

HOUSE BILL No. 2377

By Committee on Judiciary

2-12

1 AN ACT concerning driving; relating to driving under the influence;
2 authorizing reinstatement of a driver's license for certain persons with
3 an ignition interlock device restriction; removing the motorized bicycle
4 license option for persons whose driving privileges are suspended for a
5 DUI-related offense; allowing certain persons disqualified from driving
6 a commercial motor vehicle to have commercial driving privileges
7 restored; modifying the criminal penalties for driving a commercial
8 motor vehicle under the influence and driving under the influence,
9 authorizing courts to waive certain fines and clarifying that amendment
10 or dismissal of certain charges is permitted; allowing persons with
11 suspended driving privileges to seek driving privileges restricted to
12 driving only a motor vehicle equipped with an ignition interlock device
13 earlier in the suspension period; requiring persons with an ignition
14 interlock device restriction to complete the ignition interlock device
15 program before driving privileges are fully reinstated; requiring the
16 secretary of revenue to adopt certain rules and regulations related to
17 ignition interlock devices; providing for reduced ignition interlock
18 device program costs for certain persons; reducing the restricted driving
19 privileges period for certain persons less than 21 years of age;
20 clarifying that a city attorney or a county or district attorney shall not
21 enter into a diversion agreement for certain traffic violations if the
22 defendant is a commercial driver's license holder; amending K.S.A. 8-
23 1016 and K.S.A. 2020 Supp. 8-235, 8-2,142, 8-2,144, 8-1015, 8-1567,
24 8-1567a, 12-4415 and 22-2908 and repealing the existing sections.

25

26 *Be it enacted by the Legislature of the State of Kansas:*

27 New Section 1. (a) Any person whose license is restricted to
28 operating only a motor vehicle with an ignition interlock device installed
29 and who meets the requirements of subsection (b) may request
30 reinstatement of such person's driver's license by submitting a request to
31 the division in a form and manner prescribed by the division.

32 (b) The division shall approve the request for reinstatement of the
33 person's driver's license if the division determines all the following
34 conditions are met:

35 (1) The person's ignition interlock device restriction period has been
36 extended at least five years, not including any period of incarceration,

1 beyond the initial ignition interlock device restriction period required by
2 law due to the person's failure to provide the division with proof of
3 completion of the ignition interlock device program as required by K.S.A.
4 8-1015, and amendments thereto;

5 (2) during the person's ignition interlock device restriction period and
6 any extension thereof, the person has not had an alcohol or drug-related
7 conviction or occurrence, as those terms are defined by K.S.A. 8-1013,
8 and amendments thereto, or a conviction of a violation of K.S.A. 8-1017,
9 and amendments thereto, or of a law of another state, or of a political
10 subdivision thereof, that prohibits the acts prohibited by K.S.A. 8-1017,
11 and amendments thereto;

12 (3) during the person's ignition interlock device restriction period and
13 any extension thereof, the person has not had any of the following:

14 (A) Conviction of a violation of K.S.A. 8-1599, and amendments
15 thereto;

16 (B) conviction of a violation of K.S.A. 41-727, and amendments
17 thereto;

18 (C) conviction of any violation listed in K.S.A. 8-285(a), and
19 amendments thereto;

20 (D) conviction of two or more moving traffic violations committed on
21 separate occasions; or

22 (E) revocation, suspension, cancellation or withdrawal of the person's
23 driving privileges due to another action by the division or a court; and

24 (4) at the time of submitting the request to the division, the person
25 does not have any pending charges or proceedings involving any violation
26 listed in subsection (b)(2) or (3).

27 Sec. 2. K.S.A. 2020 Supp. 8-235 is hereby amended to read as
28 follows: 8-235. (a) No person, except those expressly exempted, shall
29 drive any motor vehicle upon a highway in this state unless such person
30 has a valid driver's license. No person shall receive a driver's license
31 unless and until such person surrenders or with the approval of the
32 division, lists to the division all valid licenses in such person's possession
33 issued to such person by any other jurisdiction. All surrendered licenses or
34 the information listed on foreign licenses shall be returned by the division
35 to the issuing department, together with information that the licensee is
36 now licensed in a new jurisdiction. No person shall be permitted to have
37 more than one valid license at any time.

38 (b) Any person licensed under the motor vehicle drivers' license act
39 may exercise the privilege granted upon all streets and highways in this
40 state and shall not be required to obtain any other license to exercise such
41 privilege by any local authority. Nothing herein shall prevent cities from
42 requiring licenses of persons who drive taxicabs or municipally franchised
43 transit systems for hire upon city streets, to protect the public from drivers

1 whose character or habits make them unfit to transport the public. If a
2 license is denied, the applicant may appeal such decision to the district
3 court of the county in which such city is located by filing within 14 days
4 after such denial, a notice of appeal with the clerk of the district court and
5 by filing a copy of such notice with the city clerk of the involved city. The
6 city clerk shall certify a copy of such decision of the city governing body
7 to the clerk of the district court and the matter shall be docketed as any
8 other cause and the applicant shall be granted a trial of such person's
9 character and habits. The matter shall be heard by the court de novo in
10 accordance with the code of civil procedure. The cost of such appeal shall
11 be assessed in such manner as the court may direct.

12 (c) Any person operating in this state a motor vehicle shall be the
13 holder of a driver's license that is classified for the operation of such motor
14 vehicle, and any person operating in this state a motorcycle that is
15 registered in this state shall be the holder of a class M driver's license.

16 (d) No person shall drive any motorized bicycle upon a highway of
17 this state unless such person:

18 (1) Has a valid driver's license that entitles the licensee to drive a
19 motor vehicle in any class or classes;

20 (2) is at least 15 years of age and has passed the written and visual
21 examinations required for obtaining a class C driver's license, in which
22 case the division shall issue to such person a class C license, which shall
23 clearly indicate that such license is valid only for the operation of
24 motorized bicycles; *or*

25 ~~(3) has had their driving privileges suspended, for a violation other than~~
26 ~~a violation of K.S.A. 8-2,144, and amendments thereto, or a second or~~
27 ~~subsequent violation of K.S.A. 8-1567 or 8-1567a, and amendments~~
28 ~~thereto, and such person: (A) Has completed the mandatory period of~~
29 ~~suspension as provided in K.S.A. 8-1014, and amendments thereto; and~~
30 ~~(B) has made application and submitted a \$40 nonrefundable application~~
31 ~~fee to the division for the issuance of a class C license for the operation of~~
32 ~~motorized bicycles, in accordance with paragraph (2), in which case the~~
33 ~~division shall issue to such person a class C license, which shall clearly~~
34 ~~indicate that such license is valid only for the operation of motorized~~
35 ~~bicycles; or (4) has had their driving privileges revoked under K.S.A. 8-~~
36 ~~286, and amendments thereto, has not had a test refusal or test failure or~~
37 ~~alcohol or drug-related conviction, as those terms are defined in K.S.A. 8-~~
38 ~~1013, and amendments thereto, in the last five years, has not been~~
39 ~~convicted of a violation of K.S.A. 8-1568(b), and amendments thereto, in~~
40 ~~the last five years and has made application to the division for issuance of~~
41 ~~a class C license for the operation of motorized bicycles, in accordance~~
42 ~~with paragraph (2), in which case the division shall issue such person a~~
43 ~~class C license, which shall clearly indicate that such license is valid only~~

1 for the operation of motorized bicycles. As used in this subsection,
 2 "motorized bicycle" shall have the meaning ascribed to it in K.S.A. 8-126,
 3 and amendments thereto.

4 ~~(e) All moneys received under subsection (d) from the nonrefundable~~
 5 ~~application fee shall be applied by the division of vehicles for the~~
 6 ~~additional administrative costs to implement restricted driving privileges.~~
 7 ~~The division shall remit all restricted driving privilege application fees to~~
 8 ~~the state treasurer in accordance with the provisions of K.S.A. 75-4215,~~
 9 ~~and amendments thereto. Upon receipt of each such remittance, the state~~
 10 ~~treasurer shall deposit the entire amount in the state treasury to the credit~~
 11 ~~of the division of vehicles operating fund.~~

12 ~~(f) Violation of this section shall constitute~~ *is a class B nonperson*
 13 ~~misdemeanor.~~

14 Sec. 3. K.S.A. 2020 Supp. 8-2,142 is hereby amended to read as
 15 follows: 8-2,142. (a) A person is disqualified from driving a commercial
 16 motor vehicle for a period of not less than one year upon a first occurrence
 17 of any one of the following:

18 (1) While operating a commercial motor vehicle:

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

21 (B) the person is convicted of violating K.S.A. 8-2,132(b), and
 22 amendments thereto;

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

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

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

29 (2) while operating a noncommercial motor vehicle:

30 (A) The person is convicted of a violation of K.S.A. 8-1567, and
 31 amendments thereto, or of a violation of an ordinance of any city in this
 32 state, a resolution of any county in this state or any law of another state,
 33 which ordinance or law declares to be unlawful the acts prohibited by that
 34 statute; or

35 (B) the person's test refusal or test failure, as defined in K.S.A. 8-
 36 1013, and amendments thereto; or

37 (3) while operating any motor vehicle:

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

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

41 (b) If any offenses, test refusal or test failure specified in subsection
 42 (a) occurred in a commercial motor vehicle while transporting a hazardous
 43 material required to be placarded, the person is disqualified for a period of

1 not less than three years.

