

JOHN FRYDMAN, J.D.

ATTORNEY AT LAW

123 WEST 8TH STREET, SUITE 207

LAWRENCE, KANSAS 66044

(785) 749-1122

Noon CLE: 10/20/10 (jury assembly room)
Pros and Cons of Recent Amendments to Kansas DUI Laws
Presenter: John Frydman (with assistance from Greg Benefiel)

Topics to be addressed:

Are the new DUI laws (which went into effect on 7/1/11) tougher?

Do "loopholes" still exist?

Do all prior DUI diversions/convictions now count? Are the new "look back" provisions retroactive or only prospective?

Administrative hearing requests including new fees and time limitations.

After driver's licenses are suspended, mandatory Ignition Interlock System (IIS) installation required in many cases.

In many cases (with many exceptions) requests for IIS now available after 45 days of driving suspensions (corresponding \$100.00 fee required).

Increased minimum fines for every DUI (but still only \$5.00 per hour for community service work in lieu of fine).

New central DUI Depository.

New allowances for expungement of DUI diversion/convictions.

Time permitting, any questions/concerns/confusion over any DUI topic will be addressed.

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

(b) (1) On and after July 1, 2011, through June 30, 2015:

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

(B) When a person has completed the suspension pursuant to subsection (b)(1)(A) of K.S.A. 8-1014, and amendments thereto, the division shall restrict the person's driving privileges for one year to driving only a motor vehicle equipped with an ignition interlock device if the records maintained by the division indicate that such person has previously: (A) Been convicted of a violation of K.S.A. 8-1599, and amendments thereto; (B) been convicted of a violation of K.S.A. 41-727, and amendments thereto; (C) been convicted of any violations listed in subsection (a) of K.S.A. 8-285, and amendments thereto; (D) been convicted of three or more moving traffic violations committed on separate occasions within a 12-month period; or (E) had such person's driving privileges revoked, suspended, canceled or withdrawn.

(2) On and after July 1, 2015:

(A) Except as provided in subsection (b)(2)(B), when a person has completed the suspension pursuant to subsection (b)(1)(A) of K.S.A. 8-1014, and amendments thereto, the division shall restrict the person's driving privileges to driving only under the circumstances provided by subsections (a)(1), (2), (3) and (4) of K.S.A. 8-292, and amendments thereto.

(B) In lieu of the restrictions set out in subsection (b)(2)(A), the division, upon request of the person whose driving privileges are to be restricted, may restrict the person's driving privileges to driving only a motor vehicle equipped with an ignition interlock device.

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

ignition interlock device, ~~approved by the division and maintained at the person's expense. Proof of the installation of such device, for the entire restriction period, shall be provided to the division before the person's driving privileges are fully reinstated. Upon restricting a person's driving privileges pursuant to this subsection, the division shall issue a copy of the order imposing the restrictions which is required to be carried by the person at any time the person is operating a motor vehicle on the highways of this state.~~

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

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

(f) Upon expiration of the period of time for which restrictions are imposed pursuant to this section, the licensee may apply to the division for the return of any license previously surrendered by the licensee. If the license has expired, the person may apply to the division for a new license, which shall be issued by the division upon payment of the proper fee and satisfaction of the other conditions established by law, unless the person's driving privileges have been suspended or revoked prior to expiration.

(g) Any person who has had the person's driving privileges suspended or restricted pursuant to subsection (a), (b) or (c) of K.S.A. 8-1014, prior to the amendments by this act, may apply to the division to have the suspension and restriction penalties modified in conformity with the provisions of subsection (a), (b) or (c) of K.S.A. 8-1014, and amendments thereto. The division shall assess an application fee of \$100 for a person to apply to modify the suspension and restriction penalties previously issued. The division shall remit all application fees to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of such remittance, the state treasurer shall deposit the entire amount in the state treasury and shall credit such moneys to the division of vehicles operating fund until an aggregate amount of \$100,000 is credited to the division of vehicles operating fund. On and after an aggregate amount of \$100,000 is credited to such fund the entire amount of such remittance shall be credited to the community corrections supervision fund created by section 3, and amendments thereto. The application fee established in this

allow a person to drive such vehicle when such owner knows or reasonably should have known such person was driving in violation of K.S.A. 8-1014, and amendments thereto.

