

HOUSE BILL No. 2218

By Committee on Corrections and Juvenile Justice

2-5

1 AN ACT concerning **driving; relating to** driving under the influence of  
2 alcohol or drugs; ~~relating to~~ tests; implied consent; administrative  
3 hearings; **aggravated battery**; amending K.S.A. 8-1567a and K.S.A.  
4 2012 Supp. **8-2,144**, 8-1001 ~~and~~ , **8-1013**, 8-1020, **8-1025**, **8-1567** and  
5 **21-5413** and repealing the existing sections.

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

8 *Section 1. K.S.A. 2012 Supp. 8-2,144 is hereby amended to read as*  
9 *follows: 8-2,144. (a) Driving a commercial motor vehicle under the*  
10 *influence is operating or attempting to operate any commercial motor*  
11 *vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, within*  
12 *this state while:*

13 *(1) The alcohol concentration in the person's blood or breath, as*  
14 *shown by any competent evidence, including other competent evidence,*  
15 *as defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and*  
16 *amendments thereto, is .04 or more;*

17 *(2) the alcohol concentration in the person's blood or breath, as*  
18 *measured within three hours of the time of driving a commercial motor*  
19 *vehicle, is .04 or more; or*

20 *(3) committing a violation of subsection (a) of K.S.A. 8-1567, and*  
21 *amendments thereto, or the ordinance of a city or resolution of a county*  
22 *which prohibits any of the acts prohibited thereunder.*

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

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

32 *(B) on a second conviction a class A, nonperson misdemeanor. The*  
33 *person convicted shall be sentenced to not less than 90 days nor more*  
34 *than one year's imprisonment and fined not less than \$1,250 nor more*  
35 *than \$1,750. The person convicted shall serve at least five consecutive*  
36 *days' imprisonment before the person is granted probation, suspension*

1 *or reduction of sentence or parole or is otherwise released. The five*  
2 *days' imprisonment mandated by this subsection may be served in a*  
3 *work release program only after such person has served 48 consecutive*  
4 *hours' imprisonment, provided such work release program requires such*  
5 *person to return to confinement at the end of each day in the work*  
6 *release program. The person convicted, if placed into a work release*  
7 *program, shall serve a minimum of 120 hours of confinement. Such 120*  
8 *hours of confinement shall be a period of at least 48 consecutive hours*  
9 *of imprisonment followed by confinement hours at the end of and*  
10 *continuing to the beginning of the offender's work day. The court may*  
11 *place the person convicted under a house arrest program pursuant to*  
12 *K.S.A. 2012 Supp. 21-6609, and amendments thereto, to serve the five*  
13 *days' imprisonment mandated by this subsection only after such person*  
14 *has served 48 consecutive hours' imprisonment. The person convicted, if*  
15 *placed under house arrest, shall be monitored by an electronic*  
16 *monitoring device, which verifies the offender's location. The offender*  
17 *shall serve a minimum of 120 hours of confinement within the*  
18 *boundaries of the offender's residence. Any exceptions to remaining*  
19 *within the boundaries of the offender's residence provided for in the*  
20 *house arrest agreement shall not be counted as part of the 120 hours;*  
21 *and*

22 *(C) on a third or subsequent conviction a nonperson felony. The*  
23 *person convicted shall be sentenced to not less than 90 days nor more*  
24 *than one year's imprisonment and fined not less than \$1,750 nor more*  
25 *than \$2,500. The person convicted shall not be eligible for release on*  
26 *probation, suspension or reduction of sentence or parole until the*  
27 *person has served at least 90 days' imprisonment. The 90 days'*  
28 *imprisonment mandated by this subsection may be served in a work*  
29 *release program only after such person has served 48 consecutive hours'*  
30 *imprisonment, provided such work release program requires such*  
31 *person to return to confinement at the end of each day in the work*  
32 *release program. The person convicted, if placed into a work release*  
33 *program, shall serve a minimum of 2,160 hours of confinement. Such*  
34 *2,160 hours of confinement shall be a period of at least 48 consecutive*  
35 *hours of imprisonment followed by confinement hours at the end of and*  
36 *continuing to the beginning of the offender's work day. The court may*  
37 *place the person convicted under a house arrest program pursuant to*  
38 *K.S.A. 2012 Supp. 21-6609, and amendments thereto, to serve the 90*  
39 *days' imprisonment mandated by this subsection only after such person*  
40 *has served 48 consecutive hours' imprisonment. The person convicted, if*  
41 *placed under house arrest, shall be monitored by an electronic*  
42 *monitoring device, which verifies the offender's location. The offender*  
43 *shall serve a minimum of 2,160 hours of confinement within the*

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

4 *(2) In addition, for any conviction pursuant to subsection (b)(1)(C),*  
5 *at the time of the filing of the judgment form or journal entry as*  
6 *required by K.S.A. 22-3426 or K.S.A. 2012 Supp. 21-6711, and*  
7 *amendments thereto, the court shall cause a certified copy to be sent to*  
8 *the officer having the offender in charge. The court shall determine*  
9 *whether the offender, upon release from imprisonment, shall be*  
10 *supervised by community correctional services or court services based*  
11 *upon the risk and needs of the offender. The risk and needs of the*  
12 *offender shall be determined by use of a risk assessment tool specified by*  
13 *the Kansas sentencing commission. The law enforcement agency*  
14 *maintaining custody and control of a defendant for imprisonment shall*  
15 *cause a certified copy of the judgment form or journal entry to be sent to*  
16 *the supervision office designated by the court and upon expiration of the*  
17 *term of imprisonment shall deliver the defendant to a location*  
18 *designated by the supervision office designated by the court. After the*  
19 *term of imprisonment imposed by the court, the person shall be placed*  
20 *on supervision to community correctional services or court services, as*  
21 *determined by the court, for a mandatory one-year period of supervision,*  
22 *which such period of supervision shall not be reduced. During such*  
23 *supervision, the person shall be required to participate in a*  
24 *multidisciplinary model of services for substance use disorders*  
25 *facilitated by a department of social and rehabilitation services*  
26 *designated care coordination agency to include assessment and, if*  
27 *appropriate, referral to a community based substance use disorder*  
28 *treatment including recovery management and mental health counseling*  
29 *as needed. The multidisciplinary team shall include the designated care*  
30 *coordination agency, the supervision officer, the social and*  
31 *rehabilitation services department designated treatment provider and the*  
32 *offender. Any violation of the conditions of such supervision may subject*  
33 *such person to revocation of supervision and imprisonment in jail for*  
34 *the remainder of the period of imprisonment, the remainder of the*  
35 *supervision period, or any combination or portion thereof.*

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

42 *(c) Any person convicted of a violation of this section, or a violation*  
43 *of a city ordinance or county resolution prohibiting the acts prohibited*

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

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

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

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

30 *(g) Prior to filing a complaint alleging a violation of this section, a*  
31 *prosecutor shall request and shall receive from the: (1) Division a record*  
32 *of all prior convictions obtained against such person for any violations*  
33 *of any of the motor vehicle laws of this state; and (2) Kansas bureau of*  
34 *investigation central repository all criminal history record information*  
35 *concerning such person.*

36 *(h) The court shall electronically report every conviction of a*  
37 *violation of this section and every diversion agreement entered into in*  
38 *lieu of further criminal proceedings on a complaint alleging a violation*  
39 *of this section to the division. Prior to sentencing under the provisions of*  
40 *this section, the court shall request and shall receive from the: (1)*  
41 *Division a record of all prior convictions obtained against such person*  
42 *for any violation of any of the motor vehicle laws of this state; and (2)*  
43 *Kansas bureau of investigation central repository all criminal history*

1 *record information concerning such person.*

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

9 *(j) (1) Nothing contained in this section shall be construed as*  
10 *preventing any city from enacting ordinances, or any county from*  
11 *adopting resolutions, declaring acts prohibited or made unlawful by this*  
12 *section as unlawful or prohibited in such city or county and prescribing*  
13 *penalties for violation thereof.*