2 (c) A person shall be disqualified for life upon the second or a
3 subsequent occurrence of any offense, test refusal or test failure specified
4 in subsection (a), or any combination thereof, arising from two or more
5 separate incidents *occurring on or after July 1, 2003*.

6 ~~(d) (1) The secretary of revenue may adopt rules and regulations~~
7 ~~establishing guidelines, including conditions, under which a~~
8 ~~disqualification for life under subsection (c) may be reduced to a period of~~
9 ~~not less than 10 years.~~ *Any person disqualified for life under subsection (c)*
10 *who seeks to have commercial driving privileges restored after such*
11 *person has been disqualified for at least 10 years shall apply in writing to*
12 *the division.*

13 (2) *The division shall restore a person's commercial driving*
14 *privileges if the division determines:*

15 (A) *None of the occurrences that led to the person's lifetime*
16 *disqualification under subsection (c) included violations described in*
17 *subsection (a)(1)(A) or (a)(1)(E);*

18 (B) *the person has had no occurrence of any offense, test refusal or*
19 *test failure specified in subsection (a) during the 10-year period preceding*
20 *the application;*

21 (C) *the person has had no alcohol or drug related convictions as*
22 *defined in K.S.A. 8-2,128, and amendments thereto, in Kansas or any*
23 *other jurisdiction during the 10-year period preceding the application;*

24 (D) *the person has no pending alcohol or drug related criminal*
25 *charges in Kansas or any other jurisdiction;*

26 (E) *the person has had no convictions for violations that occurred*
27 *while operating a commercial motor vehicle in Kansas or any other*
28 *jurisdiction during the 10-year period preceding the application;*

29 (F) *the person has successfully completed an alcohol or drug*
30 *treatment program, or a comparable program, that meets or exceeds the*
31 *minimum standards approved by the Kansas department for aging and*
32 *disability services if any of the disqualifying offenses were drug or alcohol*
33 *related;*

34 (G) *the person is no longer a threat to the public safety of this state.*
35 *The division may request, and the person shall provide, any additional*
36 *information or documentation which the division deems necessary to*
37 *determine the person's fitness for relicensure;*

38 (H) *the person is otherwise eligible for licensure; and*

39 (I) *the person has not previously been restored to commercial motor*
40 *vehicle privileges following a prior 10-year-minimum disqualification.*

41 (3) *For purposes of verifying a person's prior 10-year alcohol and*
42 *drug history, the person shall provide a copy of the person's closed*
43 *criminal history from any jurisdiction to the division.*

1 (4) *If the division finds the person is eligible for restoration to*
2 *commercial driving status, such person shall complete the written and*
3 *driving skills examinations as specified in K.S.A. 8-2,133, and*
4 *amendments thereto, before a commercial driver license is issued.*

5 (5) *If the person is found ineligible for restoration of commercial*
6 *driving privileges, the division shall notify the person of such findings by*
7 *certified mail and continue the denial of commercial driving privilege*
8 *until such ineligibility has been disproven to the division's satisfaction.*

9 (6) *Any person who previously had such person's commercial motor*
10 *vehicle privileges restored pursuant to this statute shall not be eligible to*
11 *apply for restoration if such person receives another lifetime*
12 *disqualification.*

13 (7) *Any person who is aggrieved by the decision of the division may*
14 *appeal for review in accordance with the Kansas judicial review act,*
15 *K.S.A. 77-601 et seq., and amendments thereto.*

16 (8) *The secretary of revenue shall adopt rules and regulations*
17 *necessary to administer the provisions of this subsection.*

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

23 (2) *A person is disqualified from driving a commercial motor vehicle*
24 *for life who uses a commercial motor vehicle in the commission of a felony*
25 *involving an act or practice of severe forms of trafficking in persons. The*
26 *term "severe forms of trafficking in persons" means:*

27 (A) *Sex trafficking in which a commercial sex act is induced by force,*
28 *fraud or coercion, or in which the person induced to perform such act has*
29 *not attained 18 years of age; or*

30 (B) *the recruitment, harboring, transportation, provision or obtaining*
31 *of a person for labor or services, through the use of force, fraud or*
32 *coercion for the purpose of subjection to involuntary servitude, peonage,*
33 *debt bondage or slavery.*

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

43 (g) *A person is disqualified from driving a commercial motor vehicle*

1 for a period of not less than 60 days if convicted of two serious traffic
2 violations, or 120 days if convicted of three or more serious traffic
3 violations, committed in a noncommercial motor vehicle arising from
4 separate incidents occurring within a three-year period, if such convictions
5 result in the revocation, cancellation or suspension of the person's driving
6 privileges.

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

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

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

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

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

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

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

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

37 (A) ~~For persons~~ Who are not required to always stop, failing to slow
38 down and check that the tracks are clear of an approaching train;

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

41 (C) ~~for persons~~ who are always required to stop, failing to stop before
42 driving onto the crossing;

43 (D) ~~for all persons~~ failing to have sufficient space to drive completely

1 through the crossing without stopping;

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

4 (F) ~~for all persons~~ failing to negotiate a crossing because of
5 insufficient undercarriage clearance.

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

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

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

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

16 (j) After suspending, revoking or canceling a commercial driver's
17 license, the division shall update its records to reflect that action within 10
18 days. After suspending, revoking or canceling a nonresident commercial
19 driver's privileges, the division shall notify the licensing authority of the
20 state which issued the commercial driver's license or nonresident
21 commercial driver's license within 10 days. The notification shall include
22 both the disqualification and the violation that resulted in the
23 disqualification, suspension, revocation or cancellation.

24 (k) Upon receiving notification from the licensing authority of
25 another state, that it has disqualified a commercial driver's license holder
26 licensed by this state, or has suspended, revoked or canceled such
27 commercial driver's license holder's commercial driver's license, the
28 division shall record such notification and the information such
29 notification provides on the driver's record.

30 (l) Upon suspension, revocation, cancellation or disqualification of a
31 commercial driver's license under this act, the license shall be immediately
32 surrendered to the division if still in the licensee's possession. If otherwise
33 eligible, and upon payment of the required fees, the licensee may be issued
34 a noncommercial driver's license for the period of suspension, revocation,
35 cancellation or disqualification of the commercial driver's license under
36 the same identifier number.

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

43 (n) *If a person is disqualified for life under on subsection (c), and at*

1 *least one of the disqualifying incidents occurred prior to July 1, 2003, the*
2 *person may apply to the secretary of revenue for review of the incidents*
3 *and modification of the disqualification. The secretary shall adopt rules*
4 *and regulations establishing guidelines, including conditions, to*
5 *administer this subsection.*

6 Sec. 4. K.S.A. 2020 Supp. 8-2,144 is hereby amended to read as
7 follows: 8-2,144. (a) Driving a commercial motor vehicle under the
8 influence is operating or attempting to operate any commercial motor
9 vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, within this
10 state while:

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

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

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

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

21 (A) On a first conviction, a class B, nonperson misdemeanor. The
22 person convicted shall be sentenced to not less than 48 consecutive hours
23 nor more than six months' imprisonment, or in the court's discretion, 100
24 hours of public service, and fined not less than \$750 nor more than \$1,000.
25 ~~The person convicted shall serve at least 48 consecutive hours'~~
26 ~~imprisonment or 100 hours of public service either before or as a condition~~
27 ~~of any grant of probation, suspension or reduction of sentence or parole or~~
28 ~~other release;~~

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

1 ~~person convicted under a house arrest program pursuant to K.S.A. 2020-~~
2 ~~Supp. 21-6609, and amendments thereto, to serve the five days'~~
3 ~~imprisonment mandated by this subsection only after such person has~~
4 ~~served 48 consecutive hours' imprisonment. The person convicted, if~~
5 ~~placed under house arrest, shall be monitored by an electronic monitoring~~
6 ~~device, which verifies the offender's location. The offender shall serve a~~
7 ~~minimum of 120 hours of confinement within the boundaries of the~~
8 ~~offender's residence. Any exceptions to remaining within the boundaries of~~
9 ~~the offender's residence provided for in the house arrest agreement shall~~
10 ~~not be counted as part of the 120 hours; The following conditions shall~~
11 ~~apply to such sentence:~~

