



Kansas Department of Health and Environment

Breath Alcohol Program

Training Manual

Revised 12/11/2018

Health & Environmental Laboratories
6810 SE Dwight St.
Topeka, KS 66620
785-296-1642

The contents of this manual are intended for the sole use of law enforcement agencies. Permission to reproduce any or all contents is freely given to those agencies. Permission to reproduce any or all contents by anyone else for any other purpose is prohibited without the expressed written permission of the Kansas Department of Health and Environment.

This manual is solely used as a training guide. Any critical application at law of this guide should refer to the original source material. It does not create any rights, substantive or procedural, enforceable at law by any party in any civil or criminal matter, nor does it place any limitation on otherwise lawful enforcement or procedural methods available to law enforcement agencies.

**KDHE BREATH ALCOHOL PROGRAM
KANSAS HEALTH AND ENVIRONMENTAL LABORATORIES
6810 SE DWIGHT ST.
TOPEKA, KS 66620
FAX (785) 559-5206
<http://www.kdheks.gov/lipo/alcohol.html>**

Amanda Pfannenstiel- Laboratory Improvement Specialist amanda.pfannenstiel@ks.gov	(work) (785) 296-2095 (cell) (785) 213-6056
Katy Schwinghamer- Laboratory Improvement Specialist katy.schwinghamer@ks.gov	(work) (785) 296-2095 (cell) (785) 221-9275
Denae Jones- Administrative Specialist denae.c.jones@ks.gov	(work) (785) 296-1642

PREFACE

The purpose of this manual is to provide the information for initial operator training and to be used as a reference and resource manual. All material presented in this manual may not be covered in the actual lecture, nor is it designed to infer that all material is presented in its entirety.

Table of Contents

<u>Topic</u>	<u>Page</u>
KDHE BREATH ALCOHOL PROGRAM	1
PREFACE	2
OBJECTIVES	4
OPERATOR'S TESTIMONY IN COURT	5
65-1,107	6
65-1,109	6
8-1013	7
8-1001	8
DC-70	12
8-1002	14
DC-27	16
8-1004	18
8-1005	18
8-1012	18
8-1017	19
8-1020	19
8-1023	24
8-1024	25
8-1567	25
8-1567A	32
DC-28	34
8-2,136	36
8-2,144	36
8-2,145	41
CDL-5	44
28-32-8. DEFINITIONS	46
28-32-9. AGENCY CERTIFICATION	46
28-32-10. OPERATOR CERTIFICATION	47
28-32-11. EBAT DEVICE CERTIFICATION	48
28-32-12. CERTIFIED OPERATOR INSTRUCTION	49
28-32-13. RECORDS AND REPORTS	49
28-32-14. PRELIMINARY BREATH-SCREENING TEST DEVICES.	49
ALCOHOL PROPERTIES & PRODUCTION	51
PHYSIOLOGY OF ALCOHOL	53
HENRY'S LAW	56
SUMMARY REVIEW	57
INTOXILYZER 9000	62
INTOXILYZER 9000 PROTOCOL	64
DRY GAS CYLINDER INFORMATION	65
INTOXILYZER 9000 INFORMATIONAL MESSAGES	66

OBJECTIVES

This training session is only a step in the continuous fight against “Drunk Driving”. It is designed so that after the training, the operator will be aware of:

1. The theoretical aspects of breath testing.
2. The basic operation of the instruments used for breath testing, including any informational messages generated.
3. The necessary steps to achieve an objective and reliable test result, e.g., 20-minute alcohol deprivation period prior to testing.
4. The paperwork associated with performing a DUI investigation.
5. Statutes and regulations associated with DUIs.

OPERATOR'S TESTIMONY IN COURT

You may be asked about:

1. Your operator's certification.
2. Instrument (agency) certificate:
The officer in charge of the program at the agency may answer this question.
3. Administering the test step-by-step according to the Kansas approved protocol.
4. The alcohol deprivation period.
5. The defendant's condition while in the officer's presence.

KANSAS STATUTES

65-1,107. Secretary of health and environment to adopt rules and regulations relating to procedures, testing protocols, qualifications of personnel and equipment of certain laboratories; list of approved preliminary screening devices for testing of breath for law enforcement purposes.

The secretary of health and environment may adopt rules and regulations establishing:

- (a) The procedures, testing protocols and qualifications of authorized personnel, instruments and methods used in laboratories performing tests for the presence of controlled substances included in schedule I or II of the uniform controlled substances act or metabolites thereof;
- (b) the procedures, testing protocols, qualifications of personnel and standards of performance in the testing of human breath for law enforcement purposes, including procedures for the periodic inspection of apparatus, equipment and devices, other than preliminary screening devices, approved by the secretary of health and environment for the testing of human breath for law enforcement purposes;
- (c) the requirements for the training, certification and periodic testing of persons who operate apparatus, equipment or devices, other than preliminary screening devices, for the testing of human breath for law enforcement purposes;
- (d) criteria for preliminary screening devices for testing of breath for law enforcement purposes, based on health and performance considerations; and
- (e) a list of preliminary screening devices which are approved for testing of breath for law enforcement purposes and which law enforcement agencies may purchase and train officers to use as aids in determining: (1) Probable cause to arrest and grounds for requiring testing pursuant to K.S.A. 8-1001, and amendments thereto; and (2) violations of K.S.A. 41-727, and amendments thereto.

65-1,109. Testing human breath for law enforcement purposes; unlawful acts; penalty.

- (a) It shall be unlawful for any person to make any test of the human breath for law enforcement purposes, unless:
 - (1) Such person has complied with the rules and regulations of the secretary of health and environment adopted pursuant to K.S.A. 65-1,107 and amendments thereto to govern the procedures, standards of performance and the qualifications, training, certification and annual testing of personnel for the testing of human breath for law enforcement purposes; and
 - (2) the apparatus, equipment or device used by such person in the testing of human breath for law enforcement purposes is of a type approved by the secretary of health and environment and otherwise complies with the rules and regulations of the secretary of health and environment adopted pursuant to K.S.A. 65-1,107 and amendments thereto to govern the periodic inspection of such apparatus, equipment and devices.
- (b) Any person who violates any provision of subsection (a) shall be guilty of a class C misdemeanor.
- (c) Nothing in this section shall be construed to prohibit the use of devices approved pursuant to K.S.A. 65-1,107 and amendments thereto for preliminary screening tests for law enforcement purposes.

