

As Amended by House Committee

Session of 2021

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

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

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

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

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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 **prior to March***
18 ***1, 2022.***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (D) ~~for all persons~~ failing to have sufficient space to drive completely
2 through the crossing without stopping;

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

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

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

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

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

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

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

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

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

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

1 (n) *If a person is disqualified for life under on subsection (c), and at*
2 *least one of the disqualifying incidents occurred prior to July 1, 2003, the*
3 *person may apply to the secretary of revenue for review of the incidents*
4 *and modification of the disqualification. The secretary shall adopt rules*
5 *and regulations establishing guidelines, including conditions, to*
6 *administer this subsection **prior to March 1, 2022.***

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

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

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

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

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

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

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

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

13 (i) *As a condition of any probation granted under this subsection, the*
14 *person shall serve at least 120 hours of confinement. The hours of*
15 *confinement shall include at least 48 hours imprisonment and otherwise*
16 *may be served by a combination of: Imprisonment; a work release*
17 *program, provided such work release program requires such person to*
18 *return to the confinement at the end of each day in the work release*
19 *program; or a house arrest program pursuant to K.S.A. 2020 Supp. 21-*
20 *6609, and amendments thereto; and*

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

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

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

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

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

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

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

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

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

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

1 release of the defendant by the court.

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

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

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

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

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

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

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

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

30 (i) Upon conviction of a person of a violation of this section or a
31 violation of a city ordinance or county resolution prohibiting the acts
32 prohibited by this section, the division, upon receiving a report of
33 conviction, shall:

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

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

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

43 (2) The minimum penalty prescribed by any such ordinance or

1 resolution shall not be less than the minimum penalty prescribed by this
2 section for the same violation, and the maximum penalty in any such
3 ordinance or resolution shall not exceed the maximum penalty prescribed
4 for the same violation.

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

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

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

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

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

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

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

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

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

1 this provision shall be construed as preventing any court from considering
2 any convictions or diversions occurring during the person's lifetime in
3 determining the sentence to be imposed within the limits provided for a
4 first, second, third, fourth or subsequent offense;

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

7 (A) This section;

8 (B) operating a vessel under the influence of alcohol or drugs, K.S.A.
9 32-1131, and amendments thereto;

10 (C) involuntary manslaughter while driving under the influence of
11 alcohol or drugs, K.S.A. 21-3442, prior to its repeal, or K.S.A. 2020 Supp.
12 21-5405(a)(3) or (a)(5), and amendments thereto;

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

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

19 (3) "conviction" includes:

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

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

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

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

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

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

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

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

38 (p) For the purpose of this section:

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

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

1 board of county commissioners or the governing body of a city; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 (D) *"BrAC fail" means the ignition interlock device registers a BrAC*

1 *value equal to or greater than the alcohol setpoint, as defined in rules and*
2 *regulations adopted by the secretary of revenue, when the intended driver*
3 *conducts an initial test or retest;*

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

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

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

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

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

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

1 aggregate amount of \$100,000 is credited to such fund each fiscal year, the
2 entire amount of such remittance shall be credited to the community
3 corrections supervision fund created by K.S.A. 75-52,113, and
4 amendments thereto. The application fee established in this section shall
5 be the only fee collected or moneys in the nature of a fee collected for such
6 application. Such fee shall only be established by an act of the legislature
7 and no other authority is established by law or otherwise to collect a fee.

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

9 (a) The secretary of revenue ~~may~~ shall adopt rules and regulations **prior to**
10 **March 1, 2022**, for:

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

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

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

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

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

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

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

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

1 use and maintenance of a certified ignition interlock device.

2 ~~(5) The division shall require that each manufacturer provide a credit~~
3 ~~of at least 2% of the gross program revenues in the state as a credit for~~
4 ~~those persons who have otherwise qualified to obtain an ignition interlock~~
5 ~~restricted license under this act who are indigent as evidenced by~~
6 ~~qualification and eligibility for the federal food stamp program.~~

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

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

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

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

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

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

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

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

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

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

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

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

3 (iv) 100% of the federal poverty level, 25% of the program costs; and

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

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

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

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

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

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

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

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

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

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

40 (B) on a second conviction, a class A, nonperson misdemeanor. The
41 person convicted shall be sentenced to not less than 90 days nor more than
42 one year's imprisonment and fined not less than \$1,250 nor more than
43 \$1,750. ~~The person convicted shall serve at least five consecutive days'~~

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

23 (i) *As a condition of any probation granted under this subsection, the*
24 *person shall serve at least 120 hours of confinement. The hours of*
25 *confinement shall include at least 48 hours imprisonment and otherwise*
26 *may be served by a combination of: Imprisonment; a work release*
27 *program, provided such work release program requires such person to*
28 *return to the confinement at the end of each day in the work release*
29 *program; or a house arrest program pursuant to K.S.A. 2020 Supp. 21-*
30 *6609, and amendments thereto;*

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

42 (b) *when in a work release program, the person shall only be given*
43 *credit for the time served in confinement at the end of and continuing to*

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

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

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

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

1 *in such program unless otherwise ordered by the court; and*

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

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

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

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

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

40 (3) In addition, for any conviction pursuant to subsection (b)(1)(C),
41 ~~or (b)(1)(D) or (b)(1)(E)~~, at the time of the filing of the judgment form or
42 journal entry as required by K.S.A. 22-3426 or K.S.A. 2020 Supp. 21-
43 6711, and amendments thereto, the court shall cause a certified copy to be

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

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

1 evaluation, unless otherwise ordered by the court.

