection shall not be considered a departure and shall not be subject to
9 appeal.

10 (q) As used in this section, an "optional nonprison sentence" is a
11 sentence which the court may impose, in lieu of the presumptive sentence,
12 upon making the following findings on the record:

13 (1) An appropriate treatment program exists which is likely to be
14 more effective than the presumptive prison term in reducing the risk of
15 offender recidivism; and

16 (2) the recommended treatment program is available and the offender
17 can be admitted to such program within a reasonable period of time; or

18 (3) the nonprison sanction will serve community safety interests by
19 promoting offender reformation.

20 Any decision made by the court regarding the imposition of an optional
21 nonprison sentence shall not be considered a departure and shall not be
22 subject to appeal.

23 (r) The sentence for a violation of K.S.A. 2017 Supp. 21-5413(c)(2),
24 and amendments thereto, shall be presumptive imprisonment and shall be
25 served consecutively to any other term or terms of imprisonment imposed.
26 Such sentence shall not be considered a departure and shall not be subject
27 to appeal.

28 (s) The sentence for a violation of K.S.A. 2017 Supp. 21-5512, and
29 amendments thereto, shall be presumptive imprisonment. Such sentence
30 shall not be considered a departure and shall not be subject to appeal.

31 (t) (1) If the trier of fact makes a finding beyond a reasonable doubt
32 that an offender wore or used ballistic resistant material in the commission
33 of, or attempt to commit, or flight from any felony, in addition to the
34 sentence imposed pursuant to the Kansas sentencing guidelines act, the
35 offender shall be sentenced to an additional 30 months' imprisonment.

36 (2) The sentence imposed pursuant to subsection (t)(1) shall be
37 presumptive imprisonment and shall be served consecutively to any other
38 term or terms of imprisonment imposed. Such sentence shall not be
39 considered a departure and shall not be subject to appeal.

40 (3) As used in this subsection, "ballistic resistant material" means:
41 (A) Any commercially produced material designed with the purpose of
42 providing ballistic and trauma protection, including, but not limited to,
43 bulletproof vests and kevlar vests; and (B) any homemade or fabricated

1 substance or item designed with the purpose of providing ballistic and
2 trauma protection.

3 (u) The sentence for a violation of K.S.A. 2017 Supp. 21-6107, and
4 amendments thereto, or any attempt or conspiracy, as defined in K.S.A.
5 2017 Supp. 21-5301 and 21-5302, and amendments thereto, to commit
6 such offense, when such person being sentenced has a prior conviction for
7 a violation of K.S.A. 21-4018, prior to its repeal, or K.S.A. 2017 Supp. 21-
8 6107, and amendments thereto, or any attempt or conspiracy to commit
9 such offense, shall be presumptive imprisonment. Such sentence shall not
10 be considered a departure and shall not be subject to appeal.

11 (v) The sentence for a third or subsequent violation of K.S.A. 8-1568,
12 and amendments thereto, shall be presumptive imprisonment and shall be
13 served consecutively to any other term or terms of imprisonment imposed.
14 Such sentence shall not be considered a departure and shall not be subject
15 to appeal.

16 (w) The sentence for aggravated criminal damage to property as
17 defined in K.S.A. 2017 Supp. 21-5813(b), and amendments thereto, when
18 such person being sentenced has a prior conviction for any nonperson
19 felony shall be presumptive imprisonment. Such sentence shall not be
20 considered a departure and shall not be subject to appeal.

21 (x) The sentence for a violation of K.S.A. 2017 Supp. 21-5807(a)(1),
22 and amendments thereto, shall be presumptive imprisonment if the offense
23 under such paragraph is classified in grid blocks 7-C, 7-D or 7-E. Such
24 sentence shall not be considered a departure and shall not be subject to
25 appeal.

26 (y) (1) Except as provided in subsection (y)(3), if the trier of fact
27 makes a finding beyond a reasonable doubt that an offender committed a
28 nondrug felony offense, or any attempt or conspiracy, as defined in K.S.A.
29 2017 Supp. 21-5301 and 21-5302, and amendments thereto, to commit a
30 nondrug felony offense, against a law enforcement officer, as defined in
31 K.S.A. 2017 Supp. 21-5111(p)(1) and (3), and amendments thereto, while
32 such officer was engaged in the performance of such officer's duty, or in
33 whole or in any part because of such officer's status as a law enforcement
34 officer, the sentence for such offense shall be:

35 (A) If such offense is classified in severity level 2 through 10, one
36 severity level above the appropriate level for such offense; and

37 (B) (i) if such offense is classified in severity level 1, except as
38 otherwise provided in subsection (y)(1)(B)(ii), imprisonment for life, and
39 such offender shall not be eligible for probation or suspension,
40 modification or reduction of sentence. In addition, such offender shall not
41 be eligible for parole prior to serving 25 years' imprisonment, and such 25
42 years' imprisonment shall not be reduced by the application of good time
43 credits. No other sentence shall be permitted.

1 (ii) The provisions of subsection (y)(1)(B)(i) requiring the court to
2 impose a mandatory minimum term of imprisonment of 25 years shall not
3 apply if the court finds the offender, because of the offender's criminal
4 history classification, is subject to presumptive imprisonment and the
5 sentencing range exceeds 300 months. In such case, the offender is
6 required to serve a mandatory minimum term equal to the sentence
7 established pursuant to the sentencing range.

8 (2) The sentence imposed pursuant to subsection (y)(1) shall not be
9 considered a departure and shall not be subject to appeal.

10 (3) The provisions of this subsection shall not apply to an offense
11 described in subsection (y)(1) if the factual aspect concerning a law
12 enforcement officer is a statutory element of such offense.

13 Sec. 25. K.S.A. 2017 Supp. 21-6811 is hereby amended to read as
14 follows: 21-6811. In addition to the provisions of K.S.A. 2017 Supp. 21-
15 6810, and amendments thereto, the following shall apply in determining an
16 offender's criminal history classification as contained in the presumptive
17 sentencing guidelines grids:

18 (a) Every three prior adult convictions or juvenile adjudications of
19 class A and class B person misdemeanors in the offender's criminal history,
20 or any combination thereof, shall be rated as one adult conviction or one
21 juvenile adjudication of a person felony for criminal history purposes.
22 Every three prior adult convictions or juvenile adjudications of assault as
23 defined in K.S.A. 21-3408, prior to its repeal, or K.S.A. 2017 Supp. 21-
24 5412(a), and amendments thereto, occurring within a period commencing
25 three years prior to the date of conviction for the current crime of
26 conviction shall be rated as one adult conviction or one juvenile
27 adjudication of a person felony for criminal history purposes.

28 (b) A conviction of criminal possession of a firearm as defined in
29 K.S.A. 21-4204(a)(1) or (a)(5), prior to its repeal, criminal use of weapons
30 as defined in K.S.A. 2017 Supp. 21-6301(a)(10) or (a)(11), and
31 amendments thereto, or unlawful possession of a firearm as in effect on
32 June 30, 2005, and as defined in K.S.A. 21-4218, prior to its repeal, will be
33 scored as a select class B nonperson misdemeanor conviction or
34 adjudication and shall not be scored as a person misdemeanor for criminal
35 history purposes.