KANSAS STATUTES

8-1013. Definitions. As used in K.S.A. 8-1001 through 8-1018, and amendments thereto:

- (a) "Alcohol concentration" means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.
- (b) (1) "Alcohol or drug-related conviction" means any of the following: (A) Conviction of vehicular battery or aggravated vehicular homicide, prior to their repeal, if the crime is committed while committing a violation of K.S.A. 8-1567, and amendments thereto, or the ordinance of a city or resolution of a county in this state which prohibits any acts prohibited by that statute, or conviction of a violation of K.S.A. 8-2,144 or 8-1567, and amendments thereto, conviction of a violation of aggravated battery as described in K.S.A. 2017 Supp. 21-5413(b)(3) or (b)(4), and amendments thereto, or conviction of a violation of involuntary manslaughter as described in K.S.A. 2017 Supp. 21-5405(a)(3) or (a)(5), and amendments thereto; (B) conviction of a violation of a law of another state which would constitute a crime described in subsection (b)(1)(A) if committed in this state; (C) conviction of a violation of an ordinance of a city in this state or a resolution of a county in this state which would constitute a crime described in subsection (b)(1)(A), whether or not such conviction is in a court of record; or (D) conviction of an act which was committed on a military reservation and which would constitute a violation of K.S.A. 8-2,144 or 8-1567, and amendments thereto, or would constitute a crime described in subsection (b)(1)(A) if committed off a military reservation in this state.
(2) For the purpose of determining whether an occurrence is a first, second or subsequent occurrence: (A) "Alcohol or drug-related conviction" also includes entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging commission of a crime described in subsection (b) (1), including a diversion agreement entered into prior to the effective date of this act; and (B) it is irrelevant whether an offense occurred before or after conviction or diversion for a previous offense.
- (c) "Division" means the division of vehicles of the department of revenue.
- (d) "Ignition interlock device" means a device which uses a breath analysis mechanism to prevent a person from operating a motor vehicle if such person has consumed an alcoholic beverage.
- (e) "Occurrence" means a test refusal, test failure or alcohol or drug-related conviction, or any combination thereof arising from one arrest, including an arrest which occurred prior to the effective date of this act.
- (f) "Other competent evidence" includes: (1) Alcohol concentration tests obtained from samples taken three hours or more after the operation or attempted operation of a vehicle; and (2) readings obtained from a partial alcohol concentration test on a breath testing machine.
- (g) "Samples" includes breath supplied directly for testing, which breath is not preserved.
- (h) "Test failure" or "fails a test" refers to a person's having results of a test administered pursuant to this act, other than a preliminary screening test, which show an alcohol concentration of .08 or greater in the person's blood or breath, and includes failure of any such test on a military reservation.
- (i) "Test refusal" or "refuses a test" refers to a person's failure to submit to or complete any test of the person's blood, breath, urine, or other bodily substance, other than a preliminary screening test, in accordance with this act, and includes refusal of any such test on a military reservation.

KANSAS STATUTES

8-1013 (Continued)

- (j) "Law enforcement officer" has the meaning provided by K.S.A. 2011 Supp. 21-5111, and amendments thereto, and includes any person authorized by law to make an arrest on a military reservation for an act which would constitute a violation of K.S.A. 8-1567, and amendments thereto, if committed off a military reservation in this state.

8-1001. Tests for alcohol or drugs; request by officer, grounds; consent implied; administration of tests, when; procedures; immunity from liability; warning statement; search warrant, admissibility of test; availability of test result; remedial nature of law.

- (a) Any person who operates or attempts to operate a vehicle within this state may be requested, subject to the provisions of this article, to submit to one or more tests of the person's blood, breath, urine or other bodily substance to determine the presence of alcohol or drugs. The testing shall include all quantitative and qualitative tests for alcohol and drugs. The test must be administered at the direction of a law enforcement officer, and the law enforcement officer shall determine which type of test is to be conducted or requested.
- (b) (1) One or more tests may be required of a person when, at the time of the request, a law enforcement officer has probable cause to believe the person has committed a violation of K.S.A. 8-1567(a), and amendments thereto, or to believe the person was driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system, or to believe the person is under the age of 21 years and was operating or attempting to operate a vehicle while having alcohol or other drugs in such person's system; and one of the following conditions exists: (A) The person has been arrested or otherwise taken into custody for any offense involving operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both, or for a violation of K.S.A. 8-1567a, and amendments thereto, or involving driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system, in violation of a state statute or a city ordinance or (B) the person has been involved in a motor vehicle accident or collision resulting in property damage, personal injury or death.
- (2) The law enforcement officer directing administration of the test or tests may act on personal knowledge or on the basis of the collective information available to law enforcement officers involved in the investigation or arrest.
- (c) When requesting a test or tests of breath or other bodily substance other than blood or urine, under this section, the person shall be given oral and written notice that:
- (1) There is no right to consult with an attorney regarding whether to submit to testing, but, after the completion of the testing, the person may request and has the right to consult with an attorney and may secure additional testing;
- (2) if the person refuses to submit to and complete the test or tests, or if the person fails a test, the person's driving privileges will be suspended for a period of at least 30 days and up to one year;
- (3) refusal to submit to testing may be used against the person at any trial or hearing on a charge arising out of the operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both; and

KANSAS STATUTES

8-1001 (Continued)