14 *(2) The minimum penalty prescribed by any such ordinance or*  
15 *resolution shall not be less than the minimum penalty prescribed by this*  
16 *section for the same violation, and the maximum penalty in any such*  
17 *ordinance or resolution shall not exceed the maximum penalty*  
18 *prescribed for the same violation.*

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

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

30 *(2) If the elements of such ordinance violation are the same as the*  
31 *elements of a violation of this section that would constitute, and be*  
32 *punished as, a felony, the city attorney shall refer the violation to the*  
33 *appropriate county or district attorney for prosecution. The county or*  
34 *district attorney shall accept such referral and pursue a disposition of*  
35 *such violation, and shall not refer any such violation back to the city*  
36 *attorney.*

37 *(l) No plea bargaining agreement shall be entered into nor shall*  
38 *any judge approve a plea bargaining agreement entered into for the*  
39 *purpose of permitting a person charged with a violation of this section,*  
40 *or a violation of any ordinance of a city or resolution of any county in*  
41 *this state which prohibits the acts prohibited by this section, to avoid the*  
42 *mandatory penalties established by this section or by the ordinance or*  
43 *resolution.*

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

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

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

17        *(2) any convictions for a violation of the following sections*  
18 *occurring during a person's lifetime shall be taken into account: (A)*  
19 *This section; (B) refusing to submit to a test to determine the presence of*  
20 *alcohol or drugs, K.S.A. 2012 Supp. 8-1025, and amendments thereto;*  
21 *(C) operating a vessel under the influence of alcohol or drugs, K.S.A.*  
22 *32-1131, and amendments thereto; (D) involuntary manslaughter while*  
23 *driving under the influence of alcohol or drugs, K.S.A. 21-3442, prior to*  
24 *its repeal, or subsection (a)(3) of K.S.A. 2012 Supp. 21-5405, and*  
25 *amendments thereto; (E) aggravated battery as described in subsection*  
26 *(b)(3) of K.S.A. 2012 Supp. 21-5413, and amendments thereto; and ~~(E)~~ (F)*  
27 *aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or*  
28 *vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was*  
29 *committed while committing a violation of K.S.A. 8-1567, and*  
30 *amendments thereto;*

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

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

43        *(5) multiple convictions of any crime described in subsection (n)(1)*

1 *or (n)(2) arising from the same arrest shall only be counted as one*  
2 *conviction.*

3 *(o) For the purpose of this section:*

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

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

10 *(3) "drug" includes toxic vapors as such term is defined in K.S.A.*  
11 *2012 Supp. 21-5712, and amendments thereto.*

12 *(p) On and after July 1, 2011, the amount of \$250 from each fine*  
13 *imposed pursuant to this section shall be remitted by the clerk of the*  
14 *district court to the state treasurer in accordance with the provisions of*  
15 *K.S.A. 75-4215, and amendments thereto. Upon receipt of each such*  
16 *remittance, the state treasurer shall credit the entire amount to the*  
17 *community corrections supervision fund established by K.S.A. 2012*  
18 *Supp. 75-52,113, and amendments thereto.*

19 ~~Section 1.~~ *Sec. 2.* K.S.A. 2012 Supp. 8-1001 is hereby amended to  
20 read as follows: 8-1001. (a) Any person who operates or attempts to  
21 operate a vehicle within this state is deemed to have given consent, subject  
22 to the provisions of this ~~act~~ *article*, to submit to one or more tests of the  
23 person's blood, breath, urine or other bodily substance to determine the  
24 presence of alcohol or drugs. The testing deemed consented to herein shall  
25 include all quantitative and qualitative tests for alcohol and drugs. A  
26 person who is dead or unconscious shall be deemed not to have withdrawn  
27 the person's consent to such test or tests, which shall be administered in the  
28 manner provided by this section.

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

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

16 (c) If a law enforcement officer requests a person to submit to a test  
17 of blood under this section, the withdrawal of blood at the direction of the  
18 officer may be performed only by: (1) A person licensed to practice  
19 medicine and surgery, licensed as a physician's assistant, or a person acting  
20 under the direction of any such licensed person; (2) a registered nurse or a  
21 licensed practical nurse; (3) any qualified medical technician, including,  
22 but not limited to, an emergency medical technician-intermediate, mobile  
23 intensive care technician, an emergency medical technician-intermediate  
24 defibrillator, an advanced emergency medical technician or a paramedic,  
25 as those terms are defined in K.S.A. 65-6112, and amendments thereto,  
26 authorized by medical protocol; or (4) a phlebotomist.

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

29 (1) If the person has given consent and meets the requirements of  
30 subsection (b);

31 (2) if medically unable to consent, if the person meets the  
32 requirements of paragraph (2) of subsection (b); or

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

35 (e) When so directed by a law enforcement officer through a written  
36 statement, the medical professional shall withdraw the sample as soon as  
37 practical and shall deliver the sample to the law enforcement officer or  
38 another law enforcement officer as directed by the requesting law  
39 enforcement officer as soon as practical, provided the collection of the  
40 sample does not jeopardize the person's life, cause serious injury to the  
41 person or seriously impede the person's medical assessment, care or  
42 treatment. The medical professional authorized herein to withdraw the  
43 blood and the medical care facility where the blood is drawn may act on



1 good faith that the requirements have been met for directing the  
2 withdrawing of blood once presented with the written statement provided  
3 for under this subsection. The medical professional shall not require the  
4 person to sign any additional consent or waiver form. In such a case, the  
5 person authorized to withdraw blood and the medical care facility shall not  
6 be liable in any action alleging lack of consent or lack of informed  
7 consent.

8 (f) Such sample or samples shall be an independent sample and not  
9 be a portion of a sample collected for medical purposes. The person  
10 collecting the blood sample shall complete the collection portion of a  
11 document provided by law enforcement.

12 (g) If a person must be restrained to collect the sample pursuant to  
13 this section, law enforcement shall be responsible for applying any such  
14 restraint utilizing acceptable law enforcement restraint practices. The  
15 restraint shall be effective in controlling the person in a manner not to  
16 jeopardize the person's safety or that of the medical professional or  
17 attending medical or health care staff during the drawing of the sample and  
18 without interfering with medical treatment.

19 (h) A law enforcement officer may request a urine sample upon  
20 meeting the requirements of paragraph (1) of subsection (b) and shall  
21 request a urine sample upon meeting the requirements of paragraph (2) of  
22 subsection (b).

23 (i) If a law enforcement officer requests a person to submit to a test of  
24 urine under this section, the collection of the urine sample shall be  
25 supervised by: (1) A person licensed to practice medicine and surgery,  
26 licensed as a physician's assistant, or a person acting under the direction of  
27 any such licensed person; (2) a registered nurse or a licensed practical  
28 nurse; or (3) a law enforcement officer of the same sex as the person being  
29 tested. The collection of the urine sample shall be conducted out of the  
30 view of any person other than the persons supervising the collection of the  
31 sample and the person being tested, unless the right to privacy is waived  
32 by the person being tested. When possible, the supervising person shall be  
33 a law enforcement officer. The results of qualitative testing for drug  
34 presence shall be admissible in evidence and questions of accuracy or  
35 reliability shall go to the weight rather than the admissibility of the  
36 evidence. If the person is medically unable to provide a urine sample in  
37 such manner due to the injuries or treatment of the injuries, the same  
38 authorization and procedure as used for the collection of blood in  
39 subsections (d) and (e) shall apply to the collection of a urine sample.

40 (j) No law enforcement officer who is acting in accordance with this  
41 section shall be liable in any civil or criminal proceeding involving the  
42 action.

43 (k) Before a test or tests are administered under this section, the

1 person shall be given oral and written notice that:

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

5 (2) the opportunity to consent to or refuse a test is not a constitutional  
6 right;

7 (3) there is no constitutional right to consult with an attorney  
8 regarding whether to submit to testing;

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

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

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

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

29 (6) if the person submits to and completes the test or tests and the test  
30 results show:

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

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

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

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

43 (9) after the completion of the testing, the person has the right to

1 consult with an attorney and may secure additional testing, which, if  
2 desired, should be done as soon as possible and is customarily available  
3 from medical care facilities willing to conduct such testing.