12 *(i) As a condition of any probation granted under this subsection, the*
13 *person shall serve at least 120 hours of confinement. The hours of*
14 *confinement shall include at least 48 hours imprisonment and otherwise*
15 *may be served by a combination of: Imprisonment; a work release*
16 *program, provided such work release program requires such person to*
17 *return to the confinement at the end of each day in the work release*
18 *program; or a house arrest program pursuant to K.S.A. 2020 Supp. 21-*
19 *6609, and amendments thereto; and*

20 *(ii) (a) if the person is placed into a work release program or placed*
21 *under a house arrest program for any portion of the minimum 120 hours*
22 *confinement mandated by this subsection, the person shall receive hour-*
23 *for-hour credit for time served in such program until the minimum*
24 *sentence is met. If the person is placed into a work release program or*
25 *placed under a house arrest program for more than the minimum 120*
26 *hours confinement mandated by this subsection, the person shall receive*
27 *hour-for-hour credit for time served in such program until the minimum*
28 *120 hours confinement is completed, and thereafter the person shall*
29 *receive day-for-day credit for time served in such program unless*
30 *otherwise ordered by the court; and*

31 *(b) when in a work release program, the person shall only be given*
32 *credit for the time served in confinement at the end of and continuing to*
33 *the beginning of the person's work day. When under a house arrest*
34 *program, the person shall be monitored by an electronic monitoring*
35 *device that verifies the person's location and shall only be given credit for*
36 *the time served within the boundaries of the person's residence; and*

37 *(C) on a third or subsequent conviction, a severity level 6, nonperson*
38 *felony. The person convicted shall be sentenced to not less than 90 days*
39 *nor more than one year's imprisonment and fined not less than \$1,750 nor*
40 *more than \$2,500. The person convicted shall not be eligible for release on*
41 *probation, suspension or reduction of sentence or parole until the person*
42 *has served at least 90 days' imprisonment. The 90 days' imprisonment*
43 *mandated by this subsection may be served in a work release program only*

1 after such person has served 48 consecutive hours' imprisonment, provided
2 such work release program requires such person to return to confinement
3 at the end of each day in the work release program. The person convicted,
4 if placed into a work release program, shall serve a minimum of 2,160
5 hours of confinement. Such 2,160 hours of confinement shall be a period
6 of at least 48 consecutive hours of imprisonment followed by confinement
7 hours at the end of and continuing to the beginning of the offender's work
8 day. The court may place the person convicted under a house arrest
9 program pursuant to K.S.A. 2020 Supp. 21-6609, and amendments thereto,
10 to serve the 90 days' imprisonment mandated by this subsection only after
11 such person has served 48 consecutive hours' imprisonment. The person
12 convicted, if placed under house arrest, shall be monitored by an electronic
13 monitoring device, which verifies the offender's location. The offender
14 shall serve a minimum of 2,160 hours of confinement within the
15 boundaries of the offender's residence. Any exceptions to remaining within
16 the boundaries of the offender's residence provided for in the house arrest
17 agreement shall not be counted as part of the 2,160 hours.

18 (2) In addition, for any conviction pursuant to subsection (b)(1)(C), at
19 the time of the filing of the judgment form or journal entry as required by
20 K.S.A. 22-3426, and amendments thereto, or K.S.A. 2020 Supp. 21-6711,
21 and amendments thereto, the court shall cause a certified copy to be sent to
22 the officer having the offender in charge. The court shall determine
23 whether the offender, upon release from imprisonment, shall be supervised
24 by community correctional services or court services based upon the risk
25 and needs of the offender. The risk and needs of the offender shall be
26 determined by use of a risk assessment tool specified by the Kansas
27 sentencing commission. The law enforcement agency maintaining custody
28 and control of a defendant for imprisonment shall cause a certified copy of
29 the judgment form or journal entry to be sent to the supervision office
30 designated by the court and upon expiration of the term of imprisonment
31 shall deliver the defendant to a location designated by the supervision
32 office designated by the court. After the term of imprisonment imposed by
33 the court, the person shall be placed on supervision to community
34 correctional services or court services, as determined by the court, for a
35 mandatory one-year period of supervision, which such period of
36 supervision shall not be reduced. During such supervision, the person shall
37 be required to participate in a multidisciplinary model of services for
38 substance use disorders facilitated by a Kansas department for aging and
39 disability services designated care coordination agency to include
40 assessment and, if appropriate, referral to a community based substance
41 use disorder treatment including recovery management and mental health
42 counseling as needed. The multidisciplinary team shall include the
43 designated care coordination agency, the supervision officer, the aging and

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

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

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

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

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

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

11 (2) *The court may, in its discretion, waive any portion of a fine*
12 *imposed pursuant to this section, except the \$250 required to be remitted*
13 *to the state treasurer pursuant to subsection (q), upon a showing that the*
14 *person successfully completed court-ordered education or treatment.*

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

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

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

21 (h) The court shall electronically report every conviction of a
22 violation of this section to the division. Prior to sentencing under the
23 provisions of this section, the court shall request and shall receive from
24 the:

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

27 (2) Kansas bureau of investigation central repository all criminal
28 history record 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:

33 (1) Disqualify the person from driving a commercial motor vehicle
34 under K.S.A. 8-2,142, and amendments thereto; and

35 (2) suspend, restrict or suspend and restrict the person's driving
36 privileges as provided by K.S.A. 8-1014, and amendments thereto.

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

42 (2) The minimum penalty prescribed by any such ordinance or
43 resolution shall not be less than the minimum penalty prescribed by this

1 section for the same violation, and the maximum penalty in any such
2 ordinance or resolution shall not exceed the maximum penalty prescribed
3 for the same violation.

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

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

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

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

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

22 (l) No plea bargaining agreement shall be entered into nor shall any
23 judge approve a plea bargaining agreement entered into for the purpose of
24 permitting a person charged with a violation of this section, or a violation
25 of any ordinance of a city or resolution of any county in this state which
26 prohibits the acts prohibited by this section, to avoid the mandatory
27 penalties established by this section or by the ordinance or resolution. *This*
28 *subsection shall not be construed to prohibit an amendment or dismissal*
29 *of any charge where the admissible evidence is not sufficient to support a*
30 *conviction beyond a reasonable doubt on such charge.*

31 (m) The alternatives set out in subsection (a) may be pleaded in the
32 alternative, and the state, city or county may, but shall not be required to,
33 elect one or more of such alternatives prior to submission of the case to the
34 fact finder.

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

37 (1) Convictions for a violation of K.S.A. 8-1567, and amendments
38 thereto, or a violation of an ordinance of any city or resolution of any
39 county that prohibits the acts that such section prohibits, or entering into a
40 diversion agreement in lieu of further criminal proceedings on a complaint
41 alleging any such violations, shall be taken into account, but only
42 convictions or diversions occurring on or after July 1, 2001. Nothing in
43 this provision shall be construed as preventing any court from considering

1 any convictions or diversions occurring during the person's lifetime in
 2 determining the sentence to be imposed within the limits provided for a
 3 first, second, third, fourth or subsequent offense;

4 (2) any convictions for a violation of the following sections occurring
 5 during a person's lifetime shall be taken into account:

6 (A) This section;

7 (B) operating a vessel under the influence of alcohol or drugs, K.S.A.
 8 32-1131, and amendments thereto;

9 (C) involuntary manslaughter while driving under the influence of
 10 alcohol or drugs, K.S.A. 21-3442, prior to its repeal, or K.S.A. 2020 Supp.
 11 21-5405(a)(3) or (a)(5), and amendments thereto;

12 (D) aggravated battery as described in K.S.A. 2020 Supp. 21-5413(b)
 13 (3) or (b)(4), and amendments thereto; and

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

18 (3) "conviction" includes:

19 (A) Entering into a diversion agreement in lieu of further criminal
 20 proceedings on a complaint alleging a violation of a crime described in
 21 subsection (n)(2); and

22 (B) conviction of a violation of an ordinance of a city in this state, a
 23 resolution of a county in this state or any law of another jurisdiction that
 24 would constitute an offense that is comparable to the offense described in
 25 subsection (n)(1) or (n)(2);

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

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

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

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

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

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

37 (p) For the purpose of this section:

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

40 (2) "imprisonment" ~~shall include~~ *includes* any restrained environment
 41 in which the court and law enforcement agency intend to retain custody
 42 and control of a defendant and such environment has been approved by the
 43 board of county commissioners or the governing body of a city; and

1 (3) "drug" includes toxic vapors as such term is defined in K.S.A.
2 2020 Supp. 21-5712, and amendments thereto.

3 (q) On and after July 1, 2011, the amount of \$250 from each fine
4 imposed pursuant to this section shall be remitted by the clerk of the
5 district court to the state treasurer in accordance with the provisions of
6 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
7 remittance, the state treasurer shall credit the entire amount to the
8 community corrections supervision fund established by K.S.A. 75-52,113,
9 and amendments thereto.