36 (c) (1) If the current crime of conviction was committed before July
37 1, 1996, and is for K.S.A. 21-3404(b), as in effect on June 30, 1996,
38 involuntary manslaughter in the commission of driving under the
39 influence, then, each prior adult conviction or juvenile adjudication for
40 K.S.A. 8-1567, and amendments thereto, shall count as one person felony
41 for criminal history purposes.

42 (2) If the current crime of conviction was committed on or after July
43 1, 1996, and is for a violation of K.S.A. 2017 Supp. 21-5405(a)(3), and

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

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

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

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

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

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

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

35 The facts required to classify prior burglary adult convictions and
36 juvenile adjudications shall be established by the state by a preponderance
37 of the evidence.

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

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

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

1 (B) If a crime is a misdemeanor in another state, the state of Kansas
2 shall refer to the comparable offense in order to classify the out-of-state
3 crime as a class A, B or C misdemeanor. If the comparable misdemeanor
4 crime in the state of Kansas is a felony, the out-of-state crime shall be
5 classified as a class A misdemeanor. If the state of Kansas does not have a
6 comparable crime, the out-of-state crime shall not be used in classifying
7 the offender's criminal history.

8 (3) The state of Kansas shall classify the crime as person or
9 nonperson. In designating a crime as person or nonperson, comparable
10 offenses under the Kansas criminal code in effect on the date the current
11 crime of conviction was committed shall be referred to. If the state of
12 Kansas does not have a comparable offense in effect on the date the
13 current crime of conviction was committed, the out-of-state conviction
14 shall be classified as a nonperson crime.

15 (4) Convictions or adjudications occurring within the federal system,
16 other state systems, the District of Columbia, foreign, tribal or military
17 courts are considered out-of-state convictions or adjudications.

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

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

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

32 (h) Drug crimes are designated as nonperson crimes for criminal
33 history scoring.

34 (i) If the current crime of conviction is for a violation of K.S.A. 8-
35 1602(b)(3) through (b)(5), and amendments thereto, each of the following
36 prior convictions for offenses committed on or after July 1, 2011, shall
37 count as a person felony for criminal history purposes: K.S.A. 8-235, 8-
38 262, 8-287, 8-291, 8-1566, 8-1567, 8-1568, 8-1602, 8-1605 and 40-3104,
39 and amendments thereto, and K.S.A. 2017 Supp. 21-5405(a)(3) and 21-
40 5406, and amendments thereto, or a violation of a city ordinance or law of
41 another state which would also constitute a violation of such sections.

42 (j) The amendments made to this section by chapter 5 of the 2015
43 Session Laws of Kansas are procedural in nature and shall be construed

1 and applied retroactively.

2 Sec. 26. K.S.A. 2017 Supp. 22-2802 is hereby amended to read as
3 follows: 22-2802. (1) Any person charged with a crime shall, at the
4 person's first appearance before a magistrate, be ordered released pending
5 preliminary examination or trial upon the execution of an appearance bond
6 in an amount specified by the magistrate and sufficient to assure the
7 appearance of such person before the magistrate when ordered and to
8 assure the public safety. If the person is being bound over for a felony, the
9 bond shall also be conditioned on the person's appearance in the district
10 court or by way of a two-way electronic audio-video communication as
11 provided in subsection (14) at the time required by the court to answer the
12 charge against such person and at any time thereafter that the court
13 requires. Unless the magistrate makes a specific finding otherwise, if the
14 person is being bonded out for a person felony or a person misdemeanor,
15 the bond shall be conditioned on the person being prohibited from having
16 any contact with the alleged victim of such offense for a period of at least
17 72 hours. The magistrate may impose such of the following additional
18 conditions of release as will reasonably assure the appearance of the
19 person for preliminary examination or trial:

20 (a) Place the person in the custody of a designated person or
21 organization agreeing to supervise such person;

22 (b) place restrictions on the travel, association or place of abode of
23 the person during the period of release;

24 (c) impose any other condition deemed reasonably necessary to
25 assure appearance as required, including a condition requiring that the
26 person return to custody during specified hours;

27 (d) place the person under a house arrest program pursuant to K.S.A.
28 2017 Supp. 21-6609, and amendments thereto; or

29 (e) place the person under the supervision of a court services officer
30 responsible for monitoring the person's compliance with any conditions of
31 release ordered by the magistrate. The magistrate may order the person to
32 pay for any costs associated with the supervision provided by the court
33 services department in an amount not to exceed \$15 per week of such
34 supervision. The magistrate may also order the person to pay for all other
35 costs associated with the supervision and conditions for compliance in
36 addition to the \$15 per week.

37 (2) In addition to any conditions of release provided in subsection (1),
38 for any person charged with a felony, the magistrate may order such
39 person to submit to a drug and alcohol abuse examination and evaluation
40 in a public or private treatment facility or state institution and, if
41 determined by the head of such facility or institution that such person is a
42 drug or alcohol abuser or is incapacitated by drugs or alcohol, to submit to
43 treatment for such drug or alcohol abuse, as a condition of release.

1 (3) The appearance bond shall be executed with sufficient solvent
2 sureties who are residents of the state of Kansas, unless the magistrate
3 determines, in the exercise of such magistrate's discretion, that requiring
4 sureties is not necessary to assure the appearance of the person at the time
5 ordered.

6 (4) A deposit of cash in the amount of the bond may be made in lieu
7 of the execution of the bond pursuant to subsection (3). Except as provided
8 in subsection (5), such deposit shall be in the full amount of the bond and
9 in no event shall a deposit of cash in less than the full amount of bond be
10 permitted. Any person charged with a crime who is released on a cash
11 bond shall be entitled to a refund of all moneys paid for the cash bond,
12 after deduction of any outstanding restitution, costs, fines and fees, after
13 the final disposition of the criminal case if the person complies with all
14 requirements to appear in court. The court may not exclude the option of
15 posting bond pursuant to subsection (3).

16 (5) Except as provided further, the amount of the appearance bond
17 shall be the same whether executed as described in subsection (3) or
18 posted with a deposit of cash as described in subsection (4). When the
19 appearance bond has been set at \$2,500 or less and the most serious charge
20 against the person is a misdemeanor, a severity level 8, 9 or 10 nonperson
21 felony, a drug severity level 4 felony committed prior to July 1, 2012, a
22 drug severity level 5 felony committed on or after July 1, 2012, or a
23 violation of K.S.A. 8-1567 or ~~K.S.A. 2017 Supp. 8-1025~~, and amendments
24 thereto, the magistrate may allow the person to deposit cash with the clerk
25 in the amount of 10% of the bond, provided the person meets at least the
26 following qualifications:

- 27 (A) Is a resident of the state of Kansas;
28 (B) has a criminal history score category of G, H or I;
29 (C) has no prior history of failure to appear for any court
30 appearances;
31 (D) has no detainer or hold from any other jurisdiction;
32 (E) has not been extradited from, and is not awaiting extradition to,
33 another state; and
34 (F) has not been detained for an alleged violation of probation.

35 (6) In the discretion of the court, a person charged with a crime may
36 be released upon the person's own recognizance by guaranteeing payment
37 of the amount of the bond for the person's failure to comply with all
38 requirements to appear in court. The release of a person charged with a
39 crime upon the person's own recognizance shall not require the deposit of
40 any cash by the person.