4 (l) If a law enforcement officer has reasonable grounds to believe that  
5 the person has been driving a commercial motor vehicle, as defined in  
6 K.S.A. 8-2,128, and amendments thereto, while having alcohol or other  
7 drugs in such person's system, the person shall also be provided the oral  
8 and written notice pursuant to K.S.A. 8-2,145, and amendments thereto.  
9 Any failure to give the notices required by K.S.A. 8-2,145, and  
10 amendments thereto, shall not invalidate any action taken as a result of the  
11 requirements of this section. If a law enforcement officer has reasonable  
12 grounds to believe that the person has been ~~driving~~ *operating* or  
13 attempting to ~~drive~~ *operate* a vehicle while having alcohol or other drugs  
14 in such person's system and such person was under 21 years of age, the  
15 person also shall be given the notices required by K.S.A. 8-1567a, and  
16 amendments thereto. Any failure to give the notices required by K.S.A. 8-  
17 1567a, and amendments thereto, shall not invalidate any action taken as a  
18 result of the requirements of this section.

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

25 (n) The person's refusal shall be admissible in evidence against the  
26 person at any trial on a charge arising out of the alleged operation or  
27 attempted operation of a vehicle while under the influence of alcohol or  
28 drugs, or both. The person's refusal shall be admissible in evidence against  
29 the person at any trial on a charge arising out of the alleged violation of  
30 K.S.A. 2012 Supp. 8-1025, and amendments thereto.

31 (o) If a law enforcement officer had reasonable grounds to believe the  
32 person had been driving a commercial motor vehicle, as defined in K.S.A.  
33 8-2,128, and amendments thereto, and the test results show a blood or  
34 breath alcohol concentration of .04 or greater, the person shall be  
35 disqualified from driving a commercial motor vehicle, pursuant to K.S.A.  
36 8-2,142, and amendments thereto. If a law enforcement officer had  
37 reasonable grounds to believe the person had been driving a commercial  
38 motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, and  
39 the test results show a blood or breath alcohol concentration of .08 or  
40 greater, or the person refuses a test, the person's driving privileges shall be  
41 subject to suspension, or suspension and restriction, pursuant to this  
42 section, in addition to being disqualified from driving a commercial motor  
43 vehicle pursuant to K.S.A. 8-2,142, and amendments thereto.

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

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

12 (r) It shall not be a defense that the person did not understand the  
13 written or oral notice required by this section.

14 (s) No test results shall be suppressed because of technical  
15 irregularities in the consent or notice required pursuant to this act.

16 (t) Nothing in this section shall be construed to limit the admissibility  
17 at any trial of alcohol or drug concentration testing results obtained  
18 pursuant to a search warrant.

19 (u) Upon the request of any person submitting to testing under this  
20 section, a report of the results of the testing shall be made available to such  
21 person.

22 (v) This act is remedial law and shall be liberally construed to  
23 promote public health, safety and welfare.

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

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

29 (2) renders a person unconscious;

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

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

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

35 ***Sec. 3. K.S.A. 2012 Supp. 8-1013 is hereby amended to read as***  
36 ***follows: 8-1013. As used in K.S.A. 8-1001 through 8-1010, 8-1011, 8-***  
37 ***1012, 8-1014, 8-1015, 8-1016, 8-1017 and 8-1018, and amendments***  
38 ***thereto, and this section:***

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

41 (b) (1) ***"Alcohol or drug-related conviction" means any of the***  
42 ***following: (A) Conviction of vehicular battery or aggravated vehicular***  
43 ***homicide, if the crime is committed while committing a violation of***

1 *K.S.A. 8-1567, and amendments thereto, or the ordinance of a city or*  
2 *resolution of a county in this state which prohibits any acts prohibited by*  
3 *that statute, or conviction of a violation of K.S.A. 8-2,144 or 8-1567 or*  
4 *K.S.A. 2012 Supp. 8-1025, and amendments thereto, or conviction of a*  
5 *violation of aggravated battery as described in subsection (b)(3) of K.S.A.*  
6 *2012 Supp. 21-5413, and amendments thereto; (B) conviction of a*  
7 *violation of a law of another state which would constitute a crime*  
8 *described in subsection (b)(1)(A) if committed in this state; (C)*  
9 *conviction of a violation of an ordinance of a city in this state or a*  
10 *resolution of a county in this state which would constitute a crime*  
11 *described in subsection (b)(1)(A), whether or not such conviction is in a*  
12 *court of record; or (D) conviction of an act which was committed on a*  
13 *military reservation and which would constitute a violation of K.S.A. 8-*  
14 *2,144 or 8-1567 or K.S.A. 2012 Supp. 8-1025, and amendments thereto,*  
15 *or would constitute a crime described in subsection (b)(1)(A) if*  
16 *committed off a military reservation in this state.*

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

25 (c) *"Division" means the division of vehicles of the department of*  
26 *revenue.*

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

30 (e) *"Occurrence" means a test refusal, test failure or alcohol or*  
31 *drug-related conviction, or any combination thereof arising from one*  
32 *arrest, including an arrest which occurred prior to the effective day*  
33 *[date] of this act.*

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

38 (g) *"Samples" includes breath supplied directly for testing, which*  
39 *breath is not preserved.*

40 (h) *"Test failure" or "fails a test" refers to a person's having*  
41 *results of a test administered pursuant to this act, other than a*  
42 *preliminary screening test, which show an alcohol concentration of .08*  
43 *or greater in the person's blood or breath, and includes failure of any*

1 *such test on a military reservation.*

2 (i) *"Test refusal" or "refuses a test" refers to a person's failure to*  
3 *submit to or complete any test of the person's blood, breath, urine or*  
4 *other bodily substance, other than a preliminary screening test, in*  
5 *accordance with this act, and includes refusal of any such test on a*  
6 *military reservation.*

7 (j) *"Law enforcement officer" has the meaning provided by K.S.A.*  
8 *2012 Supp. 21-5111, and amendments thereto, and includes any person*  
9 *authorized by law to make an arrest on a military reservation for an act*  
10 *which would constitute a violation of K.S.A. 8-1567 or K.S.A. 2012*  
11 *Supp. 8-1025, and amendments thereto, if committed off a military*  
12 *reservation in this state.*

13 Sec. ~~2~~ 4. K.S.A. 2012 Supp. 8-1020 is hereby amended to read as  
14 follows: 8-1020. (a) Any licensee served with an officer's certification and  
15 notice of suspension pursuant to K.S.A. 8-1002, and amendments thereto,  
16 may request an administrative hearing. Such request may be made either  
17 by:

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

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

22 (b) If the licensee makes a timely request for an administrative  
23 hearing and makes a timely payment of the required hearing fee, any  
24 temporary license issued pursuant to K.S.A. 8-1002, and amendments  
25 thereto, shall remain in effect until the 30<sup>th</sup> day after the effective date of  
26 the decision made by the division.

27 (c) If the licensee fails to make a timely request for an administrative  
28 hearing together with the required hearing fee, the licensee's driving  
29 privileges shall be suspended or suspended and then restricted in  
30 accordance with the notice of suspension served pursuant to K.S.A. 8-  
31 1002, and amendments thereto.

32 (d) (1) Upon receipt of a timely request for a hearing together with  
33 the required hearing fee, the division shall forthwith set the matter for  
34 hearing before a representative of the director and provide notice of the  
35 extension of temporary driving privileges. The hearing shall be held by  
36 telephone conference call unless the hearing request includes a request that  
37 the hearing be held in person before a representative of the director. The  
38 officer's certification and notice of suspension shall inform the licensee of  
39 the availability of a hearing before a representative of the director. Except  
40 for a hearing conducted by telephone conference call, the hearing shall be  
41 conducted in the county where the arrest occurred or a county adjacent  
42 thereto.

43 (2) The division shall charge a fee of \$50 for a hearing, to be paid

1 within the time period for making a timely request for a hearing, whether  
2 held by telephone or in person, to be applied by the division for  
3 administrative costs to conduct the hearing. The division shall remit all  
4 hearing fees to the state treasurer in accordance with the provisions of  
5 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such  
6 remittance, the state treasurer shall deposit the entire amount in the state  
7 treasury to the credit of the division of vehicles operating fund. The  
8 hearing fee established in this section shall be the only fee collected or  
9 moneys in the nature of a fee collected for such hearing. Such fee shall  
10 only be established by an act of the legislature and no other authority is  
11 established by law or otherwise to collect a fee.