(b) Violation of this section is an unclassified misdemeanor punishable by a fine of not less than \$500 nor more than \$1,000. In addition to the fine imposed upon a person convicted of a violation of this section, the court may order that the convicted person's motor vehicle or vehicles be impounded or immobilized for a period not to exceed one year and that the convicted person pay all towing, impoundment and storage fees or other immobilization costs. Prior to ordering the impoundment or immobilization of any such motor vehicle, the court shall consider the factors established in subsection (f)(2) (g) of K.S.A. 8-1567, and amendments thereto. Any personal property in a vehicle impounded or immobilized pursuant to this section may be retrieved prior to or during the period of such impoundment or immobilization.

Sec. 19. K.S.A. 2010 Supp. 8-1567 is hereby amended to read as follows: 8-1567. (a) ~~No person shall operate or attempt Driving under the influence is operating or attempting to operate any vehicle within this state while:~~

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

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

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

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

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

(b) (6) ~~No person shall operate or attempt to operate any vehicle within this state if:~~The person is a habitual user of any narcotic, hypnotic, somnifacient or stimulating drug.

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

(d) (b) (1) ~~Upon a first conviction of a violation of this section, a person shall be guilty of Driving under the influence is:~~

(A) ~~On a first conviction a class B, nonperson misdemeanor and. The person convicted shall be sentenced to not less than 48 consecutive hours nor more than six months' imprisonment, or in the court's discretion, 100~~

hours of public service, and fined not less than \$500 \$750 nor more than \$1,000. The person convicted must shall serve at least 48 consecutive hours' imprisonment or 100 hours of public service either before or as a condition of any grant of probation or suspension, reduction of sentence or parole. ~~The court may place the person convicted under a house arrest program pursuant to section 249 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served 48 consecutive hours' imprisonment;~~

~~In addition, the court shall enter an order which requires that the person enroll in and successfully complete an alcohol and drug safety action education program or treatment program as provided in K.S.A. 8-1008, and amendments thereto, or both the education and treatment programs.~~

(e) (B) ~~on a second conviction of a violation of this section, a person shall be guilty of a class A, nonperson misdemeanor and. The person convicted shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,000 \$1,250 nor more than \$1,500 \$1,750. The person convicted must shall serve at least five consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. The five days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The person convicted, if placed into a work release program, shall serve a minimum of 120 hours of confinement. Such 120 hours of confinement shall be a period of at least 48 consecutive hours of imprisonment followed by the confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program pursuant to K.S.A. 21-4603b section 249 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served 48 consecutive hours' imprisonment. The person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of 120 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the 120 hours.~~

~~As a condition of any grant of probation, suspension of sentence or parole or of any other release, the person shall be required to enter into and complete a treatment program for alcohol and drug abuse as provided in K.S.A. 8-1008, and amendments thereto.~~

(f) (H) (C) ~~on a third conviction a class A, nonperson misdemeanor, except as provided in subsection (b)(1)(D). The person convicted shall be~~

sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,750 nor more than \$2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The 90 days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The person convicted, if placed into a work release program, shall serve a minimum of 240 hours of confinement. Such 240 hours of confinement shall be a period of at least 48 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program pursuant to section 249 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served 48 consecutive hours' imprisonment. The person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of 240 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the 240 hours.