41 (7) The court shall not impose any administrative fee.

42 (8) In determining which conditions of release will reasonably assure
43 appearance and the public safety, the magistrate shall, on the basis of

1 available information, take into account the nature and circumstances of
2 the crime charged; the weight of the evidence against the defendant;
3 whether the defendant is lawfully present in the United States; the
4 defendant's family ties, employment, financial resources, character, mental
5 condition, length of residence in the community, record of convictions,
6 record of appearance or failure to appear at court proceedings or of flight
7 to avoid prosecution; the likelihood or propensity of the defendant to
8 commit crimes while on release, including whether the defendant will be
9 likely to threaten, harass or cause injury to the victim of the crime or any
10 witnesses thereto; and whether the defendant is on probation or parole
11 from a previous offense at the time of the alleged commission of the
12 subsequent offense.

13 (9) The appearance bond shall set forth all of the conditions of
14 release.

15 (10) A person for whom conditions of release are imposed and who
16 continues to be detained as a result of the person's inability to meet the
17 conditions of release shall be entitled, upon application, to have the
18 conditions reviewed without unnecessary delay by the magistrate who
19 imposed them. If the magistrate who imposed conditions of release is not
20 available, any other magistrate in the county may review such conditions.

21 (11) A magistrate ordering the release of a person on any conditions
22 specified in this section may at any time amend the order to impose
23 additional or different conditions of release. If the imposition of additional
24 or different conditions results in the detention of the person, the provisions
25 of subsection (10) shall apply.

26 (12) Statements or information offered in determining the conditions
27 of release need not conform to the rules of evidence. No statement or
28 admission of the defendant made at such a proceeding shall be received as
29 evidence in any subsequent proceeding against the defendant.

30 (13) The appearance bond and any security required as a condition of
31 the defendant's release shall be deposited in the office of the magistrate or
32 the clerk of the court where the release is ordered. If the defendant is
33 bound to appear before a magistrate or court other than the one ordering
34 the release, the order of release, together with the bond and security shall
35 be transmitted to the magistrate or clerk of the court before whom the
36 defendant is bound to appear.

37 (14) Proceedings before a magistrate as provided in this section to
38 determine the release conditions of a person charged with a crime
39 including release upon execution of an appearance bond may be conducted
40 by two-way electronic audio-video communication between the defendant
41 and the judge in lieu of personal presence of the defendant or defendant's
42 counsel in the courtroom in the discretion of the court. The defendant may
43 be accompanied by the defendant's counsel. The defendant shall be

1 informed of the defendant's right to be personally present in the courtroom
2 during such proceeding if the defendant so requests. Exercising the right to
3 be present shall in no way prejudice the defendant.

4 (15) The magistrate may order the person to pay for any costs
5 associated with the supervision of the conditions of release of the
6 appearance bond in an amount not to exceed \$15 per week of such
7 supervision. As a condition of sentencing under K.S.A. 2017 Supp. 21-
8 6604, and amendments thereto, the court may impose the full amount of
9 any such costs in addition to the \$15 per week, including, but not limited to,
10 costs for treatment and evaluation under subsection (2).

11 Sec. 27. K.S.A. 2017 Supp. 22-2908 is hereby amended to read as
12 follows: 22-2908. (a) In determining whether diversion of a defendant is in
13 the interests of justice and of benefit to the defendant and the community,
14 the county or district attorney shall consider at least the following factors
15 among all factors considered:

16 (1) The nature of the crime charged and the circumstances
17 surrounding it;

18 (2) any special characteristics or circumstances of the defendant;

19 (3) whether the defendant is a first-time offender and if the defendant
20 has previously participated in diversion, according to the certification of
21 the Kansas bureau of investigation or the division of vehicles of the
22 department of revenue;

23 (4) whether there is a probability that the defendant will cooperate
24 with and benefit from diversion;

25 (5) whether the available diversion program is appropriate to the
26 needs of the defendant;

27 (6) whether there is a probability that the defendant committed such
28 crime as a result of an injury, including major depressive disorder,
29 polytrauma, post-traumatic stress disorder or traumatic brain injury,
30 connected to service in a combat zone, as defined in section 112 of the
31 federal internal revenue code of 1986, in the armed forces of the United
32 States of America;

33 (7) if subsection (a)(6) applies to the defendant, whether there is a
34 probability that the defendant will cooperate with and benefit from
35 inpatient or outpatient treatment from any treatment facility or program
36 operated by the United States department of defense, the United States
37 department of veterans affairs or the Kansas national guard with the
38 consent of the defendant, as a condition of diversion;

39 (8) the impact of the diversion of the defendant upon the community;

40 (9) recommendations, if any, of the involved law enforcement
41 agency;

42 (10) recommendations, if any, of the victim;

43 (11) provisions for restitution; and

1 (12) any mitigating circumstances.

2 (b) A county or district attorney shall not enter into a diversion
3 agreement in lieu of further criminal proceedings on a complaint if:

4 (1) The complaint alleges a violation of K.S.A. 8-1567 ~~or K.S.A.~~
5 ~~2017 Supp. 8-1025~~, and amendments thereto, and the defendant: (A) Has
6 previously participated in diversion upon a complaint alleging a violation
7 of that statute or an ordinance of a city in this state which prohibits the acts
8 prohibited by that statute; (B) has previously been convicted of or pleaded
9 nolo contendere to a violation of that statute or a violation of a law of
10 another state or of a political subdivision of this or any other state, which
11 law prohibits the acts prohibited by that statute; or (C) during the time of
12 the alleged violation was involved in a motor vehicle accident or collision
13 resulting in personal injury or death;

14 (2) the complaint alleges that the defendant committed a class A or B
15 felony or for crimes committed on or after July 1, 1993, an off-grid crime,
16 a severity level 1, 2 or 3 felony for nondrug crimes, a drug severity level 1
17 or 2 felony for drug crimes committed on or after July 1, 1993, but prior to
18 July 1, 2012, or a drug severity level 1, 2 or 3 felony committed on or after
19 July 1, 2012; or

20 (3) the complaint alleges a domestic violence offense, as defined in
21 K.S.A. 2017 Supp. 21-5111, and amendments thereto, and the defendant
22 has participated in two or more diversions in the previous five year period
23 upon complaints alleging a domestic violence offense.

24 (c) A county or district attorney may enter into a diversion agreement
25 in lieu of further criminal proceedings on a complaint for violations of
26 article 10 of chapter 32 of the Kansas Statutes Annotated, and amendments
27 thereto, if such diversion carries the same penalties as the conviction for
28 the corresponding violations. If the defendant has previously participated
29 in one or more diversions for violations of article 10 of chapter 32 of the
30 Kansas Statutes Annotated, and amendments thereto, then each subsequent
31 diversion shall carry the same penalties as the conviction for the
32 corresponding violations.

33 (d) As used in this section, "major depressive disorder,"
34 "polytrauma," "post-traumatic stress disorder" and "traumatic brain injury"
35 shall mean the same as such terms are defined in K.S.A. 2017 Supp. 21-
36 6630, and amendments thereto.