10 Sec. 5. K.S.A. 2020 Supp. 8-1015 is hereby amended to read as
11 follows: 8-1015. (a) (1) ~~Except as provided in subsection (a)(2);~~ Whenever
12 a person's driving privileges have been suspended ~~for one year~~ as provided
13 in K.S.A. 8-1014(a), and amendments thereto, ~~after 90 days of such~~
14 ~~suspension;~~ such person may apply to the division for such person's
15 driving privileges to be restricted for the ~~remainder of the one-year~~
16 suspension period to driving only a motor vehicle equipped with an
17 ignition interlock device ~~and only for the purposes of getting to and from:~~
18 ~~Work, school or an alcohol treatment program;~~ and the ignition interlock
19 provider for maintenance and downloading of data from the device.

20 (2) ~~Whenever a person's driving privileges have been suspended for~~
21 ~~one year as provided in K.S.A. 8-1014(a)(1), and amendments thereto;~~
22 ~~after 90 days of such suspension,~~ such person may apply to the division for
23 such person's driving privileges to be restricted for the remainder of the
24 one-year suspension period to driving only a motor vehicle equipped with
25 an ignition interlock device and only: Under the circumstances provided
26 by K.S.A. 8-292(a)(1), (2), (3) and (4), and amendments thereto; and for
27 the purpose of getting to and from the ignition interlock provider for
28 maintenance and downloading of data from the device.

29 (3) ~~Except as provided in subsection (a)(4), whenever a person's~~
30 ~~driving privileges have been suspended for one year as provided in K.S.A.~~
31 ~~8-1014(b), and amendments thereto,~~ after 45 days of such suspension, such
32 person may apply to the division for such person's driving privileges to be
33 restricted for the remainder of the one-year suspension period to driving
34 only a motor vehicle equipped with an ignition interlock device and only
35 for the purposes of getting to and from: Work, school or an alcohol
36 treatment program; and the ignition interlock provider for maintenance and
37 downloading of data from the device.

38 (4) ~~Whenever a person's driving privileges have been suspended for~~
39 ~~one year as provided in K.S.A. 8-1014(b)(2)(A), and amendments thereto;~~
40 ~~after 45 days of such suspension,~~ such person may apply to the division for
41 such person's driving privileges to be restricted for the remainder of the
42 one-year suspension period to driving only a motor vehicle equipped with
43 an ignition interlock device and only: Under the circumstances provided

1 by K.S.A. 8-292(a)(1), (2), (3) and (4), and amendments thereto; and for
2 the purpose of getting to and from the ignition interlock provider for
3 maintenance and downloading of data from the device.

4 (5)(2) The division shall assess an application fee of \$100 for a
5 person to apply to modify the suspension to restricted ignition interlock
6 status.

7 (6)(3) The division shall approve the request for such restricted
8 license unless such person's driving privileges have been restricted,
9 suspended, revoked or disqualified pursuant to another action by the
10 division or a court. If the request is approved, upon receipt of proof of the
11 installation of such device, the division shall issue a copy of the order
12 imposing such restrictions on the person's driving privileges and such
13 order shall be carried by the person at any time the person is operating a
14 motor vehicle on the highways of this state. Except as provided in K.S.A.
15 8-1017, and amendments thereto, if such person is convicted of a violation
16 of the restrictions, such person's driving privileges shall be suspended for
17 an additional year, in addition to any term of suspension or restriction as
18 provided in K.S.A. 8-1014(a) or (b), and amendments thereto.

19 (b) (1) Except as provided in subsection (b)(2), when a person has
20 completed the suspension pursuant to K.S.A. 8-1014(b)(1)(A), and
21 amendments thereto, the division shall restrict the person's driving
22 privileges for 180 days to driving only a motor vehicle equipped with an
23 ignition interlock device.

24 (2) When a person has completed the suspension pursuant to K.S.A.
25 8-1014(b)(1)(A), and amendments thereto, the division shall restrict the
26 person's driving privileges for one year to driving only a motor vehicle
27 equipped with an ignition interlock device if the records maintained by the
28 division indicate that such person has previously:

29 (A) Been convicted of a violation of K.S.A. 8-1599, and amendments
30 thereto;

31 (B) been convicted of a violation of K.S.A. 41-727, and amendments
32 thereto;

33 (C) been convicted of any violations listed in K.S.A. 8-285(a), and
34 amendments thereto;

35 (D) been convicted of three or more moving traffic violations
36 committed on separate occasions within a 12-month period; or

37 (E) had such person's driving privileges revoked, suspended, canceled
38 or withdrawn.

39 (c) Except as provided in subsection (b), when a person has
40 completed the suspension pursuant to K.S.A. 8-1014(a) or (b), and
41 amendments thereto, the division shall restrict the person's driving
42 privileges pursuant to K.S.A. 8-1014(a) or (b), and amendments thereto, to
43 driving only a motor vehicle equipped with an ignition interlock device.

1 Upon restricting a person's driving privileges pursuant to this subsection,
2 the division shall issue a copy of the order imposing the restrictions which
3 is required to be carried by the person at any time the person is operating a
4 motor vehicle on the highways of this state.

5 (d) (1) Whenever an ignition interlock device is required by law, such
6 ignition interlock device shall be approved by the division and maintained
7 at the person's expense. Proof of the installation of such ignition interlock
8 device, for the entire period required by the applicable law, shall be
9 provided to the division before the person's driving privileges are fully
10 reinstated.

11 (2) Every person who has an ignition interlock device installed as
12 required by law shall be required to complete the ignition interlock device
13 program pursuant to *this section and* rules and regulations adopted by the
14 secretary of revenue ~~and proof of completion shall be provided to the~~
15 ~~division by.~~ *A person may only complete the ignition interlock device*
16 *program if the person has not more than three standard violations and no*
17 *serious violation in the 90 consecutive days prior to application for*
18 *reinstatement and the application occurs upon or after expiration of the*
19 *applicable ignition interlock period required by law.* The approved service
20 provider shall provide proof of completion to the division before the
21 person's driving privileges are fully reinstated.

22 (3) *As used in this subsection:*

23 (A) *"Standard violation" means any of the following, as reported by*
24 *the approved service provider:*

25 (i) *The driver has blown a BrAC fail when attempting an initial*
26 *engine start-up breath test;*

27 (ii) *the driver has blown a BrAC fail when attempting a required*
28 *rolling retest;*

29 (iii) *the driver fails to execute a valid rolling retest;*

30 (iv) *the driver fails to submit to a requested rolling retest by turning*
31 *the vehicle off to avoid submitting to the rolling retest; or*

32 (v) *the driver has blown a high BrAC during an initial engine start-*
33 *up breath test;*

34 (B) *"serious violation" means any of the following, as reported by the*
35 *approved service provider:*

36 (i) *Tampering with the ignition interlock device;*

37 (ii) *circumventing the ignition interlock device; or*

38 (iii) *the driver has blown a high BrAC during a rolling retest;*

39 (C) *"BrAC" means the breath alcohol concentration expressed as*
40 *weight divided by volume, based upon grams of alcohol per 210 liters of*
41 *breath;*

42 (D) *"BrAC fail" means the ignition interlock device registers a BrAC*
43 *value equal to or greater than the alcohol setpoint, as defined in rules and*

1 *regulations adopted by the secretary of revenue, when the intended driver*
2 *conducts an initial test or retest;*

3 (E) *"high BrAC" means a BrAC fail result that registers an alcohol*
4 *setpoint of 0.08 or greater; and*

5 (F) *"rolling retest" means a breath test that is required after the*
6 *initial engine start-up breath test and while the engine is running.*

7 (e) Except as provided further, any person whose license is restricted
8 to operating only a motor vehicle with an ignition interlock device
9 installed may operate an employer's vehicle without an ignition interlock
10 device installed during normal business activities, provided that the person
11 does not partly or entirely own or control the employer's vehicle or
12 business. The provisions of this subsection shall not apply to any person
13 whose driving privileges have been restricted for the remainder of the one-
14 year suspension period as provided in subsection (a)(1) ~~or (a)(3)~~.

15 (f) Upon expiration of the ~~period of time for which restrictions are~~
16 ~~imposed pursuant to this section~~ *applicable ignition interlock period*
17 *required by law and completion of the ignition interlock device program*
18 *as described in subsection (d), the licensee may apply to the division for*
19 *the return of any license previously surrendered by the licensee. If the*
20 *license has expired, the person may apply to the division for a new license,*
21 *which shall be issued by the division upon payment of the proper fee and*
22 *satisfaction of the other conditions established by law, unless the person's*
23 *driving privileges have been suspended or revoked prior to expiration.*

24 (g) Any person who has had the person's driving privileges
25 suspended, restricted or revoked pursuant to K.S.A. 8-1014(a), (b) or (c),
26 prior to the amendments by section 16 of chapter 172 of the 2012 Session
27 Laws of Kansas and section 14 of chapter 105 of the 2011 Session Laws of
28 Kansas, may apply to the division to have the suspension, restriction or
29 revocation penalties modified in conformity with the provisions of K.S.A.
30 8-1014(a), (b) or (c), and amendments thereto. The division shall assess an
31 application fee of \$100 for a person to apply to modify the suspension,
32 restriction or revocation penalties previously issued. The division shall
33 modify the suspension, restriction or revocation penalties, unless such
34 person's driving privileges have been restricted, suspended, revoked or
35 disqualified pursuant to another action by the division or a court.