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (A) Driving a commercial motor vehicle under the influence, K.S.A.
22 8-2,144, and amendments thereto;

23 (B) operating a vessel under the influence of alcohol or drugs, K.S.A.
24 32-1131, and amendments thereto;

25 (C) involuntary manslaughter while driving under the influence of
26 alcohol or drugs, K.S.A. 21-3442, prior to its repeal, or K.S.A. 2020 Supp.
27 21-5405(a)(3) or (a)(5), and amendments thereto;

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

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

34 (3) "conviction" includes:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (p) As used in this section:

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

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

30 (3) "drug" includes toxic vapors as such term is defined in K.S.A.
31 2020 Supp. 21-5712, and amendments thereto.

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

41 (2) On and after July 1, 2011, the amount of \$250 from each fine
42 imposed pursuant to this section shall be remitted by the clerk of the
43 district court to the state treasurer in accordance with the provisions of

1 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
2 remittance, the state treasurer shall credit the entire amount to the
3 community corrections supervision fund established by K.S.A. 75-52,113,
4 and amendments thereto.

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

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

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

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

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

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

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

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

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

1 and the oral and written notice required by this section;

2 (D) that the person was less than 21 years of age at the time of the
3 test request; and

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

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

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

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

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

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

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

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

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

32 (4) the testing equipment used was reliable;

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

34 (6) the testing procedures used were reliable;

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

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

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

40 (f) If a person less than 21 years of age submits to a breath or blood
41 alcohol test requested pursuant to K.S.A. 8-1001 or K.S.A. 8-2,142, and
42 amendments thereto, and produces a test result of .02 or greater, but less
43 than .08, on the person's first occurrence, the person's driving privileges

1 shall be suspended for 30 days and then restricted as provided by K.S.A.
2 8-1015, and amendments thereto, for an additional ~~330~~ 180 days, and on
3 the person's second or subsequent occurrence, the person's driving
4 privileges shall be suspended for one year.

5 (g) Except where there is a conflict between this section and K.S.A.
6 8-1001 and 8-1002, and amendments thereto, the provisions of K.S.A. 8-
7 1001 and 8-1002, and amendments thereto, shall be applicable to
8 proceedings under this section.

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

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

22 (1) The nature of the crime charged and the circumstances
23 surrounding it;

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

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

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

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

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

43 (7) whether the available diversion program is appropriate to the

1 needs of the defendant;

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

3 (9) recommendations, if any, of the involved law enforcement
4 agency;

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

6 (11) provisions for restitution; and

7 (12) any mitigating circumstances.

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

12 (1) Has previously participated in diversion of an alcohol related
13 offense;

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

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

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

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

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

39 (1) The nature of the crime charged and the circumstances
40 surrounding it;

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

42 (3) whether the defendant is a first-time offender and if the defendant
43 has previously participated in diversion, according to the certification of

1 the Kansas bureau of investigation or the division of vehicles of the
2 department of revenue;

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

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

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

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

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

20 (9) recommendations, if any, of the involved law enforcement
21 agency;

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

23 (11) provisions for restitution; and

24 (12) any mitigating circumstances.

25 (b) A county or district attorney shall not enter into a diversion
26 agreement in lieu of further criminal proceedings on a complaint if *the*
27 *complaint alleges that the defendant committed a*:

28 (1) ~~The complaint alleges a~~ Violation of K.S.A. 8-1567, and
29 amendments thereto, and the defendant:

30 (A) Has previously participated in diversion upon a complaint
31 alleging a violation of that statute or an ordinance of a city in this state
32 which prohibits the acts prohibited by that statute;

33 (B) has previously been convicted of or pleaded nolo contendere to a
34 violation of that statute or a violation of a law of another state or of a
35 political subdivision of this or any other state, which law prohibits the acts
36 prohibited by that statute; or

37 (C) during the time of the alleged violation was involved in a motor
38 vehicle accident or collision resulting in personal injury *to another person*
39 or death;

40 (2) ~~the complaint alleges that the defendant committed a violation~~
41 *under chapter 8 of the Kansas Statutes Annotated, and amendments*
42 *thereto, and the defendant was a commercial driver's license holder at the*
43 *time the violation was committed or at any subsequent time prior to being*

1 *considered for diversion;*

2 (3) class A or B felony or for crimes committed on or after July 1,
3 1993, an off-grid crime, a severity level 1, 2 or 3 felony for nondrug
4 crimes, a drug severity level 1 or 2 felony for drug crimes committed on or
5 after July 1, 1993, but prior to July 1, 2012, or a drug severity level 1, 2 or
6 3 felony committed on or after July 1, 2012; or

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

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

20 (d) As used in this section, "major depressive disorder,"
21 "polytrauma," "post-traumatic stress disorder" and "traumatic brain injury"
22 shall mean the same as ~~such terms are defined~~ in K.S.A. 2020 Supp. 21-
23 6630, and amendments thereto.

24 Sec. 11. K.S.A. 8-1016 and K.S.A. 2020 Supp. 8-235, 8-2,142, 8-
25 2,144, 8-1015, 8-1567, 8-1567a, 12-4415 and 22-2908 are hereby
26 repealed.

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