- (4) the results of the testing may be used against the person at any trial or hearing on a charge arising out of the operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both.
- (d) When requesting a test or tests of blood or urine, under this section, the person shall be given oral and written notice that:
 - (1) If the person refuses to submit to and complete the test or tests, or if the person fails a test, the person's driving privileges will be suspended for a period of at least 30 days and up to one year;
 - (2) the results of the testing may be used against the person at any trial or hearing on a charge arising out of the operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both; and
 - (3) after the completion of the testing, the person may request and has the right to consult with an attorney and may secure additional testing.
- (e) Nothing in this section shall be construed to limit the right of a law enforcement officer to conduct any search of a person's breath or other bodily substance, other than blood or urine, incident to a lawful arrest pursuant to the constitution of the United States, with or without providing the person the advisories authorized in subsection (c), nor limit the admissibility at any trial or hearing of alcohol or drug concentration testing results obtained pursuant to such a search.
- (f) Nothing in this section shall be construed to limit the right of a law enforcement officer to conduct or obtain a blood or urine test of a person pursuant to a warrant under K.S.A. 22-2502, and amendments thereto, the constitution of the United States or a judicially recognized exception to the search warrant requirement, with or without providing the person the advisories authorized in subsection (d), nor limit the admissibility at any trial or hearing of alcohol or drug concentration testing results obtained pursuant to such a search.
- (g) A law enforcement officer may direct a medical professional, as described in subsection (h), to draw one or more samples of blood from a person to determine the blood's alcohol or drug concentration:
 - (1) If the person has given consent, with or without the advisories in subsection (d), and meets the requirements of subsection (b);
 - (2) if law enforcement has obtained a search warrant authorizing the collection of blood from the person; or
 - (3) if the person refuses or is unable to consent to submit to and complete a test, and another judicially recognized exception to the warrant requirement applies.
- (h) If a law enforcement officer is authorized to collect one or more tests of blood under this section, the withdrawal of blood at the direction of the officer may be performed only by:
 - (1) A person licensed to practice medicine and surgery, licensed as a physician assistant, or a person acting under the direction of any such licensed person;
 - (2) a registered nurse or a licensed practical nurse;
 - (3) any qualified medical technician, including, but not limited to, an advanced emergency medical technician or a paramedic, as those terms are defined in K.S.A. 65-6112, and amendments thereto, authorized by medical protocol or
 - (4) a phlebotomist.
- (i) When so directed by a law enforcement officer through a written statement, the medical professional shall withdraw the sample of blood as soon as practical and shall deliver the sample to the law enforcement officer or another law enforcement officer as directed

KANSAS STATUTES

8-1001 (Continued)

by the requesting law enforcement officer as soon as practical, provided the collection of the sample does not jeopardize the person's life, cause serious injury to the person or seriously impede the person's medical assessment, care or treatment. The medical professional authorized herein to withdraw the blood and the medical care facility where the blood is drawn may act on good faith that the requirements have been met for directing the withdrawing of blood once presented with the written statement provided for under this subsection. The medical professional shall not require the person that is the subject of the test or tests to provide any additional consent or sign any waiver form. In such a case, the person authorized to withdraw blood and the medical care facility shall not be liable in any action alleging lack of consent or lack of informed consent. Such sample or samples shall be an independent sample and not be a portion of a sample collected for medical purposes. The person collecting the blood sample shall complete the collection portion of a document if provided by law enforcement.

- (j) If a person must be restrained to collect the sample pursuant to this section, law enforcement shall be responsible for applying any such restraint utilizing acceptable law enforcement restraint practices. The restraint shall be effective in controlling the person in a manner not to jeopardize the person's safety or that of the medical professional or attending medical or health care staff during the drawing of the sample and without interfering with medical treatment.
- (k) If a law enforcement officer is authorized to collect one or more tests of urine under this section, the collection of the urine sample shall be supervised by: (1) A person licensed to practice medicine and surgery, licensed as a physician assistant, or a person acting under the direction of any such licensed person; (2) a registered nurse or a licensed practical nurse; or (3) a law enforcement officer of the same sex as the person being tested. The collection of the urine sample shall be conducted out of the view of any person other than the persons supervising the collection of the sample and the person being tested, unless the right to privacy is waived by the person being tested. When possible, the supervising person shall be a law enforcement officer. The results of qualitative testing for drug presence shall be admissible in evidence and questions of accuracy or reliability shall go to the weight rather than the admissibility of the evidence. If the person is medically unable to provide a urine sample in such manner due to the injuries or treatment of the injuries, the same authorization and procedure as used for the collection of blood in subsections (g) and (i) shall apply to the collection of a urine sample.
- (l) No law enforcement officer who is acting in accordance with this section shall be liable in any civil or criminal proceeding involving the action.
- (m) If a law enforcement officer has probable cause to believe that the person has been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system, the person shall also be provided the oral and written notice pursuant to K.S.A. 8-2,145, and amendments thereto. Any failure to give the notices required by K.S.A. 8-2,145, and amendments thereto, shall not invalidate any action taken as a result of the requirements of this section. If a law enforcement officer has probable cause to believe that the person has been operating or attempting to operate a vehicle while having alcohol or other drugs in such person's system and such person was under 21 years of age, the person also shall be given the notices required by K.S.A. 8-1567a, and

KANSAS STATUTES

8-1001 (Continued)

amendments thereto. Any failure to give the notices required by K.S.A. 8-1567a, and amendments thereto, shall not invalidate any action taken as a result of the requirements of this section.

- (n) The person's refusal shall be admissible in evidence against the person at any trial on a charge arising out of the alleged operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both.
- (o) If a law enforcement officer had probable cause to believe the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, and the test results show a blood or breath alcohol concentration of .04 or greater, the person shall be disqualified from driving a commercial motor vehicle, pursuant to K.S.A. 8-2,142, and amendments thereto. If a law enforcement officer had probable cause to believe the person had been driving any motor vehicle, the person fails a test, as defined in K.S.A. 8-1013(h), and amendments thereto, or the person refuses a test, the person's driving privileges shall be subject to suspension, or suspension and restriction, pursuant to this section, in addition to being disqualified from driving a commercial motor vehicle pursuant to K.S.A. 8-2,142, and amendments thereto.
- (p) Failure of a person to provide an adequate breath sample or samples as directed shall constitute a refusal unless the person shows the inability caused by a medical condition unrelated to any ingested alcohol or drugs.
- (q) It shall not be a defense that the person did not understand the written or oral notice authorized by this section.
- (r) No test results shall be suppressed because of irregularities not affecting the substantial rights of the accused in the consent or notice authorized pursuant to this act. Failure to provide any or all of the notices set forth in subsection (c) or (d) shall not be an issue or defense in any action other than an administrative action regarding the subject's driving privileges.
- (s) Nothing in this section shall be construed to limit the admissibility at any trial of alcohol or drug concentration testing results obtained pursuant to a search warrant or other judicially recognized exception to the warrant requirement.
- (t) Upon the request of any person submitting to testing under this section, a report of the results of the testing shall be made available to such person when available.
- (u) This act is remedial law and shall be liberally construed to promote public health, safety and welfare.