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

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

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

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

22 (4) in the case of a breath test failure, a copy of the Kansas  
23 department of health and environment testing protocol checklist.

24 (f) At or prior to the time the notice of hearing is sent, the division  
25 shall issue an order allowing the licensee or the licensee's attorney to  
26 review any video or audio tape record made of the events upon which the  
27 administrative action is based. Such review shall take place at a reasonable  
28 time designated by the law enforcement agency and shall be made at the  
29 location where the video or audio tape is kept. The licensee may obtain a  
30 copy of any such video or audio tape upon request and upon payment of a  
31 reasonable fee to the law enforcement agency, not to exceed \$25 per tape.

32 (g) Witnesses at the hearing shall be limited to the licensee, to any  
33 law enforcement officer who signed the certification form and to one other  
34 witness who was present at the time of the issuance of the certification and  
35 called by the licensee. The presence of the certifying officer or officers  
36 shall not be required, unless requested by the licensee at the time of  
37 making the request for the hearing. The examination of a law enforcement  
38 officer shall be restricted to the factual circumstances relied upon in the  
39 officer's certification.

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

42 (A) A law enforcement officer had reasonable grounds to believe the  
43 person was operating or attempting to operate a vehicle while under the

1 influence of alcohol or drugs, or both, or had been driving a commercial  
2 motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto,  
3 while having alcohol or other drugs in such person's system *or was under*  
4 *the age of 21 years and was operating or attempting to operate a vehicle*  
5 *while having alcohol or other drugs in such person's system*;

6 (B) the person was in custody or arrested ~~for an alcohol or drug-~~  
7 ~~related offense~~ or was involved in a vehicle accident or collision resulting  
8 in property damage, personal injury or death;

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

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

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

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

23 (B) the person was in custody or arrested ~~for an alcohol or drug-~~  
24 ~~related offense~~ or was involved in a vehicle accident or collision resulting  
25 in property damage, personal injury or death;

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

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

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

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

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

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

37 (3) If the officer certifies that the person failed a blood test, the scope  
38 of the hearing shall be limited to whether:

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



1 *operating or attempting to operate a vehicle while having alcohol or other*  
2 *drugs in such person's system;*

3 (B) the person was in custody or arrested ~~for an alcohol or drug~~  
4 ~~related offense~~ or was involved in a vehicle accident or collision resulting  
5 in property damage, personal injury or death;

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

8 (D) the testing equipment used was reliable;

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

10 (F) the testing procedures used were reliable;

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

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

14 (i) At a hearing pursuant to this section, or upon court review of an  
15 order entered at such a hearing, an affidavit of the custodian of records at  
16 the Kansas department of health and environment stating that the breath  
17 testing device was certified and the operator of such device was certified  
18 on the date of the test shall be admissible into evidence in the same  
19 manner and with the same force and effect as if the certifying officer or  
20 employee of the Kansas department of health and environment had  
21 testified in person. A certified operator of a breath testing device shall be  
22 competent to testify regarding the proper procedures to be used in  
23 conducting the test.

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

33 (k) At the hearing, the licensee has the burden of proof by a  
34 preponderance of the evidence to show that the facts set out in the officer's  
35 certification are false or insufficient and that the order suspending or  
36 suspending and restricting the licensee's driving privileges should be  
37 dismissed.

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

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

40 (2) the testimony of the licensee;

41 (3) the testimony of any certifying officer;

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

1 (5) any affidavits submitted from other witnesses;

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

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

7 (m) After the hearing, the representative of the director shall enter an  
8 order affirming the order of suspension or suspension and restriction of  
9 driving privileges or for good cause appearing therefor, dismiss the  
10 administrative action. If the representative of the director enters an order  
11 affirming the order of suspension or suspension and restriction of driving  
12 privileges, the suspension or suspension and restriction shall begin on the  
13 30<sup>th</sup> day after the effective date of the order of suspension or suspension  
14 and restriction. If the person whose privileges are suspended is a  
15 nonresident licensee, the license of the person shall be forwarded to the  
16 appropriate licensing authority in the person's state of residence if the  
17 result at the hearing is adverse to such person or if no timely request for a  
18 hearing is received.

19 (n) The representative of the director may issue an order at the close  
20 of the hearing or may take the matter under advisement and issue a hearing  
21 order at a later date. If the order is made at the close of the hearing, the  
22 licensee or the licensee's attorney shall be served with a copy of the order  
23 by the representative of the director. If the matter is taken under  
24 advisement or if the hearing was by telephone conference call, the licensee  
25 and any attorney who appeared at the administrative hearing upon behalf  
26 of the licensee each shall be served with a copy of the hearing order by  
27 mail. Any law enforcement officer who appeared at the hearing also may  
28 be mailed a copy of the hearing order. The effective date of the hearing  
29 order shall be the date upon which the hearing order is served, whether  
30 served in person or by mail.

31 (o) The licensee may file a petition for review of the hearing order  
32 pursuant to K.S.A. 8-259, and amendments thereto. Upon filing a petition  
33 for review, the licensee shall serve the secretary of revenue with a copy of  
34 the petition and summons. Upon receipt of a copy of the petition for  
35 review by the secretary, the temporary license issued pursuant to  
36 subsection (b) shall be extended until the decision on the petition for  
37 review is final.

38 (p) Such review shall be in accordance with this section and the  
39 Kansas judicial review act. To the extent that this section and any other  
40 provision of law conflicts, this section shall prevail. The petition for  
41 review shall be filed within 14 days after the effective date of the order.  
42 Venue of the action for review is the county where the person was arrested  
43 or the accident occurred, or, if the hearing was not conducted by telephone

1 conference call, the county where the administrative proceeding was held.  
2 The action for review shall be by trial de novo to the court and the  
3 evidentiary restrictions of subsection (l) shall not apply to the trial de  
4 novo. The court shall take testimony, examine the facts of the case and  
5 determine whether the petitioner is entitled to driving privileges or  
6 whether the petitioner's driving privileges are subject to suspension or  
7 suspension and restriction under the provisions of this act. If the court  
8 finds that the grounds for action by the agency have been met, the court  
9 shall affirm the agency action.

10 (q) Upon review, the licensee shall have the burden to show that the  
11 decision of the agency should be set aside.

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

17 (s) Upon motion by a party, or on the court's own motion, the court  
18 may enter an order restricting the driving privileges allowed by the  
19 temporary license provided for in K.S.A. 8-1002, and amendments thereto,  
20 and in this section. The temporary license also shall be subject to  
21 restriction, suspension, revocation or cancellation, as set out in K.S.A. 8-  
22 1014, and amendments thereto, or for other cause.

23 (t) The facts found by the hearing officer or by the district court upon  
24 a petition for review shall be independent of the determination of the same  
25 or similar facts in the adjudication of any criminal charges arising out of  
26 the same occurrence. The disposition of those criminal charges shall not  
27 affect the suspension or suspension and restriction to be imposed under  
28 this section.