37 Sec. 28. K.S.A. 2017 Supp. 22-2909 is hereby amended to read as
38 follows: 22-2909. (a) A diversion agreement shall provide that if the
39 defendant fulfills the obligations of the program described therein, as
40 determined by the attorney general or county or district attorney, such
41 attorney shall act to have the criminal charges against the defendant
42 dismissed with prejudice. The diversion agreement shall include
43 specifically the waiver of all rights under the law or the constitution of

1 Kansas or of the United States to a speedy arraignment, preliminary
2 examinations and hearings, and a speedy trial, and in the case of diversion
3 under subsection (c) waiver of the rights to counsel and trial by jury. The
4 diversion agreement may include, but is not limited to, provisions
5 concerning payment of restitution, including court costs and diversion
6 costs, residence in a specified facility, maintenance of gainful employment,
7 and participation in programs offering medical, educational, vocational,
8 social and psychological services, corrective and preventive guidance and
9 other rehabilitative services. If a county creates a local fund under the
10 property crime restitution and compensation act, a county or district
11 attorney may require in all diversion agreements as a condition of
12 diversion the payment of a diversion fee in an amount not to exceed \$100.
13 Such fees shall be deposited into the local fund and disbursed pursuant to
14 recommendations of the local board under the property crime restitution
15 and victims compensation act.

16 (b) The diversion agreement shall state: (1) The defendant's full
17 name; (2) the defendant's full name at the time the complaint was filed, if
18 different from the defendant's current name; (3) the defendant's sex, race
19 and date of birth; (4) the crime with which the defendant is charged; (5)
20 the date the complaint was filed; and (6) the district court with which the
21 agreement is filed.

22 (c) If a diversion agreement is entered into in lieu of further criminal
23 proceedings on a complaint alleging a violation of K.S.A. 8-1567-~~or~~
24 ~~K.S.A. 2017 Supp. 8-1025~~, and amendments thereto, the diversion
25 agreement shall include a stipulation, agreed to by the defendant, the
26 defendant's attorney if the defendant is represented by an attorney and the
27 attorney general or county or district attorney, of the facts upon which the
28 charge is based and a provision that if the defendant fails to fulfill the
29 terms of the specific diversion agreement and the criminal proceedings on
30 the complaint are resumed, the proceedings, including any proceedings on
31 appeal, shall be conducted on the record of the stipulation of facts relating
32 to the complaint. In addition, the agreement shall include a requirement
33 that the defendant:

34 (1) Pay a fine specified by the agreement in an amount equal to an
35 amount authorized by K.S.A. 8-1567-~~or~~ ~~K.S.A. 2017 Supp. 8-1025~~, and
36 amendments thereto, for a first offense or, in lieu of payment of the fine,
37 perform community service specified by the agreement, in accordance
38 with K.S.A. 8-1567-~~or~~ ~~K.S.A. 2017 Supp. 8-1025~~, and amendments
39 thereto; and

40 (2) participate in an alcohol and drug evaluation conducted by a
41 licensed provider pursuant to K.S.A. 8-1008, and amendments thereto, and
42 follow any recommendation made by the provider after such evaluation.

43 (d) If a diversion agreement is entered into in lieu of further criminal

1 proceedings on a complaint alleging a domestic violence offense, as
2 defined in K.S.A. 2017 Supp. 21-5111, and amendments thereto, the
3 diversion agreement shall include a requirement that the defendant
4 undergo a domestic violence offender assessment and follow all
5 recommendations unless otherwise agreed to with the prosecutor in the
6 diversion agreement. The defendant shall be required to pay for such
7 assessment and, unless otherwise agreed to with the prosecutor in the
8 diversion agreement, for completion of all recommendations.

9 (e) If a diversion agreement is entered into in lieu of further criminal
10 proceedings on a complaint alleging a violation other than K.S.A. 8-1567
11 ~~or K.S.A. 2017 Supp. 8-1025~~, and amendments thereto, the diversion
12 agreement may include a stipulation, agreed to by the defendant, the
13 defendant's attorney if the defendant is represented by an attorney and the
14 attorney general or county or district attorney, of the facts upon which the
15 charge is based and a provision that if the defendant fails to fulfill the
16 terms of the specific diversion agreement and the criminal proceedings on
17 the complaint are resumed, the proceedings, including any proceedings on
18 appeal, shall be conducted on the record of the stipulation of facts relating
19 to the complaint.

20 (f) If the person entering into a diversion agreement is a nonresident,
21 the attorney general or county or district attorney shall transmit a copy of
22 the diversion agreement to the division. The division shall forward a copy
23 of the diversion agreement to the motor vehicle administrator of the
24 person's state of residence.

25 (g) If the attorney general or county or district attorney elects to offer
26 diversion in lieu of further criminal proceedings on the complaint and the
27 defendant agrees to all of the terms of the proposed agreement, the
28 diversion agreement shall be filed with the district court and the district
29 court shall stay further proceedings on the complaint. If the defendant
30 declines to accept diversion, the district court shall resume the criminal
31 proceedings on the complaint.

32 (h) Except as provided in subsection (i), if a diversion agreement is
33 entered into in lieu of further criminal proceedings alleging commission of
34 a misdemeanor by the defendant, while under 21 years of age, under
35 K.S.A. 2017 Supp. 21-5701 through 21-5717, and amendments thereto, or
36 K.S.A. 41-719, 41-727, 41-804, 41-2719 or 41-2720, and amendments
37 thereto, the agreement shall require the defendant to participate in an
38 alcohol and drug evaluation conducted by a licensed provider pursuant to
39 K.S.A. 8-1008, and amendments thereto, and follow any recommendation
40 made by the provider after such evaluation.

41 (i) If the defendant is 18 or more years of age but less than 21 years
42 of age and allegedly committed a violation of K.S.A. 41-727, and
43 amendments thereto, involving cereal malt beverage, the provisions of

1 subsection (h) are permissive and not mandatory.

2 (j) If a diversion agreement is entered into in lieu of further criminal
3 proceedings on a complaint alleging a violation of K.S.A. 2017 Supp. 21-
4 6421, and amendments thereto, the agreement:

5 (1) Shall include a requirement that the defendant pay a fine specified
6 by the agreement in an amount equal to an amount authorized by K.S.A.
7 2017 Supp. 21-6421, and amendments thereto; and

8 (2) may include a requirement that the defendant enter into and
9 complete a suitable educational or treatment program regarding
10 commercial sexual exploitation.

11 (k) Except diversion agreements reported under subsection (l), the
12 attorney general or county or district attorney shall forward to the Kansas
13 bureau of investigation a copy of the diversion agreement at the time such
14 agreement is filed with the district court. The copy of the agreement shall
15 be made available upon request to the attorney general or any county,
16 district or city attorney or court.

17 (l) At the time of filing the diversion agreement with the district
18 court, the attorney general or county or district attorney shall forward to
19 the division of vehicles of the state department of revenue a copy of any
20 diversion agreement entered into in lieu of further criminal proceedings on
21 a complaint alleging a violation of K.S.A. 8-1567, and amendments
22 thereto. The copy of the agreement shall be made available upon request to
23 the attorney general or any county, district or city attorney or court.