DC-70

**TESTING NOTICES
BREATH OR OTHER BODILY SUBSTANCE (NOT BLOOD OR URINE)**

- (1) You have no right to consult with an attorney regarding whether to submit to testing, but, after the completion of the testing, you have the right to request and consult with an attorney and may secure additional testing;
- (2) If you refuse to submit to and complete the test or tests, or if you fail a test, your driving privileges will be suspended for a period of at least 30 days and up to one year;
- (3) Refusal to submit to testing may be used against you at any trial or hearing on a charge arising out of the operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both; and
- (4) The results of the testing may be used against you at any trial or hearing on a charge arising out of the operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both.

UNDER 21 NOTICES

If the person is **UNDER 21** – Read the 2 notices below in addition to the above notices:

- (1) It is unlawful for any person less than 21 years of age to operate or attempt to operate a vehicle in this state with an alcohol concentration of .02 or greater; and
- (2) If you are less than 21 years of age at the time of the test request and you consent to and complete a test or tests and the results show an alcohol concentration of .02 or greater, but less than .08, on your first occurrence, your driving privileges will be suspended for 30 days and on your second or subsequent occurrence, your driving privileges shall be suspended for one year.

COMMERCIAL VEHICLE

If the person is operating a **COMMERCIAL VEHICLE**– Read the following in addition to the above notices:

Whenever a law enforcement officer has reasonable grounds to believe a person has been driving a commercial motor vehicle while having alcohol or other drugs in such person's system and the person refuses to submit to and complete a test or tests requested by a law enforcement officer or submits to and completes a test requested by a law enforcement officer which determines that the person's alcohol concentration is .04 or greater, the person will be disqualified from driving a commercial motor vehicle for at least one year.

AFTER PROVIDING A COPY OF THIS FORM TO THE PERSON AND READING ALL APPLICABLE NOTICES, THE OFFICER SHOULD THEN REQUEST THAT THE PERSON SUBMIT TO A TEST OR TESTS, AS FOLLOWS:

WILL YOU TAKE A: BREATH TEST OTHER BODILY SUBSTANCE TEST (NOT BLOOD OR URINE)

RESPONSE: Yes No

The officer who administers testing should complete the following information on the copy of this form retained by the officer. The officer's copy of this form may be retained in the officer's file to document that the required notices were given.

Name of Licensee

Officer Administering Testing

Date

COMMENTS:

OFFICER INSTRUCTIONS:

The test must be administered at the direction of a law enforcement officer, and the law enforcement officer shall determine which type of test is to be conducted or requested.

Keep a completed copy of this document for your file.

AMENDED DC-70 (Rev. 07/18)

DC-70

**TESTING NOTICES
BLOOD OR URINE**

- (1) If you refuse to submit to and complete the test or tests, or if you fail a test, your driving privileges will be suspended for a period of at least 30 days and up to one year;
- (2) The results of the testing may be used against you at any trial or hearing on a charge arising out of the operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both; and
- (3) After the completion of the testing, you have the right to request and consult with an attorney and may secure additional testing.

UNDER 21 NOTICES

If the person is UNDER 21 – Read the 2 notices below in addition to the above notices:

- (1) It is unlawful for any person less than 21 years of age to operate or attempt to operate a vehicle in this state with an alcohol concentration of .02 or greater; and
- (2) If you are less than 21 years of age at the time of the test request and you consent to and complete a test or tests and the results show an alcohol concentration of .02 or greater, but less than .08, on your first occurrence, your driving privileges will be suspended for 30 days and on your second or subsequent occurrence, your driving privileges shall be suspended for one year.

COMMERCIAL VEHICLE

If the person is operating a COMMERCIAL VEHICLE– Read the following in addition to the above notices:

Whenever a law enforcement officer has reasonable grounds to believe a person has been driving a commercial motor vehicle while having alcohol or other drugs in such person's system and the person refuses to submit to and complete a test or tests requested by a law enforcement officer or submits to and completes a test requested by a law enforcement officer which determines that the person's alcohol concentration is .04 or greater, the person will be disqualified from driving a commercial motor vehicle for at least one year.

AFTER PROVIDING A COPY OF THIS FORM TO THE PERSON AND READING ALL APPLICABLE NOTICES, THE OFFICER SHOULD THEN REQUEST THAT THE PERSON SUBMIT TO A TEST OR TESTS, AS FOLLOWS:

WILL YOU TAKE A: BLOOD TEST URINE TEST

RESPONSE: Yes No

The officer who administers testing should complete the following information on the copy of this form retained by the officer. The officer's copy of this form may be retained in the officer's file to document that the required notices were given.

Name of Licensee

Officer Administering Testing

Date

COMMENTS:

OFFICER INSTRUCTIONS:

The test must be administered at the direction of a law enforcement officer, and the law enforcement officer shall determine which type of test is to be conducted or requested.

Keep a completed copy of this document for your file.

KANSAS STATUTES

8-1002. Test refusal or failure; suspension of license; notice; procedure.