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

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

41 ***Sec. 5. K.S.A. 2012 Supp. 8-1025 is hereby amended to read as***  
42 ***follows: 8-1025. (a) Refusing to submit to a test to determine the***  
43 ***presence of alcohol or drugs is refusing to submit to or complete a test or***

1 *tests deemed consented to under subsection (a) of K.S.A. 8-1001, and*  
2 *amendments thereto, if such person has:*

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

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

13 *(b) (I) Refusing to submit to a test to determine the presence of*  
14 *alcohol or drugs is:*

15 *(A) On a first conviction a class A, nonperson misdemeanor. The*  
16 *person convicted shall be sentenced to not less than 90 days nor more*  
17 *than one year's imprisonment and fined not less than \$1,250 nor more*  
18 *than \$1,750. The person convicted shall serve at least five consecutive*  
19 *days' imprisonment before the person is granted probation, suspension*  
20 *or reduction of sentence or parole or is otherwise released. The five*  
21 *days' imprisonment mandated by this subsection may be served in a*  
22 *work release program only after such person has served 48 consecutive*  
23 *hours' imprisonment, provided such work release program requires such*  
24 *person to return to confinement at the end of each day in the work*  
25 *release program. The person convicted, if placed into a work release*  
26 *program, shall serve a minimum of 120 hours of confinement. Such 120*  
27 *hours of confinement shall be a period of at least 48 consecutive hours*  
28 *of imprisonment followed by confinement hours at the end of and*  
29 *continuing to the beginning of the offender's work day. The court may*  
30 *place the person convicted under a house arrest program pursuant to*  
31 *K.S.A. 2012 Supp. 21-6609, and amendments thereto, to serve the five*  
32 *days' imprisonment mandated by this subsection only after such person*  
33 *has served 48 consecutive hours' imprisonment. The person convicted, if*  
34 *placed under house arrest, shall be monitored by an electronic*  
35 *monitoring device, which verifies the offender's location. The offender*  
36 *shall serve a minimum of 120 hours of confinement within the*  
37 *boundaries of the offender's residence. Any exceptions to remaining*  
38 *within the boundaries of the offender's residence provided for in the*  
39 *house arrest agreement shall not be counted as part of the 120 hours;*

40 *(B) on a second conviction a class A, nonperson misdemeanor,*  
41 *except as provided in subsection (b)(1)(C). The person convicted shall be*  
42 *sentenced to not less than 90 days nor more than one year's*  
43 *imprisonment and fined not less than \$1,750 nor more than \$2,500. The*

1 *person convicted shall not be eligible for release on probation,*  
2 *suspension or reduction of sentence or parole until the person has*  
3 *served at least 90 days' imprisonment. The 90 days' imprisonment*  
4 *mandated by this subsection may be served in a work release program*  
5 *only after such person has served 48 consecutive hours' imprisonment,*  
6 *provided such work release program requires such person to return to*  
7 *confinement at the end of each day in the work release program. The*  
8 *person convicted, if placed into a work release program, shall serve a*  
9 *minimum of 2,160 hours of confinement. Such 2,160 hours of*  
10 *confinement shall be a period of at least 48 consecutive hours of*  
11 *imprisonment followed by confinement hours at the end of and*  
12 *continuing to the beginning of the offender's work day. The court may*  
13 *place the person convicted under a house arrest program pursuant to*  
14 *K.S.A. 2012 Supp. 21-6609, and amendments thereto, to serve the 90*  
15 *days' imprisonment mandated by this subsection only after such person*  
16 *has served 48 consecutive hours' imprisonment. The person convicted, if*  
17 *placed under house arrest, shall be monitored by an electronic*  
18 *monitoring device, which verifies the offender's location. The offender*  
19 *shall serve a minimum of 2,160 hours of confinement within the*  
20 *boundaries of the offender's residence. Any exceptions to remaining*  
21 *within the boundaries of the offender's residence provided for in the*  
22 *house arrest agreement shall not be counted as part of the 2,160 hours;*

23 (C) *on a second conviction a nonperson felony if the person has a*  
24 *prior conviction which occurred within the preceding 10 years, not*  
25 *including any period of incarceration. The person convicted shall be*  
26 *sentenced to not less than 90 days nor more than one year's*  
27 *imprisonment and fined not less than \$1,750 nor more than \$2,500. The*  
28 *person convicted shall not be eligible for release on probation,*  
29 *suspension or reduction of sentence or parole until the person has*  
30 *served at least 90 days' imprisonment. The 90 days' imprisonment*  
31 *mandated by this subsection may be served in a work release program*  
32 *only after such person has served 48 consecutive hours' imprisonment,*  
33 *provided such work release program requires such person to return to*  
34 *confinement at the end of each day in the work release program. The*  
35 *person convicted, if placed into a work release program, shall serve a*  
36 *minimum of 2,160 hours of confinement. Such 2,160 hours of*  
37 *confinement shall be a period of at least 48 consecutive hours of*  
38 *imprisonment followed by confinement hours at the end of and*  
39 *continuing to the beginning of the offender's work day. The court may*  
40 *place the person convicted under a house arrest program pursuant to*  
41 *K.S.A. 2012 Supp. 21-6609, and amendments thereto, to serve the 90*  
42 *days' imprisonment mandated by this subsection only after such person*  
43 *has served 48 consecutive hours' imprisonment. The person convicted, if*

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

8 *(D) on a third or subsequent conviction a nonperson felony. The*  
9 *person convicted shall be sentenced to not less than 90 days nor more*  
10 *than one year's imprisonment and fined \$2,500. The person convicted*  
11 *shall not be eligible for release on probation, suspension or reduction of*  
12 *sentence or parole until the person has served at least 90 days'*  
13 *imprisonment. The 90 days' imprisonment mandated by this subsection*  
14 *may be served in a work release program only after such person has*  
15 *served 72 consecutive hours' imprisonment, provided such work release*  
16 *program requires such person to return to confinement at the end of*  
17 *each day in the work release program. The person convicted, if placed*  
18 *into a work release program, shall serve a minimum of 2,160 hours of*  
19 *confinement. Such 2,160 hours of confinement shall be a period of at*  
20 *least 72 consecutive hours of imprisonment followed by confinement's*  
21 *hours at the end of and continuing to the beginning of the offender's*  
22 *work day. The court may place the person convicted under a house*  
23 *arrest program pursuant to K.S.A. 2012 Supp. 21-6609, and*  
24 *amendments thereto, to serve the 90 days' imprisonment mandated by*  
25 *this subsection only after such person has served 72 consecutive hours'*  
26 *imprisonment. The person convicted, if placed under house arrest, shall*  
27 *be monitored by an electronic monitoring device, which verifies the*  
28 *offender's location. The offender shall serve a minimum of 2,160 hours*  
29 *of confinement within the boundaries of the offender's residence. Any*  
30 *exceptions to remaining within the boundaries of the offender's*  
31 *residence provided for in the house arrest agreement shall not be*  
32 *counted as part of the 2,160 hours.*

33 *(2) The court may order that the term of imprisonment imposed*  
34 *pursuant to subsection (b)(1)(C) or (b)(1)(D) be served in a state facility*  
35 *in the custody of the secretary of corrections in a facility designated by*  
36 *the secretary for the provision of substance abuse treatment pursuant to*  
37 *the provisions of K.S.A. 2012 Supp. 21-6804, and amendments thereto.*  
38 *The person shall remain imprisoned at the state facility only while*  
39 *participating in the substance abuse treatment program designated by*  
40 *the secretary and shall be returned to the custody of the sheriff for*  
41 *execution of the balance of the term of imprisonment upon completion*  
42 *of or the person's discharge from the substance abuse treatment*  
43 *program. Custody of the person shall be returned to the sheriff for*

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

14 *(3) In addition, for any conviction pursuant to subsection (b)(1)(B),*  
15 *(b)(1)(C) or (b)(1)(D), at the time of the filing of the judgment form or*  
16 *journal entry as required by K.S.A. 22-3426 or K.S.A. 2012 Supp. 21-*  
17 *6711, and amendments thereto, the court shall cause a certified copy to*  
18 *be sent to the officer having the offender in charge. The court shall*  
19 *determine whether the offender, upon release from imprisonment, shall*  
20 *be supervised by community correctional services or court services based*  
21 *upon the risk and needs of the offender. The risk and needs of the*  
22 *offender shall be determined by use of a risk assessment tool specified by*  
23 *the Kansas sentencing commission. The law enforcement agency*  
24 *maintaining custody and control of a defendant for imprisonment shall*  
25 *cause a certified copy of the judgment form or journal entry to be sent to*  
26 *the supervision office designated by the court and upon expiration of the*  
27 *term of imprisonment shall deliver the defendant to a location*  
28 *designated by the supervision office designated by the court. After the*  
29 *term of imprisonment imposed by the court, the person shall be placed*  
30 *on supervision to community correctional services or court services, as*  
31 *determined by the court, for a mandatory one-year period of supervision,*  
32 *which such period of supervision shall not be reduced. During such*  
33 *supervision, the person shall be required to participate in a*  
34 *multidisciplinary model of services for substance use disorders*  
35 *facilitated by a department of social and rehabilitation services*  
36 *designated care coordination agency to include assessment and, if*  
37 *appropriate, referral to a community based substance use disorder*  
38 *treatment including recovery management and mental health counseling*  
39 *as needed. The multidisciplinary team shall include the designated care*  
40 *coordination agency, the supervision officer, the social and*  
41 *rehabilitation services department designated treatment provider and the*  
42 *offender. Any violation of the conditions of such supervision may subject*  
43 *such person to revocation of supervision and imprisonment in jail for*