24 Sec. 29. K.S.A. 2017 Supp. 22-2910 is hereby amended to read as
25 follows: 22-2910. No defendant shall be required to enter any plea to a
26 criminal charge as a condition for diversion. No statements made by the
27 defendant or counsel in any diversion conference or in any other
28 discussion of a proposed diversion agreement shall be admissible as
29 evidence in criminal proceedings on crimes charged or facts alleged in the
30 complaint. Except for sentencing proceedings and as otherwise provided in
31 ~~subsection (e) of K.S.A. 22-2909(c), and amendments thereto, and as~~
32 ~~otherwise provided in K.S.A. 8-285 and 8-1567 and K.S.A. 2017 Supp. 8-~~
33 ~~4025, and amendments thereto, the following shall not be admissible as~~
34 ~~evidence in criminal proceedings which are resumed under K.S.A. 22-~~
35 ~~2911: (1) Participation in a diversion program; (2) the facts of such~~
36 ~~participation; or (3) the diversion agreement entered into.~~

37 Sec. 30. K.S.A. 2017 Supp. 22-3716 is hereby amended to read as
38 follows: 22-3716. (a) At any time during probation, assignment to a
39 community correctional services program, suspension of sentence or
40 pursuant to subsection (e) for defendants who committed a crime prior to
41 July 1, 1993, and at any time during which a defendant is serving a
42 nonprison sanction for a crime committed on or after July 1, 1993, or
43 pursuant to subsection (e), the court may issue a warrant for the arrest of a

1 defendant for violation of any of the conditions of release or assignment, a
2 notice to appear to answer to a charge of violation or a violation of the
3 defendant's nonprison sanction. The notice shall be personally served upon
4 the defendant. The warrant shall authorize all officers named in the
5 warrant to return the defendant to the custody of the court or to any
6 certified detention facility designated by the court. Any court services
7 officer or community correctional services officer may arrest the defendant
8 without a warrant or may deputize any other officer with power of arrest to
9 do so by giving the officer a written or verbal statement setting forth that
10 the defendant has, in the judgment of the court services officer or
11 community correctional services officer, violated the conditions of the
12 defendant's release or a nonprison sanction. A written statement delivered
13 to the official in charge of a county jail or other place of detention shall be
14 sufficient warrant for the detention of the defendant. After making an
15 arrest, the court services officer or community correctional services officer
16 shall present to the detaining authorities a similar statement of the
17 circumstances of violation. Provisions regarding release on bail of persons
18 charged with a crime shall be applicable to defendants arrested under these
19 provisions.

20 (b) (1) Upon arrest and detention pursuant to subsection (a), the court
21 services officer or community correctional services officer shall
22 immediately notify the court and shall submit in writing a report showing
23 in what manner the defendant has violated the conditions of release or
24 assignment or a nonprison sanction.

25 (2) Unless the defendant, after being apprised of the right to a hearing
26 by the supervising court services or community correctional services
27 officer, waives such hearing, the court shall cause the defendant to be
28 brought before it without unnecessary delay for a hearing on the violation
29 charged. The hearing shall be in open court and the state shall have the
30 burden of establishing the violation. The defendant shall have the right to
31 be represented by counsel and shall be informed by the judge that, if the
32 defendant is financially unable to obtain counsel, an attorney will be
33 appointed to represent the defendant. The defendant shall have the right to
34 present the testimony of witnesses and other evidence on the defendant's
35 behalf. Relevant written statements made under oath may be admitted and
36 considered by the court along with other evidence presented at the hearing.

37 (3) (A) Except as otherwise provided, if the original crime of
38 conviction was a felony, other than a felony specified in K.S.A. 2017
39 Supp. 21-6804(i), and amendments thereto, and a violation is established,
40 the court may impose the violation sanctions as provided in subsection (c)
41 (1).

42 (B) Except as otherwise provided, if the original crime of conviction
43 was a misdemeanor or a felony specified in K.S.A. 2017 Supp. 21-6804(i),

1 and amendments thereto, and a violation is established, the court may:

2 (i) Continue or modify the probation, assignment to a community
3 correctional services program, suspension of sentence or nonprison
4 sanction and impose confinement in a county jail not to exceed 60 days. If
5 an offender is serving multiple probation terms concurrently, any
6 confinement periods imposed shall be imposed concurrently;

7 (ii) impose an intermediate sanction of confinement in a county jail,
8 to be imposed as a two-day or three-day consecutive period. The total of
9 all such sanctions imposed pursuant to this subparagraph and subsections
10 (b)(4)(A) and (b)(4)(B) shall not exceed 18 total days during the term of
11 supervision; or

12 (iii) revoke the probation, assignment to a community correctional
13 services program, suspension of sentence or nonprison sanction and
14 require the defendant to serve the sentence imposed, or any lesser
15 sentence, and, if imposition of sentence was suspended, may impose any
16 sentence which might originally have been imposed.

17 (4) Except as otherwise provided, if the defendant waives the right to
18 a hearing and the sentencing court has not specifically withheld the
19 authority from court services or community correctional services to
20 impose sanctions, the following sanctions may be imposed without further
21 order of the court:

22 (A) If the defendant was on probation at the time of the violation, the
23 defendant's supervising court services officer, with the concurrence of the
24 chief court services officer, may impose an intermediate sanction of
25 confinement in a county jail, to be imposed as a two-day or three-day
26 consecutive period. The total of all such sanctions imposed pursuant to this
27 subparagraph and subsections (b)(4)(B) and (c)(1)(B) shall not exceed 18
28 total days during the term of supervision; and

29 (B) if the defendant was assigned to a community correctional
30 services program at the time of the violation, the defendant's community
31 corrections officer, with the concurrence of the community corrections
32 director, may impose an intermediate sanction of confinement in a county
33 jail, to be imposed as a two-day or three-day consecutive period. The total
34 of all such sanctions imposed pursuant to this subparagraph and
35 subsections (b)(4)(A) and (c)(1)(B) shall not exceed 18 total days during
36 the term of supervision.

37 (c) (1) Except as otherwise provided, if the original crime of
38 conviction was a felony, other than a felony specified in K.S.A. 2017
39 Supp. 21-6804(i), and amendments thereto, and a violation is established,
40 the court may impose the following sanctions:

41 (A) Continuation or modification of the release conditions of the
42 probation, assignment to a community correctional services program,
43 suspension of sentence or nonprison sanction;

1 (B) continuation or modification of the release conditions of the
2 probation, assignment to a community correctional services program,
3 suspension of sentence or nonprison sanction and an intermediate sanction
4 of confinement in a county jail to be imposed as a two-day or three-day
5 consecutive period. The total of all such sanctions imposed pursuant to this
6 subparagraph and subsections (b)(4)(A) and (b)(4)(B) shall not exceed 18
7 total days during the term of supervision;

8 (C) if the violator already had at least one intermediate sanction
9 imposed pursuant to subsection (b)(4)(A), (b)(4)(B) or (c)(1)(B) related to
10 the crime for which the original supervision was imposed, continuation or
11 modification of the release conditions of the probation, assignment to a
12 community correctional services program, suspension of sentence or
13 nonprison sanction and remanding the defendant to the custody of the
14 secretary of corrections for a period of 120 days, subject to a reduction of
15 up to 60 days in the discretion of the secretary. This sanction shall not be
16 imposed more than once during the term of supervision. The sanction
17 imposed pursuant to this subparagraph shall begin upon pronouncement by
18 the court and shall not be served by prior confinement credit, except as
19 provided in subsection (c)(7);