- (a) Whenever a test is requested pursuant to this act and results in either a test failure or test refusal, a law enforcement officer's certification shall be prepared. If the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, a separate certification pursuant to K.S.A. 8-2,145, and amendments thereto, shall be prepared in addition to any certification required by this section. The certification required by this section shall be signed by one or more officers to certify:
- (1) With regard to a test refusal, that: (A) There existed reasonable grounds to believe the person was operating or attempting to operate a vehicle while under the influence of alcohol or drugs, or both, or to believe that the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, or is under 21 years of age while having alcohol or other drugs in such person's system; (B) the person had been placed under arrest, was in custody or had been involved in a vehicle accident or collision; (C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto; and (D) the person refused to submit to and complete a test as requested by a law enforcement officer.
 - (2) With regard to a test failure, that: (A) There existed reasonable grounds to believe the person was operating a vehicle while under the influence of alcohol or drugs, or both, or to believe that the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, or is under 21 years of age while having alcohol or other drugs in such person's system; (B) the person had been placed under arrest, was in custody or had been involved in a vehicle accident or collision; (C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto; and (D) the result of the test showed that the person had an alcohol concentration of .08 or greater in such person's blood or breath.
 - (3) With regard to failure of a breath test, in addition to those matters required to be certified under subsection (a)(2), that: (A) The testing equipment used was certified by the Kansas department of health and environment; (B) the testing procedures used were in accordance with the requirements set out by the Kansas department of health and environment; and (C) the person who operated the testing equipment was certified by the Kansas department of health and environment to operate such equipment.
- (b) For purposes of this section, certification shall be complete upon signing, and no additional acts of oath, affirmation, acknowledgment or proof of execution shall be required. The signed certification or a copy or photostatic reproduction thereof shall be admissible in evidence in all proceedings brought pursuant to this act, and receipt of any such certification, copy or reproduction shall accord the department authority to proceed as set forth herein. Any person who signs a certification submitted to the division knowing it contains a false statement is guilty of a class B nonperson misdemeanor.
- (c) When the officer directing administration of the testing determines that a person has refused a test and the criteria of subsection (a) (1) have been met or determines that a person has failed a test and the criteria of subsection (a) (2) have been met, the officer shall serve upon the person notice of suspension of driving privileges pursuant to K.S.A. 8-1014, and amendments thereto. If the determination is made while the person is still

KANSAS STATUTES

8-1002 (Continued)

in custody, service shall be made in person by the officer on behalf of the division of vehicles. In cases where a test failure is established by a subsequent analysis of a breath, blood or urine sample, the officer shall serve notice of such suspension in person or by another designated officer or by mailing the notice to the person at the address provided at the time of the test.

- (d) In addition to the information required by subsection (a), the law enforcement officer's certification and notice of suspension shall contain the following information: (1) The person's name, driver's license number and current address; (2) the reason and statutory grounds for the suspension; (3) the date notice is being served and a statement that the effective date of the suspension shall be the 30th day after the date of service; (4) the right of the person to request an administrative hearing; and (5) the procedure the person must follow to request an administrative hearing. The law enforcement officer's certification and notice of suspension shall also inform the person that: (1) Constitutional issues cannot be decided at the administrative hearing, but may be preserved and raised in a petition for review of the hearing as provided in K.S.A. 8-1020(o) and (p), and amendments thereto; and (2) all correspondence will be mailed to the person at the address contained in the law enforcement officer's certification and notice of suspension unless the person notifies the division in writing of a different address or change of address. The address provided will be considered a change of address for purposes of K.S.A. 8-248, and amendments thereto, if the address furnished is different from that on file with the division.
- (e) If a person refuses a test or if a person is still in custody when it is determined that the person has failed a test, the officer shall take any license in the possession of the person and, if the license is not expired, suspended, revoked or canceled, shall issue a temporary license effective until the 30th day after the date of service set out in the law enforcement officer's certification and notice of suspension. If the test failure is established by a subsequent analysis of a breath or blood sample, the temporary license shall be served together with the copy of the law enforcement officer's certification and notice of suspension. A temporary license issued pursuant to this subsection shall bear the same restrictions and limitations as the license for which it was exchanged. Within seven days after the date of service of a copy of the law enforcement officer's certification and notice of suspension the officer's certification and notice of suspension, along with any licenses taken, shall be forwarded to the division.
- (f) Upon receipt of the law enforcement officer's certification, the division shall review the certification to determine that it meets the requirements of subsection (a). Upon so determining, the division shall proceed to suspend the person's driving privileges in accordance with the notice of suspension previously served. If the requirements of subsection (a) are not met, the division shall dismiss the administrative proceeding and return any license surrendered by the person.
- (g) The division shall prepare and distribute forms for use by law enforcement officers in giving the notice required by this section.
- (h) The provisions of K.S.A. 60-206 and amendments thereto regarding the computation of time shall be applicable in determining the effective date of suspension set out in subsection (d).

DC-27

OFFICER'S CERTIFICATION AND NOTICE OF SUSPENSION (SEE REVERSE SIDE FOR HEARING INFORMATION)

INSTRUCTIONS: This form is to be used to certify a test refusal or test failure. A copy of the completed form is required to be served upon the person; a copy is to be forwarded to the Division of Vehicles within seven (7) days after service on the driver; and a copy should be retained by a certifying officer.

DRIVER INFORMATION			
Name (Last)	(First)	(M/I)	Date of Birth
Current Address		City	
		State	
Driver's License No.	State of Issuance	Zip	

CDL YES NO
 CMV YES NO (If yes, CDL-5 form required also)
 HAZ MAT YES NO

ADDRESS: The above address will be treated as a change of address if different from that on file with the Division of Vehicles and will be used for all correspondence with the person unless the Division of Vehicles is notified by the person in writing of a different address or a change of address. You can change your address on the Internet, by mail or fax to Central Office Operations, or by going to any Kansas Driver's License Examining Station.

LAW ENFORCEMENT OFFICER'S CERTIFICATION

CERTIFICATION INSTRUCTIONS: To certify a test refusal or test failure, (1) each officer must complete the statement, if necessary, (2) at least one officer must initial on the line to the left of each of the statements intended to be certified and (3) each officer who initials a statement must sign in the space provided below.