1 *the remainder of the period of imprisonment, the remainder of the*  
2 *supervision period, or any combination or portion thereof.*

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

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

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

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

35 *(f) 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;*  
39 *and*

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

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



1 *lieu of further criminal proceedings on a complaint alleging a violation*  
2 *of this section to the division. Prior to sentencing under the provisions of*  
3 *this section, the court shall request and shall receive from the division a*  
4 *record of all prior convictions obtained against such person for any*  
5 *violations of any of the motor vehicle laws of this state.*

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

20 *(2) any convictions for a violation of the following sections which*  
21 *occurred during a person's lifetime shall be taken into account, but only*  
22 *convictions occurring when such person was 18 years of age or older:*  
23 *(A) This section; (B) driving a commercial motor vehicle under the*  
24 *influence, K.S.A. 8-2,144, and amendments thereto; (C) operating a*  
25 *vessel under the influence of alcohol or drugs, K.S.A. 32-1131, and*  
26 *amendments thereto; (D) involuntary manslaughter while driving under*  
27 *the influence of alcohol or drugs, K.S.A. 21-3442, prior to its repeal, or*  
28 *subsection (a)(3) of K.S.A. 2012 Supp. 21-5405, and amendments*  
29 *thereto; (E) aggravated battery as described in subsection (b)(3) of K.S.A.*  
30 *2012 Supp. 21-5413, and amendments thereto; and ~~(F)~~ (F) aggravated*  
31 *vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular*  
32 *battery, K.S.A. 21-3405b, prior to its repeal, if the crime was committed*  
33 *while committing a violation of K.S.A. 8-1567, and amendments thereto;*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 *Sec. 6. K.S.A. 2012 Supp. 8-1567 is hereby amended to read as*  
34 *follows: 8-1567. (a) Driving under the influence is operating or*  
35 *attempting to operate any vehicle within this state while:*

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

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

43 *(3) under the influence of alcohol to a degree that renders the*

1 *person incapable of safely driving a vehicle;*

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

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

7 *(b) (1) Driving under the influence is:*

8 *(A) On a first conviction a class B, nonperson misdemeanor. The*  
9 *person convicted shall be sentenced to not less than 48 consecutive*  
10 *hours nor more than six months' imprisonment, or in the court's*  
11 *discretion 100 hours of public service, and fined not less than \$750 nor*  
12 *more than \$1,000. The person convicted shall serve at least 48*  
13 *consecutive hours' imprisonment or 100 hours of public service either*  
14 *before or as a condition of any grant of probation or suspension,*  
15 *reduction of sentence or parole. The court may place the person*  
16 *convicted under a house arrest program pursuant to K.S.A. 2012 Supp.*  
17 *21-6609, and amendments thereto, to serve the remainder of the*  
18 *sentence only after such person has served 48 consecutive hours'*  
19 *imprisonment;*

20 *(B) on a second conviction a class A, nonperson misdemeanor. The*  
21 *person convicted shall be sentenced to not less than 90 days nor more*  
22 *than one year's imprisonment and fined not less than \$1,250 nor more*  
23 *than \$1,750. The person convicted shall serve at least five consecutive*  
24 *days' imprisonment before the person is granted probation, suspension*  
25 *or reduction of sentence or parole or is otherwise released. The five*  
26 *days' imprisonment mandated by this subsection may be served in a*  
27 *work release program only after such person has served 48 consecutive*  
28 *hours' imprisonment, provided such work release program requires such*  
29 *person to return to confinement at the end of each day in the work*  
30 *release program. The person convicted, if placed into a work release*  
31 *program, shall serve a minimum of 120 hours of confinement. Such 120*  
32 *hours of confinement shall be a period of at least 48 consecutive hours*  
33 *of imprisonment followed by confinement hours at the end of and*  
34 *continuing to the beginning of the offender's work day. The court may*  
35 *place the person convicted under a house arrest program pursuant to*  
36 *K.S.A. 2012 Supp. 21-6609, and amendments thereto, to serve the five*  
37 *days' imprisonment mandated by this subsection only after such person*  
38 *has served 48 consecutive hours' imprisonment. The person convicted, if*  
39 *placed under house arrest, shall be monitored by an electronic*  
40 *monitoring device, which verifies the offender's location. The offender*  
41 *shall serve a minimum of 120 hours of confinement within the*  
42 *boundaries of the offender's residence. Any exceptions to remaining*  
43 *within the boundaries of the offender's residence provided for in the*

1 *house arrest agreement shall not be counted as part of the 120 hours;*

2 *(C) on a third conviction a class A, nonperson misdemeanor, except*  
3 *as provided in subsection (b)(1)(D). The person convicted shall be*  
4 *sentenced to not less than 90 days nor more than one year's*  
5 *imprisonment and fined not less than \$1,750 nor more than \$2,500. The*  
6 *person convicted shall not be eligible for release on probation,*  
7 *suspension or reduction of sentence or parole until the person has*  
8 *served at least 90 days' imprisonment. The 90 days' imprisonment*  
9 *mandated by this subsection may be served in a work release program*  
10 *only after such person has served 48 consecutive hours' imprisonment,*  
11 *provided such work release program requires such person to return to*  
12 *confinement at the end of each day in the work release program. The*  
13 *person convicted, if placed into a work release program, shall serve a*  
14 *minimum of 2,160 hours of confinement. Such 2,160 hours of*  
15 *confinement shall be a period of at least 48 consecutive hours of*  
16 *imprisonment followed by confinement hours at the end of and*  
17 *continuing to the beginning of the offender's work day. The court may*  
18 *place the person convicted under a house arrest program pursuant to*  
19 *K.S.A. 2012 Supp. 21-6609, and amendments thereto, to serve the 90*  
20 *days' imprisonment mandated by this subsection only after such person*  
21 *has served 48 consecutive hours' imprisonment. The person convicted, if*  
22 *placed under house arrest, shall be monitored by an electronic*  
23 *monitoring device, which verifies the offender's location. The offender*  
24 *shall serve a minimum of 2,160 hours of confinement within the*  
25 *boundaries of the offender's residence. Any exceptions to remaining*  
26 *within the boundaries of the offender's residence provided for in the*  
27 *house arrest agreement shall not be counted as part of the 2,160 hours;*

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

1 *continuing to the beginning of the offender's work day. The court may*  
2 *place the person convicted under a house arrest program pursuant to*  
3 *K.S.A. 2012 Supp. 21-6609, and amendments thereto, to serve the 90*  
4 *days' imprisonment mandated by this subsection only after such person*  
5 *has served 48 consecutive hours' imprisonment. The person convicted, if*  
6 *placed under house arrest, shall be monitored by an electronic*  
7 *monitoring device, which verifies the offender's location. The offender*  
8 *shall serve a minimum of 2,160 hours of confinement within the*  
9 *boundaries of the offender's residence. Any exceptions to remaining*  
10 *within the boundaries of the offender's residence provided for in the*  
11 *house arrest agreement shall not be counted as part of the 2,160 hours;*  
12 *and*