20 (D) if the violator already had a sanction imposed pursuant to
21 subsection (b)(4)(A), (b)(4)(B), (c)(1)(B) or (c)(1)(C) related to the crime
22 for which the original supervision was imposed, continuation or
23 modification of the release conditions of the probation, assignment to a
24 community correctional services program, suspension of sentence or
25 nonprison sanction and remanding the defendant to the custody of the
26 secretary of corrections for a period of 180 days, subject to a reduction of
27 up to 90 days in the discretion of the secretary. This sanction shall not be
28 imposed more than once during the term of supervision. The sanction
29 imposed pursuant to this subparagraph shall begin upon pronouncement by
30 the court and shall not be served by prior confinement credit, except as
31 provided in subsection (c)(7); or

32 (E) if the violator already had a sanction imposed pursuant to
33 subsection (c)(1)(C) or (c)(1)(D) related to the crime for which the original
34 supervision was imposed, revocation of the probation, assignment to a
35 community corrections services program, suspension of sentence or
36 nonprison sanction and requiring such violator to serve the sentence
37 imposed, or any lesser sentence and, if imposition of sentence was
38 suspended, imposition of any sentence which might originally have been
39 imposed.

40 (2) Except as otherwise provided in subsections (c)(3), (c)(8) and (c)
41 (9), no offender for whom a violation of conditions of release or
42 assignment or a nonprison sanction has been established as provided in
43 this section shall be required to serve any time for the sentence imposed or

1 which might originally have been imposed in a state facility in the custody
2 of the secretary of corrections for such violation, unless such person has
3 already had at least one prior assignment to a community correctional
4 services program related to the crime for which the original sentence was
5 imposed.

6 (3) The provisions of subsection (c)(2) shall not apply to adult felony
7 offenders as described in K.S.A. 75-5291(a)(3), and amendments thereto.

8 (4) The court may require an offender for whom a violation of
9 conditions of release or assignment or a nonprison sanction has been
10 established as provided in this section to serve any time for the sentence
11 imposed or which might originally have been imposed in a state facility in
12 the custody of the secretary of corrections without a prior assignment to a
13 community correctional services program if the court finds and sets forth
14 with particularity the reasons for finding that the safety of the members of
15 the public will be jeopardized or that the welfare of the inmate will not be
16 served by such assignment to a community correctional services program.

17 (5) When a new felony is committed while the offender is on
18 probation or assignment to a community correctional services program, the
19 new sentence shall be imposed consecutively pursuant to the provisions of
20 K.S.A. 2017 Supp. 21-6606, and amendments thereto, and the court may
21 sentence the offender to imprisonment for the new conviction, even when
22 the new crime of conviction otherwise presumes a nonprison sentence. In
23 this event, imposition of a prison sentence for the new crime does not
24 constitute a departure.

25 (6) Except as provided in subsection (f), upon completion of a
26 violation sanction imposed pursuant to subsection (c)(1)(C) or (c)(1)(D)
27 such offender shall return to community correctional services supervision.
28 The sheriff shall not be responsible for the return of the offender to the
29 county where the community correctional services supervision is assigned.

30 (7) A violation sanction imposed pursuant to subsection (c)(1)(B), (c)
31 (1)(C) or (c)(1)(D) shall not be longer than the amount of time remaining
32 on the offender's underlying prison sentence.

33 (8) (A) If the offender commits a new felony or misdemeanor while
34 the offender is on probation, assignment to a community correctional
35 services program, suspension of sentence or nonprison sanction, the court
36 may revoke the probation, assignment to a community correctional
37 services program, suspension of sentence or nonprison sanction of an
38 offender pursuant to subsection (c)(1)(E) without having previously
39 imposed a sanction pursuant to subsection (c)(1)(B), (c)(1)(C) or (c)(1)(D).

40 (B) If the offender absconds from supervision while the offender is on
41 probation, assignment to a community correctional services program,
42 suspension of sentence or nonprison sanction, the court may:

43 (i) Revoke the probation, assignment to a community correctional

1 services program, suspension of sentence or nonprison sanction of an
2 offender pursuant to subsection (c)(1)(E) without having previously
3 imposed a sanction pursuant to subsection (c)(1)(B), (c)(1)(C) or (c)(1)
4 (D); or

5 (ii) sanction the offender under subsection (c)(1)(A), (c)(1)(C) or (c)
6 (1)(D) without imposing a sanction under (c)(1)(B).

7 (9) The court may revoke the probation, assignment to a community
8 correctional services program, suspension of sentence or nonprison
9 sanction of an offender pursuant to subsection (c)(1)(E) without having
10 previously imposed a sanction pursuant to subsection (c)(1)(B), (c)(1)(C)
11 or (c)(1)(D) if:

12 (A) The court finds and sets forth with particularity the reasons for
13 finding that the safety of members of the public will be jeopardized or that
14 the welfare of the offender will not be served by such sanction; or

15 (B) the probation, assignment to a community correctional services
16 program, suspension of sentence or nonprison sanction was originally
17 granted as the result of a dispositional departure granted by the sentencing
18 court pursuant to K.S.A. 2017 Supp. 21-6815, and amendments thereto.

19 (10) If an offender is serving multiple probation terms concurrently,
20 any violation sanctions imposed pursuant to subsection (c)(1)(B), (c)(1)(C)
21 or (c)(1)(D), or any sanction imposed pursuant to subsection (c)(11), shall
22 be imposed concurrently.

23 (11) If the original crime of conviction was a felony, except for
24 violations of K.S.A. 8-1567, ~~or 8-2,144 and K.S.A. 2017 Supp. 8-1025,~~
25 and amendments thereto, and the court makes a finding that the offender
26 has committed one or more violations of the release conditions of the
27 probation, assignment to a community correctional services program,
28 suspension of sentence or nonprison sanction, the court may impose
29 confinement in a county jail not to exceed 60 days upon each such finding.
30 Such confinement is separate and distinct from the violation sanctions
31 provided in subsection (c)(1)(B), (c)(1)(C), (c)(1)(D) and (c)(1)(E) and
32 shall not be imposed at the same time as any such violation sanction.

33 (12) The violation sanctions provided in this subsection shall apply to
34 any violation of conditions of release or assignment or a nonprison
35 sanction occurring on and after July 1, 2013, regardless of when the
36 offender was sentenced for the original crime or committed the original
37 crime for which sentenced.

38 (d) A defendant who is on probation, assigned to a community
39 correctional services program, under suspension of sentence or serving a
40 nonprison sanction and for whose return a warrant has been issued by the
41 court shall be considered a fugitive from justice if it is found that the
42 warrant cannot be served. If it appears that the defendant has violated the
43 provisions of the defendant's release or assignment or a nonprison

1 sanction, the court shall determine whether the time from the issuing of the
2 warrant to the date of the defendant's arrest, or any part of it, shall be
3 counted as time served on probation, assignment to a community
4 correctional services program, suspended sentence or pursuant to a
5 nonprison sanction.