1. On _____, 20____, reasonable grounds/probable cause existed to believe the above-named person, within the State of Kansas, in _____ County, had been
 - operating a vehicle while under the influence of alcohol and/or drugs in violation of state statute, city ordinance or county resolution, or
 - attempting to operate a vehicle while under the influence of alcohol and/or drugs in violation of state statute, city ordinance or county resolution; and/or
 - (If certifying a failure of a test, the officer must have reasonable grounds/probable cause to believe the person was operating a vehicle);
 - driving a commercial vehicle, as defined in K.S.A. 8-2-128, and amendments thereto, while having alcohol or other drugs in such person's system; and/or
 - under 21 years of age while having alcohol or other drugs in such person's system.
2. The person had been placed under arrest or otherwise taken into custody or had been involved in a vehicle accident or collision.
3. The person was presented oral and written notice as required by Kansas law.
4. Check one: The person refused to submit to or complete testing as requested by a law enforcement officer. The result of the test showed that the person had an alcohol concentration of .08 or greater in such person's blood or breath. **NOTE:** Please attach a readable copy of the test report.
5. Reason(s) for the initial contact and/or stop: committed traffic violation(s) (explain below); officer arrived at scene of accident; vehicle already stopped; other (explain) _____
6. Reasonable grounds/probable cause for my belief that the person was operating or attempting to operate a vehicle: saw person operate; person identified self as driver; other (explain) _____
7. Reasonable grounds/probable cause for my belief that the person was under the influence of alcohol and/or drugs: odor of alcoholic beverages; alcoholic beverage containers found in vehicle; sobriety tests indicated impairment; refused sobriety tests; slurred speech; bloodshot eyes; difficulty in communicating; poor balance or coordination; person stated alcohol/drugs consumed; failed preliminary breath test; refused preliminary breath test; other (explain) _____
8. A copy of this document which contains a Notice of Driver's License Suspension is being served on the above-named person on _____, 20____ by (check one)
 - personal service; mailing by first-class mail to the address shown above. **NOTE:** Personal service is required if a determination of refusal or failure is made while the person is in custody.

IF CERTIFYING A FAILURE OF A BREATH TEST, STATEMENTS 9, 10 AND 11 MUST ALSO BE COMPLETED AND CERTIFIED

9. The testing equipment used was certified by the Kansas Department of Health and Environment.
10. The testing procedures used were in accordance with the requirements set out by the Kansas Department of Health and Environment.
11. The person who operated the testing equipment was certified by the Kansas Department of Health and Environment to operate such equipment.

I hereby certify to the Division of Vehicles that each of the statements I have initialed above are true and accurate, under penalty of K.S.A. 8-1002(b), and amendments thereto.

Title and name (printed): _____	Title and name (printed): _____
Agency name: _____	Agency name: _____
Agency address: _____	Agency address: _____
City/state/zip: _____	City/state/zip: _____
Signature of Law Enforcement Officer	Signature of Law Enforcement Officer

TEMPORARY DRIVER'S LICENSE

THIS NOTICE IS:

- NOT VALID** as a temporary license for the reason that your license: has expired; has been revoked; has been suspended; has been cancelled; or you have no driver's license.
- VALID** as a temporary license until the 30th day after the date of service of this document. You must carry this notice with you when driving. This temporary license allows the operation of the same classes of vehicles and is subject to the same restrictions as the driver's license surrendered.

Any temporary driver's license will end and your driving privileges will be suspended on the 30th day after service of this document unless an administrative hearing has been timely requested and the required \$50 hearing fee paid, as set out in the INSTRUCTIONS FOR REQUESTING AN ADMINISTRATIVE HEARING ON THE REVERSE SIDE OF THIS FORM.

Before a test or tests are administered, the officer is required by Kansas law to provide the person oral and written notices. If the person was driving a commercial motor vehicle, as defined by Kansas law, the oral and written notice required by K.S.A. 8-2-146 should also be given. If the person is under the age of 21, the oral and written notice required by K.S.A. 8-1687a should also be given.

Distribution: 1st copy (white) copy to Division of Vehicles 2nd copy (yellow) for your file 3rd copy (pink) to licensee/driver

DC-27

NOTICE OF DRIVER'S LICENSE SUSPENSION (Pursuant to K.S.A. 8-1002)

Based upon the certification on the reverse side of this form, your driving privileges are hereby suspended, pursuant to K.S.A. 8-1014, effective the 30th day after the date of service of this notice, unless a timely request for hearing is made, together with timely payment of the required hearing fee (see below). The action taken on your license depends upon whether the officer(s) certified a test refusal or a test failure (a completed test result of .08 or greater) and whether you have any prior "occurrences" on your driving record. "Occurrence" is defined in K.S.A. 8-1013, and amendments thereto, as "a test refusal, test failure or alcohol or drug-related conviction, or any combination thereof arising from one arrest." Entry into a diversion agreement in lieu of prosecution on a prior occasion is treated as a prior "alcohol or drug-related conviction." You may request a copy of your driving record in writing from Driver Solutions Bureau, Division of Vehicles, Kansas Department of Revenue at PO Box 12021, Topeka, Kansas, 66601 or, visit <http://www.ksrevenue.org/recrequest.html> to request a copy of your driving record online.

If paragraph 4 of the certification on the reverse side indicates you refused to submit to or complete a test, the following action will be taken on your driving privileges:

First Occurrence: 1 year suspension & 2 year ignition interlock restriction
Second Occurrence: 1 year suspension & 3 year ignition interlock restriction
Third Occurrence: 1 year suspension & 4 year ignition interlock restriction
Fourth Occurrence: 1 year suspension & 5 year ignition interlock restriction
Fifth or Subsequent Occurrence: 1 year suspension & 10 year ignition interlock restriction

If paragraph 4 of the certification on the reverse side indicates you failed a test and the test result was .08 or above, but less than .15, the following action will be taken on your driving privileges:

First Occurrence: 30 day suspension & 180 days of ignition interlock restriction if you have not previously had your driving privileges revoked, suspended, canceled or withdrawn or been previously convicted of any of the following violations: (1) K.S.A. 8-1599; (2) K.S.A. 41-727; (3) any violations listed in K.S.A. 8-285(a) or (4) been convicted of three or more moving traffic violations committed on separate occasions within a 12-month period. If your driving privileges have previously been revoked, suspended, canceled or withdrawn or your driving record contains convictions as set out above, you will receive a 30 day suspension & 1 year of ignition interlock restriction.
Second Occurrence: 1 year suspension & 1 year ignition interlock restriction
Third Occurrence: 1 year suspension & 2 year ignition interlock restriction
Fourth Occurrence: 1 year suspension & 3 year ignition interlock restriction
Fifth or Subsequent Occurrence: 1 year suspension & 10 year ignition interlock restriction