(D) on the a third conviction of a violation of this section, a person shall be guilty of a nonperson felony and if the person has a prior conviction which occurred within the preceding 10 years, not including any period of incarceration. The person convicted shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,500 \$1,750 nor more than \$2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The 90 days' imprisonment mandated by this paragraph subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The person convicted, if placed into a work release program, shall serve a minimum of 240 hours of confinement. Such 240 hours of confinement shall be a period of at least 48 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program pursuant to K.S.A. 21-4603b section 249 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served 48 consecutive hours' imprisonment. The person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which

verifies the offender's location. The offender shall serve a minimum of 240 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the 240 hours; and

(2) The court may order that the term of imprisonment imposed pursuant to paragraph (1) be served in a state facility in the custody of the secretary of corrections in a facility designated by the secretary for the provision of substance abuse treatment pursuant to the provisions of K.S.A. 21-4704, and amendments thereto. The person shall remain imprisoned at the state facility only while participating in the substance abuse treatment program designated by the secretary and shall be returned to the custody of the sheriff for execution of the balance of the term of imprisonment upon completion of or the person's discharge from the substance abuse treatment program. Custody of the person shall be returned to the sheriff for execution of the sentence imposed in the event the secretary of corrections determines: (A) That substance abuse treatment resources or the capacity of the facility designated by the secretary for the incarceration and treatment of the person is not available; (B) the person fails to meaningfully participate in the treatment program of the designated facility; (C) the person is disruptive to the security or operation of the designated facility; or (D) the medical or mental health condition of the person renders the person unsuitable for confinement at the designated facility. The determination by the secretary that the person either is not to be admitted into the designated facility or is to be transferred from the designated facility is not subject to review. The sheriff shall be responsible for all transportation expenses to and from the state correctional facility.

The court shall also require as a condition of parole that such person enter into and complete a treatment program for alcohol and drug abuse as provided by K.S.A. 9-1908, and amendments thereto.

(E) on the a fourth or subsequent conviction of a violation of this section, a person shall be guilty of a nonperson felony and. The person convicted shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined \$2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The 90 days' imprisonment mandated by this paragraph may be served in a work release program only after such person has served 72 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The person convicted, if placed into a work release program, shall serve a minimum of 240 hours of confinement. Such 240 hours of confinement shall be a period of at least 72 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a

house arrest program pursuant to section 249 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served 72 consecutive hours' imprisonment. The person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of 240 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the 240 hours.

(2) The court may order that the term of imprisonment imposed pursuant to ~~paragraph (1)~~ subsection (b)(1)(D) or (b)(1)(E) be served in a state facility in the custody of the secretary of corrections in a facility designated by the secretary for the provision of substance abuse treatment pursuant to the provisions of K.S.A.-21-4794 section 285 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto. The person shall remain imprisoned at the state facility only while participating in the substance abuse treatment program designated by the secretary and shall be returned to the custody of the sheriff for execution of the balance of the term of imprisonment upon completion of or the person's discharge from the substance abuse treatment program. Custody of the person shall be returned to the sheriff for execution of the sentence imposed in the event the secretary of corrections determines: (A) That substance abuse treatment resources or the capacity of the facility designated by the secretary for the incarceration and treatment of the person is not available; (B) the person fails to meaningfully participate in the treatment program of the designated facility; (C) the person is disruptive to the security or operation of the designated facility; or (D) the medical or mental health condition of the person renders the person unsuitable for confinement at the designated facility. The determination by the secretary that the person either is not to be admitted into the designated facility or is to be transferred from the designated facility is not subject to review. The sheriff shall be responsible for all transportation expenses to and from the state correctional facility.

At the time of the filing of the judgment form or journal entry as required by K.S.A.-21-4630 or 22-3426, and amendments thereto, the court shall cause a certified copy to be sent to the officer having the offender in charge. The law enforcement agency maintaining custody and control of a defendant for imprisonment shall cause a certified copy of the judgment form or journal entry to be sent to the secretary of corrections within three business days of receipt of the judgment form or journal entry from the court and notify the secretary of corrections when the term of imprisonment expires and upon expiration of the term of imprisonment shall deliver the defendant to a location designated by the secretary. After the term of imprisonment imposed by the court, the person shall be placed in the custody of the secretary of corrections for a mandatory one-year period of postrelease su-

pervention, which such period of postrelease supervision shall not be reduced. During such postrelease supervision, the person shall be required to participate in an inpatient or outpatient program for alcohol and drug abuse, including, but not limited to, an approved aftercare plan or mental health counseling, as determined by the secretary and satisfy conditions imposed by the Kansas parole board as provided by K.S.A.-22-3717, and amendments thereto. Any violation of the conditions of such postrelease supervision may subject such person to revocation of postrelease supervision pursuant to K.S.A.-75-5217 et seq., and amendments thereto and as otherwise provided by law.