36 (h) The division shall remit all application fees collected pursuant to
37 subsections (a) and (g) to the state treasurer in accordance with the
38 provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of
39 each such remittance, the state treasurer shall deposit the entire amount in
40 the state treasury and shall credit such moneys to the division of vehicles
41 operating fund until an aggregate amount of \$100,000 is credited to the
42 division of vehicles operating fund each fiscal year. On and after an
43 aggregate amount of \$100,000 is credited to such fund each fiscal year, the

1 entire amount of such remittance shall be credited to the community
2 corrections supervision fund created by K.S.A. 75-52,113, and
3 amendments thereto. The application fee established in this section shall
4 be the only fee collected or moneys in the nature of a fee collected for such
5 application. Such fee shall only be established by an act of the legislature
6 and no other authority is established by law or otherwise to collect a fee.

7 Sec. 6. K.S.A. 8-1016 is hereby amended to read as follows: 8-1016.

8 (a) The secretary of revenue ~~may~~ shall adopt rules and regulations for:

9 (1) The approval by the division of models and classes of ignition
10 interlock devices suitable for use by persons whose driving privileges have
11 been restricted to driving a vehicle equipped with such a device;

12 (2) the calibration and maintenance of such devices, which shall be
13 the responsibility of the manufacturer; ~~and~~

14 (3) ensuring that each manufacturer ~~approved~~ provides a reasonable
15 statewide service network where such devices may be obtained, repaired,
16 replaced or serviced and such service network can be accessed 24 hours
17 per day through a toll-free phone service;

18 (4) *the requirements for proper use and maintenance of a certified*
19 *ignition interlock device by a person during any time period the person's*
20 *license is restricted by the division to only operating a motor vehicle with*
21 *an ignition interlock device installed;*

22 (5) *the reporting requirements for the manufacturer to the division*
23 *relating to a person's proper use and maintenance of a certified ignition*
24 *interlock device; and*

25 (6) *the requirements and guidelines for receiving reduced ignition*
26 *interlock device program costs pursuant to subsection (e).*

27 (b) In adopting rules and regulations for approval of ignition interlock
28 devices under this section, the secretary of revenue shall require that the
29 manufacturer or the manufacturer's representatives calibrate and maintain
30 the devices at intervals not to exceed 60 days. Calibration and maintenance
31 shall include, but not be limited to: Physical inspection of the device, the
32 vehicle and wiring of the device to the vehicle for signs of tampering;;
33 calibration of the device and downloading of all data contained within the
34 device's memory; and reporting of any violation or noncompliance to the
35 division.

36 ~~(4) The division shall adopt by rules and regulations participant~~
37 ~~requirements for proper use and maintenance of a certified ignition~~
38 ~~interlock device during any time period the person's license is restricted by~~
39 ~~the division to only operating a motor vehicle with an ignition interlock~~
40 ~~device installed and by rules and regulations the reporting requirements of~~
41 ~~the approved manufacturer to the division relating to the person's proper~~
42 ~~use and maintenance of a certified ignition interlock device.~~

43 (5) ~~The division shall require that each manufacturer provide a credit~~

1 of at least 2% of the gross program revenues in the state as a credit for
2 those persons who have otherwise qualified to obtain an ignition interlock
3 restricted license under this act who are indigent as evidenced by
4 qualification and eligibility for the federal food stamp program.

5 ~~(b)~~(c) (1) If the division approves an ignition interlock device in
6 accordance with rules and regulations adopted under this section, the
7 division shall give written notice of the approval to the manufacturer of the
8 device. Such notice shall be admissible in any civil or criminal proceeding
9 in this state.

10 ~~(e)~~(2) The manufacturer of an ignition interlock device shall
11 reimburse the division for any cost incurred in approving or disapproving
12 such device under this section.

13 (d) Neither the state nor any agency, officer or employee thereof shall
14 be liable in any civil or criminal proceeding arising out of the use of an
15 ignition interlock device approved under this section.

16 (e) (1) *Any person whose license is restricted to operating only a*
17 *motor vehicle with an ignition interlock device installed may request*
18 *reduced ignition interlock device program costs by submitting a request to*
19 *the division in a form and manner prescribed by the division. The division*
20 *shall review each request submitted pursuant to this subsection to*
21 *determine whether the person is eligible for reduced ignition interlock*
22 *device program costs. A person shall be eligible for reduced ignition*
23 *interlock device program costs if the:*

24 (A) *Person's annual household income is less than or equal to 300%*
25 *of the federal poverty level;*

26 (B) *person is enrolled in the food assistance, child care subsidy or*
27 *cash assistance program pursuant to K.S.A. 39-709, and amendments*
28 *thereto; or*

29 (C) *person is currently eligible for the low income energy assistance*
30 *program as determined by the department for children and families.*

31 (2) *If the division determines that the person is eligible for reduced*
32 *ignition interlock device program costs, the person shall be responsible*
33 *for paying the following amounts, and the manufacturer providing the*
34 *person's device shall adjust the manufacturer's charge for services*
35 *accordingly:*

36 (A) *Except as provided in subsection (e)(2)(B), for a person whose*
37 *household income is less than or equal to:*

38 (i) *300% but greater than 200% of the federal poverty level, 90% of*
39 *the program costs;*

40 (ii) *200% but greater than 150% of the federal poverty level, 75% of*
41 *the program costs;*

42 (iii) *150% but greater than 100% of the federal poverty level, 50% of*
43 *the program costs; and*

1 (iv) 100% of the federal poverty level, 25% of the program costs; and
2 (B) for a person who is enrolled in the food assistance, child care
3 subsidy or cash assistance program pursuant to K.S.A. 39-709, and
4 amendments thereto, or currently eligible for the low income energy
5 assistance program as determined by the department for children and
6 families, 25% of the program costs.

7 (f) As used in this section, "federal poverty level" means the most
8 recent poverty income guidelines published in the calendar year by the
9 United States department of health and human services.

10 Sec. 7. K.S.A. 2020 Supp. 8-1567 is hereby amended to read as
11 follows: 8-1567. (a) Driving under the influence is operating or attempting
12 to operate any vehicle within this state while:

13 (1) The alcohol concentration in the person's blood or breath as
14 shown by any competent evidence, including other competent evidence, as
15 defined in K.S.A. 8-1013(f)(1), and amendments thereto, is 0.08 or more;

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

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

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

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

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

27 (A) On a first conviction, a class B, nonperson misdemeanor. The
28 person convicted shall be sentenced to not less than 48 consecutive hours
29 nor more than six months' imprisonment, or in the court's discretion 100
30 hours of public service, and fined not less than \$750 nor more than \$1,000.
31 ~~The person convicted shall serve at least 48 consecutive hours'~~
32 ~~imprisonment or 100 hours of public service either before or as a condition~~
33 ~~of any grant of probation or suspension, reduction of sentence or parole.~~
34 ~~The court may place the person convicted under a house arrest program~~
35 ~~pursuant to K.S.A. 2020 Supp. 21-6609, and amendments thereto, to serve~~
36 ~~the remainder of the sentence only after such person has served 48~~
37 ~~consecutive hours' imprisonment;~~

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

1 imprisonment mandated by this subsection may be served in a work-
2 release program only after such person has served 48 consecutive hours'
3 imprisonment, provided such work release program requires such person
4 to return to confinement at the end of each day in the work release
5 program. The person convicted, if placed into a work release program,
6 shall serve a minimum of 120 hours of confinement. Such 120 hours of
7 confinement shall be a period of at least 48 consecutive hours of
8 imprisonment followed by confinement hours at the end of and continuing
9 to the beginning of the offender's work day. The court may place the
10 person convicted under a house arrest program pursuant to K.S.A. 2020-
11 Supp. 21-6609, and amendments thereto, to serve the five days'
12 imprisonment mandated by this subsection only after such person has
13 served 48 consecutive hours' imprisonment. The person convicted, if
14 placed under house arrest, shall be monitored by an electronic monitoring
15 device, which verifies the offender's location. The offender shall serve a
16 minimum of 120 hours of confinement within the boundaries of the
17 offender's residence. Any exceptions to remaining within the boundaries of
18 the offender's residence provided for in the house arrest agreement shall
19 not be counted as part of the 120 hours; *The following conditions shall*
20 *apply to such sentence:*