6 (e) The court shall have 30 days following the date probation,
7 assignment to a community correctional service program, suspension of
8 sentence or a nonprison sanction was to end to issue a warrant for the
9 arrest or notice to appear for the defendant to answer a charge of a
10 violation of the conditions of probation, assignment to a community
11 correctional service program, suspension of sentence or a nonprison
12 sanction.

13 (f) For crimes committed on and after July 1, 2013, a felony offender
14 whose nonprison sanction is revoked pursuant to subsection (c) or whose
15 underlying prison term expires while serving a sanction pursuant to
16 subsection (c)(1)(C) or (c)(1)(D) shall serve a period of postrelease
17 supervision upon the completion of the prison portion of the underlying
18 sentence.

19 (g) Offenders who have been sentenced pursuant to K.S.A. 2017
20 Supp. 21-6824, and amendments thereto, and who subsequently violate a
21 condition of the drug and alcohol abuse treatment program shall be subject
22 to an additional nonprison sanction for any such subsequent violation.
23 Such nonprison sanctions shall include, but not be limited to, up to 60 days
24 in a county jail, fines, community service, intensified treatment, house
25 arrest and electronic monitoring.

26 Sec. 31. K.S.A. 2017 Supp. 22-4704 is hereby amended to read as
27 follows: 22-4704. (a) In accordance with the provisions of K.S.A. 77-415
28 et seq., and amendments thereto, the director shall adopt appropriate rules
29 and regulations for agencies in the executive branch of government and for
30 criminal justice agencies other than those that are part of the judicial
31 branch of government to implement the provisions of this act.

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

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

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

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

1 information;

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

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

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

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

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

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

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

21 (f) On or before July 1, 2014, the director shall adopt rules and
22 regulations requiring district courts to electronically report all case filings
23 and dispositions for violations of K.S.A. 8-1567 or K.S.A. 2017 Supp.-~~8-~~
24 ~~4025~~, 21-5426, 21-6419, 21-6420, 21-6421 or 21-6422, and amendments
25 thereto, to the central repository.

26 Sec. 32. K.S.A. 2017 Supp. 60-427 is hereby amended to read as
27 follows: 60-427. (a) As used in this section:

28 (1) "Patient" means a person who, for the sole purpose of securing
29 preventive, palliative, or curative treatment, or a diagnosis preliminary to
30 such treatment, of such person's physical or mental condition, consults a
31 physician, or submits to an examination by a physician.

32 (2) "Physician" means a person licensed or reasonably believed by
33 the patient to be licensed to practice medicine or one of the healing arts as
34 defined in K.S.A. 65-2802, and amendments thereto, in the state or
35 jurisdiction in which the consultation or examination takes place.

36 (3) "Holder of the privilege" means the patient while alive and not
37 under guardianship or conservatorship or the guardian or conservator of
38 the patient, or the personal representative of a deceased patient.

39 (4) "Confidential communication between physician and patient"
40 means such information transmitted between physician and patient,
41 including information obtained by an examination of the patient, as is
42 transmitted in confidence and by a means which, so far as the patient is
43 aware, discloses the information to no third persons other than those

1 reasonably necessary for the transmission of the information or the
2 accomplishment of the purpose for which it is transmitted.

3 (b) Except as provided by subsections (c), (d), (e) and (f), a person,
4 whether or not a party, has a privilege in a civil action or in a prosecution
5 for a misdemeanor, other than a prosecution for a violation of K.S.A. 8-
6 2,144 or 8-1567 or ~~K.S.A. 2017 Supp. 8-1025~~, and amendments thereto, or
7 a city ordinance or county resolution which prohibits the acts prohibited by
8 those statutes, to refuse to disclose, and to prevent a witness from
9 disclosing, a communication, if the person claims the privilege and the
10 judge finds that: (1) The communication was a confidential
11 communication between patient and physician; (2) the patient or the
12 physician reasonably believed the communication necessary or helpful to
13 enable the physician to make a diagnosis of the condition of the patient or
14 to prescribe or render treatment therefor; (3) the witness (i) is the holder of
15 the privilege, (ii) at the time of the communication was the physician or a
16 person to whom disclosure was made because reasonably necessary for the
17 transmission of the communication or for the accomplishment of the
18 purpose for which it was transmitted or (iii) is any other person who
19 obtained knowledge or possession of the communication as the result of an
20 intentional breach of the physician's duty of nondisclosure by the
21 physician or the physician's agent or servant; and (4) the claimant is the
22 holder of the privilege or a person authorized to claim the privilege for the
23 holder of the privilege.

24 (c) There is no privilege under this section as to any relevant
25 communication between the patient and the patient's physician: (1) Upon
26 an issue of the patient's condition in an action to commit the patient or
27 otherwise place the patient under the control of another or others because
28 of alleged incapacity or mental illness, in an action in which the patient
29 seeks to establish the patient's competence or in an action to recover
30 damages on account of conduct of the patient which constitutes a criminal
31 offense other than a misdemeanor; (2) upon an issue as to the validity of a
32 document as a will of the patient; or (3) upon an issue between parties
33 claiming by testate or intestate succession from a deceased patient.

34 (d) There is no privilege under this section in an action in which the
35 condition of the patient is an element or factor of the claim or defense of
36 the patient or of any party claiming through or under the patient or
37 claiming as a beneficiary of the patient through a contract to which the
38 patient is or was a party.

39 (e) There is no privilege under this section: (1) As to blood drawn at
40 the request of a law enforcement officer pursuant to K.S.A. 8-1001, and
41 amendments thereto; and (2) as to information which the physician or the
42 patient is required to report to a public official or as to information
43 required to be recorded in a public office, unless the statute requiring the

1 report or record specifically provides that the information shall not be
2 disclosed.

3 (f) No person has a privilege under this section if the judge finds that
4 sufficient evidence, aside from the communication has been introduced to
5 warrant a finding that the services of the physician were sought or
6 obtained to enable or aid anyone to commit or to plan to commit a crime or
7 a tort, or to escape detection or apprehension after the commission of a
8 crime or a tort.

9 (g) A privilege under this section as to a communication is terminated
10 if the judge finds that any person while a holder of the privilege has caused
11 the physician or any agent or servant of the physician to testify in any
12 action to any matter of which the physician or the physician's agent or
13 servant gained knowledge through the communication.

14 (h) Providing false information to a physician for the purpose of
15 obtaining a prescription-only drug shall not be a confidential
16 communication between physician and patient and no person shall have a
17 privilege in any prosecution for unlawfully obtaining or distributing a
18 prescription-only drug under K.S.A. 2017 Supp. 21-5708, and
19 amendments thereto.

20 Sec. 33. K.S.A. 2017 Supp. 74-2012 is hereby amended to read as
21 follows: 74-2012. (a) (1) All motor vehicle records shall be subject to the
22 provisions of the open records act, except as otherwise provided under the
23 provisions of this section and by K.S.A. 65-2422d and 74-2022, and
24 amendments thereto.

25 (2) Nothing in this section shall prevent the transmittal of motor
26 vehicle records for the purpose of processing voter registration
27 applications.

28 (3) For the purpose of this section, "motor vehicle records" means
29 any record that pertains to a motor vehicle drivers' license, motor vehicle
30 certificate of title, motor vehicle registration or identification card issued
31 by the division of vehicles.