(3) In addition, for any conviction pursuant to subsection (b)(1)(C), (b)(1)(D) or (b)(1)(E), at the time of the filing of the judgment form or journal entry as required by K.S.A. 22-3426 or section 280 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, the court shall cause a certified copy to be sent to the officer having the offender in charge. The court shall determine whether the offender, upon release from imprisonment, shall be supervised by community correctional services or court services based upon the risk and needs of the offender. The risk and needs of the offender shall be determined by use of a risk assessment tool specified by the Kansas sentencing commission. The law enforcement agency maintaining custody and control of a defendant for imprisonment shall cause a certified copy of the judgment form or journal entry to be sent to the supervision office designated by the court and upon expiration of the term of imprisonment shall deliver the defendant to a location designated by the supervision office designated by the court. After the term of imprisonment imposed by the court, the person shall be placed on supervision to community correctional services or court services, as determined by the court, for a mandatory one-year period of supervision, which such period of supervision shall not be reduced. During such supervision, the person shall be required to participate in a multidisciplinary model of services for substance use disorders facilitated by a department of social and rehabilitation services designated care coordination agency to include assessment and, if appropriate, referral to a community based substance use disorder treatment including recovery management and mental health counseling as needed. The multidisciplinary team shall include the designated care coordination agency, the supervision officer, the social and rehabilitation services department designated treatment provider and the offender. Any violation of the conditions of such supervision may subject such person to revocation of supervision and imprisonment in jail for the remainder of the period of imprisonment, the remainder of the supervision period, or any combination or portion thereof.

(4) In addition, prior to sentencing for any conviction, the court shall order the person to participate in an alcohol and drug evaluation conducted by a provider in accordance with K.S.A. 8-1008, and amendments thereto.

The person shall be required to follow any recommendation made by the provider after such evaluation, unless otherwise ordered by the court.

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

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

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

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

(g) (1) Except as provided in paragraph (5), in addition to any other penalty which may be imposed upon a first conviction of a violation of this section, the court may order that the convicted person's motor vehicle or vehicles be impounded or immobilized for a period not to exceed one year and that the convicted person pay all towing, impoundment and storage fees or other immobilization costs.

(2) The court shall not order the impoundment or immobilization of a motor vehicle driven by a person convicted of a violation of this section if the motor vehicle had been stolen or converted at the time it was driven in violation of this section.

(3) Prior to ordering the impoundment or immobilization of a motor vehicle or vehicles owned by a person convicted of a violation of this section, the court shall consider, but not be limited to, the following:

(A) Whether the impoundment or immobilization of the motor vehicle

would result in the loss of employment by the convicted person or a member of such person's family; and

(B) whether the ability of the convicted person or a member of such person's family to attend school or obtain medical care would be impaired.

(4) Any personal property in a vehicle impounded or immobilized pursuant to this subsection may be retrieved prior to or during the period of such impoundment or immobilization.

(5) As used in this subsection, the convicted person's motor vehicle or vehicles shall include any vehicle leased by such person. If the lease on the convicted person's motor vehicle subject to impoundment or immobilization expires in less than one year from the date of the impoundment or immobilization, the time of impoundment or immobilization of such vehicle shall be the amount of time remaining on the lease.

(6) (1) Except as provided in paragraph (3), in addition to any other penalty which may be imposed upon a second or subsequent conviction of a violation of this section, the court shall order that each motor vehicle owned or leased by the convicted person shall either be equipped with an ignition interlock device or be impounded or immobilized for a period of two years. The convicted person shall pay all costs associated with the installation, maintenance and removal of the ignition interlock device and all towing, impoundment and storage fees or other immobilization costs.