21 (i) *As a condition of any probation granted under this subsection, the*
22 *person shall serve at least 120 hours of confinement. The hours of*
23 *confinement shall include at least 48 hours imprisonment and otherwise*
24 *may be served by a combination of: Imprisonment; a work release*
25 *program, provided such work release program requires such person to*
26 *return to the confinement at the end of each day in the work release*
27 *program; or a house arrest program pursuant to K.S.A. 2020 Supp. 21-*
28 *6609, and amendments thereto;*

29 (ii) (a) *if the person is placed into a work release program or placed*
30 *under a house arrest program for any portion of the minimum 120 hours*
31 *confinement mandated by this subsection, the person shall receive hour-*
32 *for-hour credit for time served in such program until the minimum*
33 *sentence is met. If the person is placed into a work release program or*
34 *placed under a house arrest program for more than the minimum 120*
35 *hours confinement mandated by this subsection, the person shall receive*
36 *hour-for-hour credit for time served in such program until the minimum*
37 *120 hours is complete and thereafter, the person shall receive day-for-day*
38 *credit for time served in such program unless otherwise ordered by the*
39 *court; and*

40 (b) *when in a work release program, the person shall only be given*
41 *credit for the time served in confinement at the end of and continuing to*
42 *the beginning of the person's work day. When under a house arrest*
43 *program, the person shall be monitored by an electronic monitoring*

1 *device that verifies the person's location and shall only be given credit for*
2 *the time served within the boundaries of the person's residence;*

3 (C) on a third conviction, a class A, nonperson misdemeanor, except
4 as provided in subsection (b)(1)(D). The person convicted shall be
5 sentenced to not less than 90 days nor more than one year's imprisonment
6 and fined not less than \$1,750 nor more than \$2,500. ~~The person convicted~~
7 ~~shall not be eligible for release on probation, suspension or reduction of~~
8 ~~sentence or parole until the person has served at least 90 days'~~
9 ~~imprisonment. The 90 days' imprisonment mandated by this subsection~~
10 ~~may be served in a work release program only after such person has served~~
11 ~~48 consecutive hours' imprisonment, provided such work release program~~
12 ~~requires such person to return to confinement at the end of each day in the~~
13 ~~work release program. The person convicted, if placed into a work release~~
14 ~~program, shall serve a minimum of 2,160 hours of confinement. Such~~
15 ~~2,160 hours of confinement shall be a period of at least 48 consecutive~~
16 ~~hours of imprisonment followed by confinement hours at the end of and~~
17 ~~continuing to the beginning of the offender's work day. The court may~~
18 ~~place the person convicted under a house arrest program pursuant to~~
19 ~~K.S.A. 2020 Supp. 21-6609, and amendments thereto, to serve the 90 days'~~
20 ~~imprisonment mandated by this subsection only after such person has~~
21 ~~served 48 consecutive hours' imprisonment. The person convicted, if~~
22 ~~placed under house arrest, shall be monitored by an electronic monitoring~~
23 ~~device, which verifies the offender's location. The offender shall serve a~~
24 ~~minimum of 2,160 hours of confinement within the boundaries of the~~
25 ~~offender's residence. Any exceptions to remaining within the boundaries of~~
26 ~~the offender's residence provided for in the house arrest agreement shall~~
27 ~~not be counted as part of the 2,160 hours; *The following conditions shall*~~
28 *apply to such sentence:*

29 (i) *As a condition of any probation granted under this subsection, the*
30 *person shall serve at least 30 days of confinement. After at least 48*
31 *consecutive hours imprisonment the remainder of the period of*
32 *confinement may be served by a combination of: Imprisonment; a work*
33 *release program, provided such work release program requires such*
34 *person to return to the confinement at the end of each day in the work*
35 *release program; or a house arrest program pursuant to K.S.A. 2020*
36 *Supp. 21-6609, and amendments thereto; and*

37 (ii) (a) *if the person is placed into a work release program or placed*
38 *under a house arrest program for any portion of the minimum 30 days*
39 *confinement mandated by this subsection, the person shall receive hour-*
40 *for-hour credit for time served in such program for the first 240 hours,*
41 *and thereafter the person shall receive day-for-day-credit for time served*
42 *in such program unless otherwise ordered by the court; and*

43 (b) *when in a work release program, the person shall only be given*

1 *credit for the time served in confinement at the end of and continuing to*
2 *the beginning of the person's work day. When under a house arrest*
3 *program, the person shall be monitored by an electronic monitoring*
4 *device that verifies the person's location and shall only be given credit for*
5 *the time served within the boundaries of the person's residence;*

6 (D) on a third conviction, a *severity level 6*, nonperson felony if the
7 person has a prior conviction which occurred within the preceding 10
8 years, not including any period of incarceration. ~~The person convicted~~
9 ~~shall be sentenced to not less than 90 days nor more than one year's~~
10 ~~imprisonment and fined not less than \$1,750 nor more than \$2,500. The~~
11 ~~person convicted shall not be eligible for release on probation, suspension~~
12 ~~or reduction of sentence or parole until the person has served at least 90~~
13 ~~days' imprisonment. The 90 days' imprisonment mandated by this~~
14 ~~subsection may be served in a work release program only after such person~~
15 ~~has served 48 consecutive hours' imprisonment, provided such work~~
16 ~~release program requires such person to return to confinement at the end of~~
17 ~~each day in the work release program. The person convicted, if placed into~~
18 ~~a work release program, shall serve a minimum of 2,160 hours of~~
19 ~~confinement. Such 2,160 hours of confinement shall be a period of at least~~
20 ~~48 consecutive hours of imprisonment followed by confinement hours at~~
21 ~~the end of and continuing to the beginning of the offender's work day. The~~
22 ~~court may place the person convicted under a house arrest program~~
23 ~~pursuant to K.S.A. 2020 Supp. 21-6609, and amendments thereto, to serve~~
24 ~~the 90 days' imprisonment mandated by this subsection only after such~~
25 ~~person has served 48 consecutive hours' imprisonment. The person~~
26 ~~convicted, if placed under house arrest, shall be monitored by an electronic~~
27 ~~monitoring device, which verifies the offender's location. The offender~~
28 ~~shall serve a minimum of 2,160 hours of confinement within the~~
29 ~~boundaries of the offender's residence. Any exceptions to remaining within~~
30 ~~the boundaries of the offender's residence provided for in the house arrest~~
31 ~~agreement shall not be counted as part of the 2,160 hours; and~~

32 (E) on a fourth or subsequent conviction, a *severity level 6*, nonperson
33 felony. ~~The person convicted shall be sentenced to not less than 90 days~~
34 ~~nor more than one year's imprisonment and fined \$2,500. The person~~
35 ~~convicted shall not be eligible for release on probation, suspension or~~
36 ~~reduction of sentence or parole until the person has served at least 90 days'~~
37 ~~imprisonment. The 90 days' imprisonment mandated by this subsection~~
38 ~~may be served in a work release program only after such person has served~~
39 ~~72 consecutive hours' imprisonment, provided such work release program~~
40 ~~requires such person to return to confinement at the end of each day in the~~
41 ~~work release program. The person convicted, if placed into a work release~~
42 ~~program, shall serve a minimum of 2,160 hours of confinement. Such~~
43 ~~2,160 hours of confinement shall be a period of at least 72 consecutive~~

1 hours of imprisonment followed by confinement hours at the end of and
2 continuing to the beginning of the offender's work day. The court may
3 place the person convicted under a house arrest program pursuant to
4 K.S.A. 2020 Supp. 21-6609, and amendments thereto, to serve the 90 days'
5 imprisonment mandated by this subsection only after such person has
6 served 72 consecutive hours' imprisonment. The person convicted, if
7 placed under house arrest, shall be monitored by an electronic monitoring
8 device, which verifies the offender's location. The offender shall serve a
9 minimum of 2,160 hours of confinement within the boundaries of the
10 offender's residence. Any exceptions to remaining within the boundaries of
11 the offender's residence provided for in the house arrest agreement shall
12 not be counted as part of the 2,160 hours.