If paragraph 4 of the certification on the reverse side indicates you failed a test and the test result was .15 or above, the following action will be taken on your driving privileges:

First Occurrence: 1 year suspension & 1 year ignition interlock restriction
Second Occurrence: 1 year suspension & 2 year ignition interlock restriction
Third Occurrence: 1 year suspension & 3 year ignition interlock restriction
Fourth Occurrence: 1 year suspension & 4 year ignition interlock restriction
Fifth or Subsequent Occurrence: 1 year suspension & 10 year ignition interlock restriction

If you possess a commercial driver's license, the following additional action will be taken on your commercial driving privileges as a result of a conviction for violating K.S.A. 8-1567 or K.S.A. 8-1025 or upon a final determination that you have refused or failed a test: First Occurrence - 1 year suspension of commercial driving privileges; Second Occurrence - permanent revocation of commercial driving privileges. For more information, see K.S.A. 8-2,142, and amendments thereto.

PROCEDURE FOR REQUESTING AN ADMINISTRATIVE HEARING

- A hearing request may be made either by mailing a written request which is postmarked within 14 calendar days after the date of service of this form, or by sending a written request by electronic facsimile (fax) to the Division of Vehicles within 14 calendar days after the date of service of this form. If this form was served on you by mail, you will have an additional 3 days, pursuant to K.S.A. 60-206(d).
- The hearing request must include your full name, driver's license number, birth date and a telephone number at which you or your legal representative can be reached if necessary.
- Constitutional issues cannot be decided at the administrative hearing, but may be preserved and raised in a petition for review of the hearing to a State district court as provided in K.S.A. 8-1020(o) and (p), and amendments thereto.
- The hearing request must include your current address. If the address you provide in your written request for a hearing is different than the address on the reverse side of this form, the address in your hearing request will be treated as a change of address pursuant to K.S.A. 8-248. All correspondence will be sent to the address provided in the hearing request.
- The hearing request must state whether you want to have the certifying officer(s) subpoenaed to the administrative hearing. If you wish to contest the facts contained in the officer's certification at the administrative hearing, you have the burden of disproving those facts, and you may need to compel the appearance of the certifying officer(s) to do so. If you fail to request any officer's attendance at the time you make a hearing request, your right to compel that attendance by subpoena will be deemed waived and this law enforcement officer's certification will be admitted as evidence at the hearing.
- You must pay a nonrefundable hearing fee of \$50.00 within the time period for making a timely request for a hearing (check or money order preferred). The \$50 hearing fee must be postmarked within the time period for making a timely hearing request or your hearing request will be denied. (A faxed image of cash or of a check or money order will not be accepted.) Checks should be made payable to: Administrative Hearing Section, Kansas Department of Revenue.
- HEARING LOCATION. Upon receipt of your timely written hearing request and fee, a hearing will be scheduled by telephone conference call. You may request that the hearing be conducted in person before a representative of the Director of Vehicles. Any request for an in person hearing must be made at the time you request a hearing. A written notice will be mailed to you setting out the time, date and place of the hearing. Any temporary driving privileges granted on the reverse side of this document will be extended until a final determination is made.
- Mail hearing requests to:
DL Administrative Hearing Section
Kansas Department of Revenue
P.O. Box 2744
Topeka, KS 66601-2744
(785) 296-6911
- Send electronic facsimile (fax) requests to: (785) 296-0275

DC-27 (Rev. 07/18)

KANSAS STATUTES

8-1004. Same; additional test by own physician; effect of denial. Without limiting or affecting the provisions of K.S.A. 8-1001 and amendments thereto, the person tested shall have a reasonable opportunity to have an additional test by a physician of the person's own choosing. In case the officer refuses to permit such additional testing, the testing administered pursuant to K.S.A. 8-1001 and amendments thereto shall not be competent in evidence.

8-1005. Evidence; test results admissible in prosecutions; weight to be given evidence. Except as provided by K.S.A. 8-1012 and amendments thereto, in any criminal prosecution for violation of the laws of this state relating to operating or attempting to operate a vehicle while under the influence of alcohol or drugs, or both, or the commission of vehicular homicide or manslaughter while under the influence of alcohol or drugs, or both, or in any prosecution for a violation of a city ordinance relating to the operation or attempted operation of a vehicle while under the influence of alcohol or drugs, or both, evidence of the concentration of alcohol or drugs in the defendant's blood, urine, breath or other bodily substance may be admitted and shall give rise to the following:

- (a) If the alcohol concentration is less than .08, that fact may be considered with other competent evidence to determine if the defendant was under the influence of alcohol, or both alcohol and drugs.
- (b) If the alcohol concentration is .08 or more, it shall be prima facie evidence that the defendant was under the influence of alcohol to a degree that renders the person incapable of driving safely.
- (c) If there was present in the defendant's bodily substance any narcotic, hypnotic, somnifacient, stimulating or other drug which has the capacity to render the defendant incapable of safely driving a vehicle, that fact may be considered to determine if the defendant was under the influence of drugs, or both alcohol and drugs, to a degree that renders the defendant incapable of driving safely.

8-1012. Preliminary screening test of breath for alcohol concentration; request by officer, reasonable suspicion; notice required; refusal to take test is traffic infraction; use of results of test; additional tests.