13 *(E) on a fourth or subsequent conviction a nonperson felony. The*  
14 *person convicted shall be sentenced to not less than 90 days nor more*  
15 *than one year's imprisonment and fined \$2,500. The person convicted*  
16 *shall not be eligible for release on probation, suspension or reduction of*  
17 *sentence or parole until the person has served at least 90 days'*  
18 *imprisonment. The 90 days' imprisonment mandated by this subsection*  
19 *may be served in a work release program only after such person has*  
20 *served 72 consecutive hours' imprisonment, provided such work release*  
21 *program requires such person to return to confinement at the end of*  
22 *each day in the work release program. The person convicted, if placed*  
23 *into a work release program, shall serve a minimum of 2,160 hours of*  
24 *confinement. Such 2,160 hours of confinement shall be a period of at*  
25 *least 72 consecutive hours of imprisonment followed by confinement*  
26 *hours at the end of and continuing to the beginning of the offender's*  
27 *work day. The court may place the person convicted under a house*  
28 *arrest program pursuant to K.S.A. 2012 Supp. 21-6609, and*  
29 *amendments thereto, to serve the 90 days' imprisonment mandated by*  
30 *this subsection only after such person has served 72 consecutive hours'*  
31 *imprisonment. The person convicted, if placed under house arrest, shall*  
32 *be monitored by an electronic monitoring device, which verifies the*  
33 *offender's location. The offender shall serve a minimum of 2,160 hours*  
34 *of confinement within the boundaries of the offender's residence. Any*  
35 *exceptions to remaining within the boundaries of the offender's*  
36 *residence provided for in the house arrest agreement shall not be*  
37 *counted as part of the 2,160 hours.*

38 *(2) The court may order that the term of imprisonment imposed*  
39 *pursuant to subsection (b)(1)(D) or (b)(1)(E) be served in a state facility*  
40 *in the custody of the secretary of corrections in a facility designated by*  
41 *the secretary for the provision of substance abuse treatment pursuant to*  
42 *the provisions of K.S.A. 2012 Supp. 21-6804, and amendments thereto.*  
43 *The person shall remain imprisoned at the state facility only while*

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

19 *(3) In addition, for any conviction pursuant to subsection (b)(1)(C),*  
20 *(b)(1)(D) or (b)(1)(E), at the time of the filing of the judgment form or*  
21 *journal entry as required by K.S.A. 22-3426 or K.S.A. 2012 Supp. 21-*  
22 *6711, and amendments thereto, the court shall cause a certified copy to*  
23 *be sent to the officer having the offender in charge. The court shall*  
24 *determine whether the offender, upon release from imprisonment, shall*  
25 *be supervised by community correctional services or court services based*  
26 *upon the risk and needs of the offender. The risk and needs of the*  
27 *offender shall be determined by use of a risk assessment tool specified by*  
28 *the Kansas sentencing commission. The law enforcement agency*  
29 *maintaining custody and control of a defendant for imprisonment shall*  
30 *cause a certified copy of the judgment form or journal entry to be sent to*  
31 *the supervision office designated by the court and upon expiration of the*  
32 *term of imprisonment shall deliver the defendant to a location*  
33 *designated by the supervision office designated by the court. After the*  
34 *term of imprisonment imposed by the court, the person shall be placed*  
35 *on supervision to community correctional services or court services, as*  
36 *determined by the court, for a mandatory one-year period of supervision,*  
37 *which such period of supervision shall not be reduced. During such*  
38 *supervision, the person shall be required to participate in a*  
39 *multidisciplinary model of services for substance use disorders*  
40 *facilitated by a department of social and rehabilitation services*  
41 *designated care coordination agency to include assessment and, if*  
42 *appropriate, referral to a community based substance use disorder*  
43 *treatment including recovery management and mental health counseling*

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

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

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

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

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

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



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

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

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

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

15       (i) *For the purpose of determining whether a conviction is a first,*  
16 *second, third, fourth or subsequent conviction in sentencing under this*  
17 *section:*

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

28       (2) *any convictions for a violation of the following sections*  
29 *occurring during a person's lifetime shall be taken into account: (A)*  
30 *Refusing to submit to a test to determine the presence of alcohol or*  
31 *drugs, K.S.A. 2012 Supp. 8-1025, and amendments thereto; (B) driving a*  
32 *commercial motor vehicle under the influence, K.S.A. 8-2,144, and*  
33 *amendments thereto; (C) operating a vessel under the influence of*  
34 *alcohol or drugs, K.S.A. 32-1131, and amendments thereto; (D)*  
35 *involuntary manslaughter while driving under the influence of alcohol*  
36 *or drugs, K.S.A. 21-3442, prior to its repeal, or subsection (a)(3) of*  
37 *K.S.A. 2012 Supp. 21-5405, and amendments thereto; (E) aggravated*  
38 *battery as described in subsection (b)(3) of K.S.A. 2012 Supp. 21-5413,*  
39 *and amendments thereto; and—(E) (F) aggravated vehicular homicide,*  
40 *K.S.A. 21-3405a, prior to its repeal, or vehicular battery, K.S.A. 21-*  
41 *3405b, prior to its repeal, if the crime was committed while committing a*  
42 *violation of K.S.A. 8-1567, and amendments thereto;*

43       (3) *"conviction" includes: (A) Entering into a diversion agreement*

1 *in lieu of further criminal proceedings on a complaint alleging a*  
2 *violation of a crime described in subsection (i)(2); (B) conviction of a*  
3 *violation of an ordinance of a city in this state, a resolution of a county*  
4 *in this state or any law of another state which would constitute a crime*  
5 *described in subsection (i)(1) or (i)(2); and (C) receiving punishment*  
6 *under the uniform code of military justice or Kansas code of military*  
7 *justice for an act which was committed on a military reservation and*  
8 *which would constitute a crime described in subsection (i)(1) or (i)(2) if*  
9 *committed off a military reservation in this state;*

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

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

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

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

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

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

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

42 *(4) Any such ordinance or resolution shall authorize the court to*  
43 *order that the convicted person pay restitution to any victim who*

1 *suffered loss due to the violation for which the person was convicted.*

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

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

9 *(B) Kansas bureau of investigation central repository all criminal*  
10 *history record information concerning such person.*

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

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

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

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

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

35 *(3) "drug" includes toxic vapors as such term is defined in K.S.A.*  
36 *2012 Supp. 21-5712, and amendments thereto.*

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

1 *of corrections alcohol and drug abuse treatment fund, which is hereby*  
2 *created in the state treasury.*

3 *(2) On and after July 1, 2011, the amount of \$250 from each fine*  
4 *imposed pursuant to this section shall be remitted by the clerk of the*  
5 *district court to the state treasurer in accordance with the provisions of*  
6 *K.S.A. 75-4215, and amendments thereto. Upon receipt of each such*  
7 *remittance, the state treasurer shall credit the entire amount to the*  
8 *community corrections supervision fund established by K.S.A. 2012*  
9 *Supp. 75-52,113, and amendments thereto.*

10 Sec. ~~3~~ 7. K.S.A. 8-1567a is hereby amended to read as follows: 8-  
11 1567a. (a) It shall be unlawful for any person less than 21 years of age to  
12 operate or attempt to operate a vehicle in this state with a breath or blood  
13 alcohol content of .02 or greater.

14 (b) Whenever a law enforcement officer determines that a breath or  
15 blood alcohol test is to be required of a person less than 21 years of age  
16 pursuant to K.S.A. 8-1001 or K.S.A. 8-2,142, and amendments thereto, in  
17 addition to any other notices required by law, the law enforcement officer  
18 shall provide written and oral notice that: (1) It is unlawful for any person  
19 less than 21 years of age to operate or attempt to operate a vehicle in this  
20 state with a breath or blood alcohol content of .02 or greater; and (2) if the  
21 person is less than 21 years of age at the time of the test request and  
22 submits to and completes the test or tests and the test results show an  
23 alcohol concentration of .02 or greater, but less than .08, on the person's  
24 first occurrence, the person's driving privileges will be suspended for 30  
25 days and on the person's second or subsequent occurrence, the person's  
26 driving privileges shall be suspended for one year.

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

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

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

1 placed under arrest, was in custody or had been involved in a vehicle  
2 accident or collision; (C) a law enforcement officer had presented the  
3 person with the oral and written notice required by K.S.A. 8-1001, and  
4 amendments thereto, and the oral and written notice required by this  
5 section; (D) that the person was less than 21 years of age at the time of the  
6 test request; and (E) the result of the test showed that the person had an  
7 alcohol concentration of .02 or greater in such person's blood or breath.