13 (2) The court may order that the term of imprisonment imposed
14 pursuant to subsection (b)(1)(D) or (b)(1)(E) be served in a state facility in
15 the custody of the secretary of corrections in a facility designated by the
16 secretary for the provision of substance abuse treatment pursuant to the
17 provisions of K.S.A. 2020 Supp. 21-6804, and amendments thereto. ~~The~~
18 ~~person shall remain imprisoned at the state facility only while participating~~
19 ~~in the substance abuse treatment program designated by the secretary and~~
20 ~~shall be returned to the custody of the sheriff for execution of the balance~~
21 ~~of the term of imprisonment upon completion of or the person's discharge~~
22 ~~from the substance abuse treatment program. Custody of the person shall~~
23 ~~be returned to the sheriff for execution of the sentence imposed in the~~
24 ~~event~~ *The secretary of corrections may refuse to admit the person to the*
25 *designated facility and place the person in a different state facility, or*
26 *admit the person and subsequently transfer the person to a different state*
27 *facility, if the secretary determines: (A) That substance abuse treatment*
28 *resources or the capacity of the facility designated by the secretary for the*
29 *incarceration and treatment of the person is not available; (B) the person*
30 *fails has failed to meaningfully participate in the treatment program of the*
31 *designated facility; (C) the person is disruptive to the security or operation*
32 *of the designated facility; or (D) the medical or mental health condition of*
33 *the person renders the person unsuitable for confinement at the designated*
34 *facility. The determination by the secretary that the person either is not to*
35 *be admitted into the designated facility or is to be transferred from the*
36 *designated facility is not subject to review. ~~The sheriff shall be responsible~~*
37 *for all transportation expenses to and from the state correctional facility.*

38 (3) In addition, for any conviction pursuant to subsection (b)(1)(C),
39 or (b)(1)(D) or (b)(1)(E), at the time of the filing of the judgment form or
40 journal entry as required by K.S.A. 22-3426 or K.S.A. 2020 Supp. 21-
41 6711, and amendments thereto, the court shall cause a certified copy to be
42 sent to the officer having the offender in charge. The court shall determine
43 whether the offender, upon release from imprisonment, shall be supervised

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

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

43 (c) Any person 18 years of age or older convicted of violating this

1 section or an ordinance which prohibits the acts that this section prohibits
2 who had one or more children under the age of 18 years in the vehicle at
3 the time of the offense shall have such person's punishment enhanced by
4 one month of imprisonment. This imprisonment must be served
5 consecutively to any other minimum mandatory penalty imposed for a
6 violation of this section or an ordinance which prohibits the acts that this
7 section prohibits. Any enhanced penalty imposed shall not exceed the
8 maximum sentence allowable by law. During the service of the enhanced
9 penalty, the judge may order the person on house arrest, work release or
10 other conditional release.

11 (d) If a person is charged with a violation of subsection (a)(4) or (a)
12 (5), the fact that the person is or has been entitled to use the drug under the
13 laws of this state shall not constitute a defense against the charge.

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

19 (f) (1) In lieu of payment of a fine imposed pursuant to this section,
20 the court may order that the person perform community service specified
21 by the court. The person shall receive a credit on the fine imposed in an
22 amount equal to \$5 for each full hour spent by the person in the specified
23 community service. The community service ordered by the court shall be
24 required to be performed not later than one year after the fine is imposed
25 or by an earlier date specified by the court. If by the required date the
26 person performs an insufficient amount of community service to reduce to
27 zero the portion of the fine required to be paid by the person, the
28 remaining balance of the fine shall become due on that date.

29 (2) *The court may, in its discretion, waive any portion of a fine*
30 *imposed pursuant to this section, except the \$250 required to be remitted*
31 *to the state treasurer pursuant to subsection (q)(2), upon a showing that*
32 *the person successfully completed court-ordered education or treatment.*

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

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

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

39 (h) The court shall electronically report every conviction of a
40 violation of this section and every diversion agreement entered into in lieu
41 of further criminal proceedings on a complaint alleging a violation of this
42 section to the division including any finding regarding the alcohol
43 concentration in the offender's blood or breath. Prior to sentencing under

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

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

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

17 (2) any convictions for a violation of the following sections occurring
18 during a person's lifetime shall be taken into account:

19 (A) Driving a commercial motor vehicle under the influence, K.S.A.
20 8-2,144, and amendments thereto;

21 (B) operating a vessel under the influence of alcohol or drugs, K.S.A.
22 32-1131, and amendments thereto;

23 (C) involuntary manslaughter while driving under the influence of
24 alcohol or drugs, K.S.A. 21-3442, prior to its repeal, or K.S.A. 2020 Supp.
25 21-5405(a)(3) or (a)(5), and amendments thereto;

26 (D) aggravated battery as described in K.S.A. 2020 Supp. 21-5413(b)
27 (3) or (b)(4), and amendments thereto; and

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

32 (3) "conviction" includes:

33 (A) Entering into a diversion agreement in lieu of further criminal
34 proceedings on a complaint alleging an offense described in subsection (i)
35 (2); and

36 (B) conviction of a violation of an ordinance of a city in this state, a
37 resolution of a county in this state or any law of another jurisdiction that
38 would constitute an offense that is comparable to the offense described in
39 subsection (i)(1) or (i)(2);

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

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

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

5 (j) For the purposes of determining whether an offense is comparable,
6 the following shall be considered:

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

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

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

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

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

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

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

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

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

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

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

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

5 (n) No plea bargaining agreement shall be entered into nor shall any
6 judge approve a plea bargaining agreement entered into for the purpose of
7 permitting a person charged with a violation of this section, or a violation
8 of any ordinance of a city or resolution of any county in this state which
9 prohibits the acts prohibited by this section, to avoid the mandatory
10 penalties established by this section or by the ordinance. For the purpose
11 of this subsection, entering into a diversion agreement pursuant to K.S.A.
12 12-4413 et seq. or 22-2906 et seq., and amendments thereto, shall not
13 constitute plea bargaining. *This subsection shall not be construed to*
14 *prohibit an amendment or dismissal of any charge where the admissible*
15 *evidence is not sufficient to support a conviction beyond a reasonable*
16 *doubt on such charge.*

17 (o) The alternatives set out in subsection (a) may be pleaded in the
18 alternative, and the state, city or county may, but shall not be required to,
19 elect one or more of such alternatives prior to submission of the case to the
20 fact finder.

21 (p) As used in this section:

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

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

28 (3) "drug" includes toxic vapors as such term is defined in K.S.A.
29 2020 Supp. 21-5712, and amendments thereto.

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

39 (2) On and after July 1, 2011, the amount of \$250 from each fine
40 imposed pursuant to this section shall be remitted by the clerk of the
41 district court to the state treasurer in accordance with the provisions of
42 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
43 remittance, the state treasurer shall credit the entire amount to the

1 community corrections supervision fund established by K.S.A. 75-52,113,
2 and amendments thereto.

3 Sec. 8. K.S.A. 2020 Supp. 8-1567a is hereby amended to read as
4 follows: 8-1567a. (a) It shall be unlawful for any person less than 21 years
5 of age to operate or attempt to operate a vehicle in this state with a breath
6 or blood alcohol content of .02 or greater.

7 (b) Whenever a law enforcement officer determines that a breath or
8 blood alcohol test is to be required of a person less than 21 years of age
9 pursuant to K.S.A. 8-1001 or K.S.A. 8-2,142, and amendments thereto, in
10 addition to any other notices required by law, the law enforcement officer
11 shall provide written and oral notice that:

12 (1) It is unlawful for any person less than 21 years of age to operate
13 or attempt to operate a vehicle in this state with a breath or blood alcohol
14 content of .02 or greater; and

15 (2) if the person is less than 21 years of age at the time of the test
16 request and submits to and completes the test or tests and the test results
17 show an alcohol concentration of .02 or greater, but less than .08, on the
18 person's first occurrence, the person's driving privileges will be suspended
19 for 30 days and on the person's second or subsequent occurrence, the
20 person's driving privileges shall be suspended for one year.

21 (c) Any suspension and restriction of driving privileges pursuant to
22 this section shall be in addition to any disqualification from driving a
23 commercial motor vehicle pursuant to K.S.A. 8-2,142, and amendments
24 thereto.

25 (d) Whenever a breath or blood alcohol test is requested pursuant to
26 K.S.A. 8-1001, and amendments thereto, from a person less than 21 years
27 of age, and results in a test result of .02 or greater, but less than .08, a law
28 enforcement officer's certification under this section shall be prepared. The
29 certification required by this section shall be signed by one or more
30 officers to certify that:

31 (1) (A) There existed reasonable grounds to believe the person was
32 operating a vehicle while under the influence of alcohol or drugs, or both,
33 or to believe that the person had been driving a commercial motor vehicle,
34 as defined in K.S.A. 8-2,128, and amendments thereto, while having
35 alcohol or other drugs in such person's system or was under the age of 21
36 years and was operating or attempting to operate a vehicle while having
37 alcohol or other drugs in such person's system;

38 (B) the person had been placed under arrest, was in custody or had
39 been involved in a vehicle accident or collision;

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

43 (D) that the person was less than 21 years of age at the time of the

1 test request; and

2 (E) the result of the test showed that the person had an alcohol
3 concentration of .02 or greater in such person's blood or breath.

4 (2) With regard to a breath test, in addition to those matters required
5 to be certified under subsection (d)(1), that:

6 (A) The testing equipment used was certified by the Kansas
7 department of health and environment;

8 (B) the testing procedures used were in accordance with the
9 requirements set out by the Kansas department of health and environment;
10 and

11 (C) the person who operated the testing equipment was certified by
12 the Kansas department of health and environment to operate such
13 equipment.