32 (b) All motor vehicle records which relate to the physical or mental
33 condition of any person, have been expunged or are photographs or digital
34 images maintained in connection with the issuance of drivers' licenses
35 shall be confidential and shall not be disclosed except in accordance with a
36 proper judicial order or as otherwise more specifically provided in this
37 section or by other law. Photographs or digital images maintained by the
38 division of vehicles in connection with the issuance of drivers' licenses
39 may be disclosed to any federal, state or local agency, including any court
40 or law enforcement agency, to assist such agency in carrying out the
41 functions required of such governmental agency. In January of each year
42 the division shall report to the house committee on veterans, military and
43 homeland security regarding the utilization of the provisions of this

1 subsection. Motor vehicle records relating to diversion agreements for the
2 purposes of K.S.A. 8-1567, 12-4415 and 22-2908 ~~and K.S.A. 2017 Supp.~~
3 ~~8-1025~~, and amendments thereto, shall be confidential and shall not be
4 disclosed except in accordance with a proper judicial order or by direct
5 computer access to:

6 (1) A city, county or district attorney, for the purpose of determining a
7 person's eligibility for diversion or to determine the proper charge for a
8 violation of K.S.A. 8-2,144 or 8-1567 ~~or K.S.A. 2017 Supp. 8-1025~~, and
9 amendments thereto, or any ordinance of a city or resolution of a county in
10 this state which prohibits any acts prohibited by those statutes;

11 (2) a municipal or district court, for the purpose of using the record in
12 connection with any matter before the court;

13 (3) a law enforcement agency, for the purpose of supplying the record
14 to a person authorized to obtain it under paragraph (1) or (2) ~~of this~~
15 ~~subsection~~; or

16 (4) an employer when a person is required to retain a commercial
17 driver's license due to the nature of such person's employment.

18 (c) Lists of persons' names and addresses contained in or derived
19 from motor vehicle records shall not be sold, given or received for the
20 purposes prohibited by K.S.A. 2017 Supp. 45-230, and amendments
21 thereto, except that:

22 (1) The director of vehicles may provide to a requesting party, and a
23 requesting party may receive, such a list and accompanying information
24 from motor vehicle records upon written certification that the requesting
25 party shall use the list solely for the purpose of:

26 (A) Assisting manufacturers of motor vehicles in compiling statistical
27 reports or in notifying owners of vehicles believed to:

28 (i) Have safety-related defects;

29 (ii) fail to comply with emission standards; or

30 (iii) have any defect to be remedied at the expense of the
31 manufacturer;

32 (B) assisting an insurer authorized to do business in this state, or the
33 insurer's authorized agent:

34 (i) In processing an application for, or renewal or cancellation of, a
35 motor vehicle liability insurance policy; or

36 (ii) in conducting antifraud activities by identifying potential
37 undisclosed drivers of a motor vehicle currently insured by an insurer
38 licensed to do business in this state by providing only the following
39 information: Drivers' license number, license type, date of birth, name,
40 address, issue date and expiration date;

41 (C) assisting the selective service system in the maintenance of a list
42 of persons 18 to 26 years of age in this state as required under the
43 provisions of section 3 of the federal military selective service act;

1 (D) assisting any federal, state or local agency, including any court or
2 law enforcement agency, or any private person acting on behalf of such
3 agencies in carrying out the functions required of such governmental
4 agency, except that such records shall not be redisclosed;

5 (E) assisting businesses with the verification or reporting of
6 information derived from the title and registration records of the division
7 to prepare and assemble vehicle history reports, except that such vehicle
8 history reports shall not include the names or addresses of any current or
9 previous owners;

10 (F) assisting businesses in producing motor vehicle title or motor
11 vehicle registration, or both, statistical reports, so long as personal
12 information is not published, redisclosed or used to contact individuals;

13 (G) assisting an employer or an employer's authorized agent in
14 monitoring the driving record of the employees required to drive in the
15 course of employment to ensure driver behavior, performance or safety; or

16 (H) assisting the Kansas commission on veterans affairs office in
17 notifying veterans of the facilities, benefits and services available to
18 veterans.

19 (2) Any law enforcement agency of this state which has access to
20 motor vehicle records may furnish to a requesting party, and a requesting
21 party may receive, such a list and accompanying information from such
22 records upon written certification that the requesting party shall use the list
23 solely for the purpose of assisting an insurer authorized to do business in
24 this state, or the insurer's authorized agent, in processing an application
25 for, or renewal or cancellation of, a motor vehicle liability insurance
26 policy.

27 (d) If a law enforcement agency of this state furnishes information to
28 a requesting party pursuant to ~~paragraph (2) of~~ subsection (c)(2), the law
29 enforcement agency shall charge the fee prescribed by the secretary of
30 revenue pursuant to K.S.A. 74-2022, and amendments thereto, for any
31 copies furnished and may charge an additional fee to be retained by the
32 law enforcement agency to cover its cost of providing such copies. The fee
33 prescribed pursuant to K.S.A. 74-2022, and amendments thereto, shall be
34 paid monthly to the secretary of revenue and upon receipt thereof shall be
35 deposited in the state treasury to the credit of the electronic databases fee
36 fund, except for the \$1 of the fee for each record required to be credited to
37 the highway patrol training center fund under subsection (f).

38 (e) The secretary of revenue, the secretary's agents or employees, the
39 director of vehicles or the director's agents or employees shall not be liable
40 for damages caused by any negligent or wrongful act or omission of a law
41 enforcement agency in furnishing any information obtained from motor
42 vehicle records.

43 (f) A fee in an amount fixed by the secretary of revenue pursuant to

1 K.S.A. 74-2022, and amendments thereto, of not less than \$2 for each full
2 or partial motor vehicle record shall be charged by the division, except that
3 the director may charge a lesser fee pursuant to a contract between the
4 secretary of revenue and any person to whom the director is authorized to
5 furnish information under ~~paragraph (1)~~ of subsection (c)(1), and such fee
6 shall not be less than the cost of production or reproduction of any full or
7 partial motor vehicle record requested. Except for the fees charged
8 pursuant to a contract for motor vehicle records authorized by this
9 subsection pertaining to motor vehicle titles or motor vehicle registrations
10 or pursuant to subsection (c)(1)(B)(ii) or (c)(1)(D), \$1 shall be credited to
11 the highway patrol training center fund for each motor vehicle record
12 provided by the division of vehicles.

13 (g) The secretary of revenue may adopt such rules and regulations as
14 are necessary to implement the provisions of this section.

15 Sec. 34. K.S.A. 2017 Supp. 8-235, 8-241, 8-262, 8-285, 8-2,142, 8-
16 2,144, 8-1001, 8-1008, 8-1013, 8-1014, 8-1025, 8-1501, 8-1567, 12-4106,
17 12-4120, 12-4413, 12-4414, 12-4415, 12-4416, 12-4516, 12-4516f, 12-
18 4517, 21-5203, 21-6604, 21-6614, 21-6804, 21-6811, 22-2802, 22-2908,
19 22-2909, 22-2910, 22-3716, 22-4704, 60-427 and 74-2012 are hereby
20 repealed.

21 Sec. 35. This act shall take effect and be in force from and after its
22 publication in the statute book.