8 (2) With regard to a breath test, in addition to those matters required  
9 to be certified under subsection (d)(1), that: (A) The testing equipment  
10 used was certified by the Kansas department of health and environment;  
11 (B) the testing procedures used were in accordance with the requirements  
12 set out by the Kansas department of health and environment; and (C) the  
13 person who operated the testing equipment was certified by the Kansas  
14 department of health and environment to operate such equipment.

15 (e) If a hearing is requested as a result of a law enforcement officer's  
16 certification under this section, the scope of the hearing shall be limited to  
17 whether: (1) A law enforcement officer had reasonable grounds to believe  
18 the person was operating a vehicle while under the influence of alcohol or  
19 drugs, or both, or to believe that the person had been driving a commercial  
20 motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto,  
21 while having alcohol or other drugs in such person's system *or was under*  
22 *the age of 21 years and was operating or attempting to operate a vehicle*  
23 *while having alcohol or other drugs in such person's system;* (2) the  
24 person ~~had been placed under arrest, was in custody or arrested for an~~  
25 ~~alcohol or drug related offense~~ or was involved in a motor vehicle accident  
26 or collision resulting in property damage, personal injury or death; (3) a  
27 law enforcement officer had presented the person with the oral and written  
28 notice required by K.S.A. 8-1001, and amendments thereto, and the oral  
29 and written notice required by this section; (4) the testing equipment used  
30 was reliable; (5) the person who operated the testing equipment was  
31 qualified; (6) the testing procedures used were reliable; (7) the test result  
32 determined that the person had an alcohol concentration of .02 or greater  
33 in such person's blood or breath; (8) the person was operating a vehicle;  
34 and (9) the person was less than 21 years of age at the time a test was  
35 requested.

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

1 (g) Except where there is a conflict between this section and K.S.A.  
2 8-1001 and 8-1002, and amendments thereto, the provisions of K.S.A. 8-  
3 1001 and 8-1002, and amendments thereto, shall be applicable to  
4 proceedings under this section.

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

13 ***Sec. 8. K.S.A. 2012 Supp. 21-5413 is hereby amended to read as***  
14 ***follows: 21-5413. (a) Battery is:***

15 ***(1) Knowingly or recklessly causing bodily harm to another person;***  
16 ***or***

17 ***(2) knowingly causing physical contact with another person when***  
18 ***done in a rude, insulting or angry manner;***

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

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

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

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

29 ***(2) (A) recklessly causing great bodily harm to another person or***  
30 ***disfigurement of another person; or***

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

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

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

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

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

43 ***(A) Uniformed or properly identified university or campus police***

1 *officer while such officer is engaged in the performance of such officer's*  
2 *duty; or*

3 *(B) uniformed or properly identified state, county or city law*  
4 *enforcement officer, other than a state correctional officer or employee,*  
5 *a city or county correctional officer or employee, a juvenile correctional*  
6 *facility officer or employee or a juvenile detention facility officer, or*  
7 *employee, while such officer is engaged in the performance of such*  
8 *officer's duty; or*

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

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

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

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

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

23 *(B) juvenile correctional facility officer or employee by a person*  
24 *confined in such juvenile correctional facility, while such officer or*  
25 *employee is engaged in the performance of such officer's or employee's*  
26 *duty;*

27 *(C) juvenile detention facility officer or employee by a person*  
28 *confined in such juvenile detention facility, while such officer or*  
29 *employee is engaged in the performance of such officer's or employee's*  
30 *duty; or*

31 *(D) city or county correctional officer or employee by a person*  
32 *confined in a city holding facility or county jail facility, while such*  
33 *officer or employee is engaged in the performance of such officer's or*  
34 *employee's duty.*

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

36 *(1) An aggravated battery, as defined in subsection (b)(1)(A)*  
37 *committed against a:*

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

41 *(B) uniformed or properly identified university or campus police*  
42 *officer while such officer is engaged in the performance of such officer's*  
43 *duty;*

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

3       (A) *Uniformed or properly identified state, county or city law*  
4 *enforcement officer while the officer is engaged in the performance of*  
5 *the officer's duty; or*

6       (B) *uniformed or properly identified university or campus police*  
7 *officer while such officer is engaged in the performance of such officer's*  
8 *duty; or*

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

10       (A) *Uniformed or properly identified state, county or city law*  
11 *enforcement officer while the officer is engaged in the performance of*  
12 *the officer's duty; or*

13       (B) *uniformed or properly identified university or campus police*  
14 *officer while such officer is engaged in the performance of such officer's*  
15 *duty.*

16       (e) *Battery against a school employee is a battery, as defined in*  
17 *subsection (a), committed against a school employee in or on any school*  
18 *property or grounds upon which is located a building or structure used*  
19 *by a unified school district or an accredited nonpublic school for student*  
20 *instruction or attendance or extracurricular activities of pupils enrolled*  
21 *in kindergarten or any of the grades one through 12 or at any regularly*  
22 *scheduled school sponsored activity or event, while such employee is*  
23 *engaged in the performance of such employee's duty.*

24       (f) *Battery against a mental health employee is a battery, as defined*  
25 *in subsection (a), committed against a mental health employee by a*  
26 *person in the custody of the secretary of social and rehabilitation*  
27 *services, while such employee is engaged in the performance of such*  
28 *employee's duty.*

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

30       (2) *Aggravated battery as defined in:*

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

32       (B) *subsection (b)(1)(B) or (b)(1)(C) is a severity level 7, person*  
33 *felony;*

34       (C) *subsection (b)(2)(A) or (b)(3)(A) is a severity level 5, person*  
35 *felony; and*

36       (D) *subsection (b)(2)(B) or (b)(3)(B) is a severity level 8, person*  
37 *felony.*

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

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

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

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

42       (4) *Aggravated battery against a law enforcement officer as defined*  
43 *in:*



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

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

4       (5) *Battery against a school employee is a class A person*  
5 *misdemeanor.*

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

8       (h) *As used in this section:*

9       (1) *"Correctional institution" means any institution or facility*  
10 *under the supervision and control of the secretary of corrections;*

11       (2) *"state correctional officer or employee" means any officer or*  
12 *employee of the Kansas department of corrections or any independent*  
13 *contractor, or any employee of such contractor, working at a*  
14 *correctional institution;*

15       (3) *"juvenile correctional facility officer or employee" means any*  
16 *officer or employee of the juvenile justice authority or any independent*  
17 *contractor, or any employee of such contractor, working at a juvenile*  
18 *correctional facility, as defined in K.S.A. 2012 Supp. 38-2302, and*  
19 *amendments thereto;*

20       (4) *"juvenile detention facility officer or employee" means any*  
21 *officer or employee of a juvenile detention facility as defined in K.S.A.*  
22 *2012 Supp. 38-2302, and amendments thereto;*

23       (5) *"city or county correctional officer or employee" means any*  
24 *correctional officer or employee of the city or county or any independent*  
25 *contractor, or any employee of such contractor, working at a city holding*  
26 *facility or county jail facility;*

27       (6) *"school employee" means any employee of a unified school*  
28 *district or an accredited nonpublic school for student instruction or*  
29 *attendance or extracurricular activities of pupils enrolled in*  
30 *kindergarten or any of the grades one through 12; and*

31       (7) *"mental health employee" means an employee of the*  
32 *department of social and rehabilitation services working at Larned state*  
33 *hospital, Osawatomie state hospital and Rainbow mental health facility,*  
34 *Kansas neurological institute and Parsons state hospital and training*  
35 *center and the treatment staff as defined in K.S.A. 59-29a02, and*  
36 *amendments thereto.*

37       Sec. ~~4~~ 9. K.S.A. 8-1567a and K.S.A. 2012 Supp. 8-2,144, 8-1001  
38 ~~and~~, 8-1013, 8-1020, 8-1025, 8-1567 and 21-5413 are hereby repealed.

39       Sec. ~~5~~ 10. This act shall take effect and be in force from and after its  
40 publication in the statute book.