14 (e) If a hearing is requested as a result of a law enforcement officer's
15 certification under this section, the scope of the hearing shall be limited to
16 whether:

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

24 (2) the person had been placed under arrest, was in custody or was
25 involved in a motor vehicle accident or collision resulting in property
26 damage, personal injury or death;

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

30 (4) the testing equipment used was reliable;

31 (5) the person who operated the testing equipment was qualified;

32 (6) the testing procedures used were reliable;

33 (7) the test result determined that the person had an alcohol
34 concentration of .02 or greater in such person's blood or breath;

35 (8) the person was operating a vehicle; and

36 (9) the person was less than 21 years of age at the time a test was
37 requested.

38 (f) If a person less than 21 years of age submits to a breath or blood
39 alcohol test requested pursuant to K.S.A. 8-1001 or K.S.A. 8-2,142, and
40 amendments thereto, and produces a test result of .02 or greater, but less
41 than .08, on the person's first occurrence, the person's driving privileges
42 shall be suspended for 30 days and then restricted as provided by K.S.A.
43 8-1015, and amendments thereto, for an additional ~~330~~ 180 days, and on

1 the person's second or subsequent occurrence, the person's driving
2 privileges shall be suspended for one year.

3 (g) Except where there is a conflict between this section and K.S.A.
4 8-1001 and 8-1002, and amendments thereto, the provisions of K.S.A. 8-
5 1001 and 8-1002, and amendments thereto, shall be applicable to
6 proceedings under this section.

7 (h) Any determination under this section that a person less than 21
8 years of age had a test result of .02 or greater, but less than .08, and any
9 resulting administrative action upon the person's driving privileges, upon
10 the first occurrence of such test result and administrative action, shall not
11 be considered by any insurance company in determining the rate charged
12 for any automobile liability insurance policy or whether to cancel any such
13 policy under the provisions of ~~subsection (4)(a)~~ of K.S.A. 40-277(4)(a),
14 and amendments thereto.

15 Sec. 9. K.S.A. 2020 Supp. 12-4415 is hereby amended to read as
16 follows: 12-4415. (a) In determining whether diversion of a defendant is in
17 the interests of justice and of benefit to the defendant and the community,
18 the city attorney shall consider at least the following factors among all
19 factors considered:

20 (1) The nature of the crime charged and the circumstances
21 surrounding it;

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

23 (3) whether the defendant is a first-time offender of an alcohol related
24 offense *as defined in K.S.A. 12-4413, and amendments thereto*, and if the
25 defendant has previously participated in diversion, according to the
26 certification of the division of vehicles of the state department of revenue;

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

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

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

41 (7) whether the available diversion program is appropriate to the
42 needs of the defendant;

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

1 (9) recommendations, if any, of the involved law enforcement
2 agency;

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

4 (11) provisions for restitution; and

5 (12) any mitigating circumstances.

6 (b) A city attorney shall not enter into a diversion agreement in lieu of
7 further criminal proceedings on a complaint alleging an alcohol related
8 offense *as defined in K.S.A. 12-4413, and amendments thereto*, if the
9 defendant:

10 (1) Has previously participated in diversion of an alcohol related
11 offense;

12 (2) has previously been convicted of or pleaded nolo contendere to an
13 alcohol related offense in this state or has previously been convicted of or
14 pleaded nolo contendere to a violation of K.S.A. 8-2,144 or 8-1567, and
15 amendments thereto, or of a law of another state, or of a political
16 subdivision thereof, ~~which~~ *that* prohibits the acts prohibited by those
17 statutes; or

18 (3) during the time of the alleged alcohol related offense was
19 involved in a motor vehicle accident or collision resulting in personal
20 injury *to another person* or death.

21 (c) *A city attorney shall not enter into a diversion agreement in lieu*
22 *of further criminal proceedings on a complaint or traffic citation alleging*
23 *a violation of an ordinance of any city or resolution of any county that*
24 *prohibits the acts prohibited under chapter 8 of the Kansas Statutes*
25 *Annotated, and amendments thereto, if the defendant was a commercial*
26 *driver's license holder at the time the violation was committed or at any*
27 *subsequent time prior to being considered for diversion.*

28 (d) *As used in this section, "major depressive disorder," "polytrauma,"*
29 *"post-traumatic stress disorder" and "traumatic brain injury" shall mean*
30 *the same as ~~such terms are defined~~ in K.S.A. 2020 Supp. 21-6630, and*
31 *amendments thereto.*

32 Sec. 10. K.S.A. 2020 Supp. 22-2908 is hereby amended to read as
33 follows: 22-2908. (a) In determining whether diversion of a defendant is in
34 the interests of justice and of benefit to the defendant and the community,
35 the county or district attorney shall consider at least the following factors
36 among all factors considered:

37 (1) The nature of the crime charged and the circumstances
38 surrounding it;

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

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

- 1 (4) whether there is a probability that the defendant will cooperate
- 2 with and benefit from diversion;
- 3 (5) whether the available diversion program is appropriate to the
- 4 needs of the defendant;
- 5 (6) whether there is a probability that the defendant committed such
- 6 crime as a result of an injury, including major depressive disorder,
- 7 polytrauma, post-traumatic stress disorder or traumatic brain injury,
- 8 connected to service in a combat zone, as defined in section 112 of the
- 9 federal internal revenue code of 1986, in the armed forces of the United
- 10 States of America;
- 11 (7) if subsection (a)(6) applies to the defendant, whether there is a
- 12 probability that the defendant will cooperate with and benefit from
- 13 inpatient or outpatient treatment from any treatment facility or program
- 14 operated by the United States department of defense, the United States
- 15 department of veterans affairs or the Kansas national guard with the
- 16 consent of the defendant, as a condition of diversion;
- 17 (8) the impact of the diversion of the defendant upon the community;
- 18 (9) recommendations, if any, of the involved law enforcement
- 19 agency;
- 20 (10) recommendations, if any, of the victim;
- 21 (11) provisions for restitution; and
- 22 (12) any mitigating circumstances.
- 23 (b) A county or district attorney shall not enter into a diversion
- 24 agreement in lieu of further criminal proceedings on a complaint if *the*
- 25 *complaint alleges that the defendant committed a*:
- 26 (1) ~~The complaint alleges a~~ Violation of K.S.A. 8-1567, and
- 27 amendments thereto, and the defendant:
- 28 (A) Has previously participated in diversion upon a complaint
- 29 alleging a violation of that statute or an ordinance of a city in this state
- 30 which prohibits the acts prohibited by that statute;
- 31 (B) has previously been convicted of or pleaded nolo contendere to a
- 32 violation of that statute or a violation of a law of another state or of a
- 33 political subdivision of this or any other state, which law prohibits the acts
- 34 prohibited by that statute; or
- 35 (C) during the time of the alleged violation was involved in a motor
- 36 vehicle accident or collision resulting in personal injury *to another person*
- 37 or death;
- 38 (2) ~~the complaint alleges that the defendant committed a violation~~
- 39 ~~under chapter 8 of the Kansas Statutes Annotated, and amendments~~
- 40 ~~thereto, and the defendant was a commercial driver's license holder at the~~
- 41 ~~time the violation was committed or at any subsequent time prior to being~~
- 42 ~~considered for diversion;~~
- 43 (3) class A or B felony or for crimes committed on or after July 1,

1 1993, an off-grid crime, a severity level 1, 2 or 3 felony for nondrug
2 crimes, a drug severity level 1 or 2 felony for drug crimes committed on or
3 after July 1, 1993, but prior to July 1, 2012, or a drug severity level 1, 2 or
4 3 felony committed on or after July 1, 2012; or

5 ~~(3)(4) the complaint alleges a domestic violence offense, as defined~~
6 in K.S.A. 2020 Supp. 21-5111, and amendments thereto, and the defendant
7 has participated in two or more diversions in the previous five year period
8 upon complaints alleging a domestic violence offense.

9 (c) A county or district attorney may enter into a diversion agreement
10 in lieu of further criminal proceedings on a complaint for violations of
11 article 10 of chapter 32 of the Kansas Statutes Annotated, and amendments
12 thereto, if such diversion carries the same penalties as the conviction for
13 the corresponding violations. If the defendant has previously participated
14 in one or more diversions for violations of article 10 of chapter 32 of the
15 Kansas Statutes Annotated, and amendments thereto, then each subsequent
16 diversion shall carry the same penalties as the conviction for the
17 corresponding violations.

18 (d) As used in this section, "major depressive disorder,"
19 "polytrauma," "post-traumatic stress disorder" and "traumatic brain injury"
20 shall mean the same as ~~such terms are defined~~ in K.S.A. 2020 Supp. 21-
21 6630, and amendments thereto.

22 Sec. 11. K.S.A. 8-1016 and K.S.A. 2020 Supp. 8-235, 8-2,142, 8-
23 2,144, 8-1015, 8-1567, 8-1567a, 12-4415 and 22-2908 are hereby
24 repealed.

25 Sec. 12. This act shall take effect and be in force from and after its
26 publication in the statute book.