(2) Any personal property in a vehicle impounded or immobilized pursuant to this subsection may be retrieved prior to or during the period of such impoundment or immobilization.

(3) As used in this subsection, the convicted person's motor vehicle or vehicles shall include any vehicle leased by such person. If the lease on the convicted person's motor vehicle subject to impoundment or immobilization expires in less than two years from the date of the impoundment or immobilization, the time of impoundment or immobilization of such vehicle shall be the amount of time remaining on the lease.

(4) (h) Prior to filing a complaint alleging a violation of this section, a prosecutor shall request and shall receive from the: (1) Division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state;

(2) Prior to filing a complaint alleging a violation of this section, a prosecutor shall request and shall receive from the: (a) Kansas bureau of investigation central repository all criminal history record information concerning such person.

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

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

(1) "Conviction" includes being convicted of a violation of this section or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;

(2) "conviction" includes being convicted of a violation of a law of another state or an ordinance of any city, or resolution of any county, which prohibits the acts that this section prohibits or entering into a diversion agreement in lieu of further criminal proceedings in a case alleging a violation of such law, ordinance or resolution;

(3) ~~any convictions occurring during a person's lifetime only convictions occurring on or after July 1, 2001,~~ shall be taken into account when determining the sentence to be imposed for a first, second, third, fourth or subsequent offender;

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

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

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

(f) (l) (A) (1) Nothing contained in this section shall be construed as preventing any city from enacting ordinances, or any county from adopting resolutions, declaring acts prohibited or made unlawful by this act as unlawful or prohibited in such city or county and prescribing penalties for violation thereof. ~~Except as specifically provided by this subsection.~~

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

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

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

loss due to the violation for which the person was convicted. ~~Except as provided in paragraph (5);~~

(5) Any such ordinance or resolution may require or authorize the court to order that the convicted person's motor vehicle or vehicles be impounded or immobilized for a period not to exceed one year and that the convicted person pay all towing, impoundment and storage fees or other immobilization costs in accordance with subsection (8).

(2) The court shall not order the impoundment or immobilization of a motor vehicle driven by a person convicted of a violation of this section if the motor vehicle had been stolen or converted at the time it was driven in violation of this section.

(2) Prior to ordering the impoundment or immobilization of a motor vehicle or vehicles owned by a person convicted of a violation of this section, the court shall consider, but not be limited to, the following:

(A) Whether the impoundment or immobilization of the motor vehicle would result in the loss of employment by the convicted person or a member of such person's family; and

(B) Whether the ability of the convicted person or a member of such person's family to attend school or obtain medical care would be impaired.

(4) Any personal property in a vehicle impounded or immobilized pursuant to this subsection may be retrieved prior to or during the period of such impoundment or immobilization.

(5) As used in this subsection, the convicted person's motor vehicle or vehicles shall include any vehicle leased by such person. If the lease on the convicted person's motor vehicle subject to impoundment or immobilization expires in less than one year from the date of the impoundment or immobilization, the time of impoundment or immobilization of such vehicle shall be the amount of time remaining on the lease.

(f) (m) (1) Upon the filing of a complaint, citation or notice to appear alleging a person has violated a city ordinance prohibiting the acts prohibited by this section, and prior to conviction thereof, a city attorney shall request and shall receive from the: (A) Division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state;

(2) Upon the filing of a complaint, citation or notice to appear alleging a person has violated a city ordinance prohibiting the acts prohibited by this section, and prior to conviction thereof, a city attorney shall request and shall receive from the; and (B) Kansas bureau of investigation central repository all criminal history record information concerning such person.

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

(f) (n) No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of

permitting a person charged with a violation of this section, or a violation of any ordinance of a city or resolution of any county in this state which prohibits the acts prohibited by this section, to avoid the mandatory penalties established by this section or by the ordinance. For the purpose of this subsection, entering into a diversion agreement pursuant to K.S.A. 12-4413 et seq. or 22-2906 et seq., and amendments thereto, shall not constitute plea bargaining.

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

(h) (p) Upon a fourth or subsequent conviction, the judge of any court in which any person is convicted of violating this section, may revoke the person's license plate or temporary registration certificate of the motor vehicle driven during the violation of this section for a period of one year. Upon revoking any license plate or temporary registration certificate pursuant to this subsection, the court shall require that such license plate or temporary registration certificate be surrendered to the court.

(i) (q) For the purpose of *As used in this section:* (1) "Alcohol concentration" means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.

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

(3) "drug" includes toxic vapors as such term is defined in K.S.A. 2010 Supp. 21-36a12, and amendments thereto.

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

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

(x) ~~Upon every conviction of a violation of this section, the court shall order such person to submit to a pre-sentence alcohol and drug abuse evaluation pursuant to K.S.A. 8-1006, and amendments thereto. Such pre-sen-~~

peal, or section 41 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

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

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

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

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

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

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

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

(c) *No person may petition for expungement until 10 or more years have elapsed since the person satisfied the sentence imposed on the terms of a diversion agreement or was discharged from probation, parole, conditional release or a suspended sentence, if such person was convicted of the violation of a city ordinance which would also constitute a violation of K.S.A. 8-1567, and amendments thereto.*

(d) There shall be no expungement of convictions or diversions for a violation of a city ordinance which would also constitute a violation of K.S.A. 8-1567 or 8-2,144, and amendments thereto.

(e) When a petition for expungement is filed, the court shall set a date for a hearing of such petition and shall cause notice of such hearing to be given to the prosecuting attorney and the arresting law enforcement agency. The petition shall state: (1) The defendant's full name;

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

(3) the defendant's sex, race and date of birth;

(4) the crime for which the defendant was arrested, convicted or diverted;

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

(6) the identity of the convicting court, arresting law enforcement agency or diverting authority. A municipal court may prescribe a fee to be charged as costs for a person petitioning for an order of expungement pursuant to this section. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner and shall have access to any reports or records relating to the petitioner that are on file with the secretary of corrections or the Kansas parole board.

(f) At the hearing on the petition, the court shall order the peti-

Division of Vehicles
Driver Control Bureau
PO Box 12021
1915 SW Harrison St
Topeka KS 66612-2021



Phone: 785-296-3671
FAX: 785-296-6851
www.ksrevenue.org

Nick Jordan, Secretary
Donna Shelite, Director of Vehicles

Department of Revenue

Sam Brownback, Governor

**APPLICATION TO MODIFY A CURRENT DRIVER'S LICENSE SUSPENSION OR REVOCATION
AND/OR REQUEST FOR RESTRICTED DRIVING PRIVILEGES**

Beginning July 1, 2011, you may apply to: 1) modify the current suspension or revocation against your driving privileges due to a DUI conviction, chemical test failure or chemical test refusal (imposed or occurring prior to July 1, 2011); and 2) determine whether you are eligible to have your driving privileges restricted to operating a motor vehicle equipped with an ignition interlock device for limited driving purposes after serving at least 45 days of suspension. Your application must be accompanied by a non-refundable, application fee of \$100.00. You will receive written notice of your application being approved or denied. If approved, you will be required to provide proof of installation of a State-approved ignition interlock device before a restricted driver's license is issued. If the application is denied, the reason(s) for the denial will be stated.

Section 1. Applicant Information

Name as it appears on your driver's license (please print):		
Date of Birth:		
Drivers License Number:		
Current Address (Note: if the address provided is different than the most recent address in the Division's records, this address will be considered a change of address, pursuant to K.S.A. 8-248, and your driving record will be updated).		
Street		
City	State	Zip Code

Section 2. Modification of current suspension or revocation and request for restricted driving privileges

Are you requesting the Division of Vehicles to:

A. Modify the current suspension or revocation of your driving privileges to a one year suspension period followed by an ignition interlock period (See Section 6 on the back page):

Yes No

AND

B. Determine if you have served at least 45 days of suspension and are eligible to operate a motor vehicle equipped with an ignition interlock device for limited driving purposes for the remainder of the one year suspension (**to be eligible, you must mark "Yes" in question A above**):

Yes No

Section 3. Acknowledgement

Applicant's Signature _____

Date _____

Section 4. Mailing Instructions

Applications must be made to the Driver Control Bureau, Division of Vehicles:

Driver Control Bureau
 PO Box 12021
 915 SW Harrison St
 Topeka KS 66612-2021

For this application to be considered, the applicant must include the required payment: (\$100.00). Applicants are encouraged to make payment by money order, cashier's check, or personal check. Checks or money orders should be made payable to the "Division of Vehicles." Payment by cash is strongly discouraged. No refunds will be issued for applications that are: 1) made in error; 2) withdrawn or rescinded by the applicant; 3) that cannot be associated with a file or driver; or 4) denied by the Division based on criteria set out by law.

Section 5. Additional Information

1. Not all applicants will be eligible for modification to the new suspension and restriction framework. Retroactive modification of previously imposed suspensions and revocations will only apply to those applicants that are solely suspended or revoked for a DUI conviction, chemical test failure, or chemical test refusal.

Reasons for the denial of an application may include, but not be limited to, the following suspension types existing on the applicant's record: 1) failure to appear in court on a traffic citation; 2) failure to maintain required liability insurance coverage on a vehicle at the time of an accident or traffic stop; 3) failure to file or maintain evidence of liability insurance on record with the Driver Control Bureau; 4) failure to comply with a child support order; and/or 5) determined to be a habitual violator.

2. While an approved modification may permit the applicant to operate a vehicle equipped with ignition interlock for limited driving purposes, in lieu of suspension, the applicant should be aware that the subsequent ignition interlock period with full driving privileges will also be revised (potentially adding more ignition interlock time) in conformance with the Senate Bill 6 (2011). Suspension and/or revocation days, associated with the DUI conviction, chemical test failure or chemical test refusal, already served will be credited toward the one year suspension but will not be credited towards the subsequent ignition interlock period with full driving privileges.
3. Proof of the installation of the Ignition Interlock device, for the entire period required by the applicable law, shall be provided to the Division before the person's driving privileges will be fully reinstated. Reinstatement requirements relating to, but not limited to, retesting, reinstatement fees, and proof of insurance also remain as pre-requisites to full re-instatement.
4. If you are a commercial licensed driver and your commercial driving privileges are currently disqualified, the modification and restriction will only apply toward your regular driving privileges. Your commercial driving privileges will remain disqualified.
5. If this application is denied, any subsequent application will require another \$100.00 application fee.

Section 6. Suspension and Ignition Interlock Periods Beginning July 1, 2011

Table 1 - Chemical Test Failure (alcohol level under .15) and DUI Conviction

Occurrence	Suspension	Restriction to driving with ignition interlock device
1st *	30 days*	6 months or 1 year*
2nd	1 year	1 year
3rd	1 year	2 years
4th	1 year	3 years
5th or subsequent	1 year	10 years

Table 2 - Chemical Test Failure (alcohol level .15 or greater)

Occurrence	Suspension	Restriction to driving with ignition interlock device
1st	1 year	1 year
2nd	1 year	2 years
3rd	1 year	3 years
4th	1 year	4 years
5th or subsequent	1 year	10 years

Table 3 - Refusal of an Evidentiary Chemical Test

Occurrence	Suspension	Restriction to driving with ignition interlock device
1st	1 year	1 year
2nd	1 year	2 years
3rd	1 year	3 years
4th	1 year	4 years
5th or subsequent	1 year	10 years

* If licensee is under 21, licensee will be suspended for 1 year. 1 year of ignition interlock restriction will also be added if the "under 21" licensee's alcohol concentration was .15 or greater.