- (a) Any person who operates or attempts to operate a vehicle within this state is deemed to have given consent to submit to a preliminary screening test of the person's breath or saliva, or both, subject to the provisions set out in subsection (b).
- (b) A law enforcement officer may request a person who is operating or attempting to operate a vehicle within this state to submit to a preliminary screening test of the person's breath or saliva, or both, if the officer has reasonable suspicion to believe the person has been operating or attempting to operate a vehicle while under the influence of alcohol or drugs or both alcohol and drugs.
- (c) At the time the test is requested, the person shall be given oral notice that: (1) There is no right to consult with an attorney regarding whether to submit to testing; (2) refusal to submit to testing is a traffic infraction; and (3) further testing may be required after the preliminary screening test. Failure to provide the notice shall not be an issue or defense in any action. The law enforcement officer then shall request the person to submit to the test.
- (d) Refusal to take and complete the test as requested is a traffic infraction. If the person submits to the test, the results shall be used for the purpose of assisting law

KANSAS STATUTES

8-1012 (Continued)

enforcement officers in determining whether an arrest should be made and whether to request the tests authorized by K.S.A. 8-1001 and amendments thereto. A law enforcement officer may arrest a person based in whole or in part upon the results of a preliminary screening test. Such results shall not be admissible in any civil or criminal action concerning the operation of or attempted operation of a vehicle except to aid the court or hearing officer in determining a challenge to the validity of the arrest or the validity of the request to submit to a test pursuant to K.S.A. 8-1001 and amendments thereto. Following the preliminary screening test, additional tests may be requested pursuant to K.S.A. 8-1001 and amendments thereto.

- (e) Any preliminary screening of a person's breath shall be conducted with a device approved pursuant to K.S.A. 65-1,107, and amendments thereto.

8-1017. Circumvention of ignition interlock device; penalty.

- (a) No person shall:
- (1) Tamper with an ignition interlock device, circumvent it or render it inaccurate or inoperative;
 - (2) request or solicit another to blow into an ignition interlock device, or start a motor vehicle equipped with such device, providing an operable motor vehicle to a person whose driving privileges have been restricted to driving a motor vehicle equipped with such device;
 - (3) blow into an ignition interlock device, or start a motor vehicle equipped with such device, providing an operable motor vehicle to a person whose driving privileges have been restricted to driving a motor vehicle equipped with such device; or
 - (4) operate a vehicle not equipped with an ignition interlock device while such person's driving privileges have been restricted to driving a motor vehicle equipped with such device.
- (b) Violation of this section is a class A, nonperson misdemeanor.
- (c) In addition to any other penalties provided by law:
- (1) (A) On a first conviction of a violation of subsection (a)(1) or (a)(2), the division shall extend the ignition interlock restriction period on the person's driving privileges for an additional 90 days; and
(B) on a second or subsequent conviction of a violation of subsection (a)(1) or (a)(2), the division shall restart the original ignition interlock restriction period on the person's driving privileges; and
 - (2) on a conviction of a violation of subsection (a)(4), the division shall restart the original ignition interlock restriction period on the person's driving privileges.

8-1020. Administrative hearing; requirements; procedure.

- (a) Any licensee served with an officer's certification and notice of suspension pursuant to K.S.A. 8-1002, and amendments thereto, may request an administrative hearing. Such request may be made either by:
- (1) Mailing a written request which is postmarked 14 days after service of notice or;
 - (2) transmitting a written request by electronic facsimile which is received by the division within 14 days after service of notice.
- (b) If the licensee makes a timely request for an administrative hearing and makes a timely payment of the required hearing fee, any temporary license issued pursuant to K.S.A. 8-

KANSAS STATUTES

8-1020 (Continued)

1002, and amendments thereto, shall remain in effect until the 30th day after the effective date of the decision made by the division.

- (c) If the licensee fails to make a timely request for an administrative hearing together with the required hearing fee, the licensee's driving privileges shall be suspended or suspended and then restricted in accordance with the notice of suspension served pursuant to K.S.A. 8-1002, and amendments thereto.
- (d) (1) Upon receipt of a timely request for a hearing together with the required hearing fee, the division shall forthwith set the matter for hearing before a representative of the director and provide notice of the extension of temporary driving privileges. The hearing shall be held by telephone conference call unless the hearing request includes a request that the hearing be held in person before a representative of the director. The officer's certification and notice of suspension shall inform the licensee of the availability of a hearing before a representative of the director. Except for a hearing conducted by telephone conference call, the hearing shall be conducted in the county where the arrest occurred or a county adjacent thereto.
(2) The division shall charge a fee of \$50 for a hearing, to be paid within the time period for making a timely request for a hearing, whether held by telephone or in person, to be applied by the division for administrative costs to conduct the hearing. The division shall remit all hearing fees to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the division of vehicles operating fund. The hearing fee established in this section shall be the only fee collected or moneys in the nature of a fee collected for such hearing. Such fee shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee.
- (e) Except as provided in subsection (f), prehearing discovery shall be limited to the following documents, which shall be provided to the licensee or the licensee's attorney no later than seven days prior to the date of hearing:
 - (1) The officer's certification and notice of suspension;
 - (2) in the case of a breath or blood test failure, copies of documents indicating the result of any evidentiary breath or blood test administered at the request of a law enforcement officer;
 - (3) in the case of a breath test failure, a copy of the affidavit showing certification of the officer and the instrument; and
 - (4) in the case of a breath test failure, a copy of the Kansas department of health and environment testing protocol checklist.
- (f) At or prior to the time the notice of hearing is sent, the division shall issue an order allowing the licensee or the licensee's attorney to review any law enforcement report and video or audio tape record made of the events upon which the administrative action is based. Such review shall take place at a reasonable time designated by the law enforcement agency and shall be made at the location where the law enforcement report or video or audio tape is kept. The licensee may obtain a copy of any such law enforcement report or video or audio tape upon request and upon payment of a reasonable fee to the law enforcement agency, not to exceed \$25 per tape or \$.25 per page of the law enforcement report.

KANSAS STATUTES

8-1020 (Continued)

- (g) Witnesses at the hearing shall be limited to the licensee, to any law enforcement officer who signed the certification form and to one other witness who was present at the time of the issuance of the certification and called by the licensee. The presence of the certifying officer or officers shall not be required, unless requested by the licensee at the time of making the request for the hearing. The examination of a law enforcement officer shall be restricted to the factual circumstances relied upon in the officer's certification.
- (h) (1) If the officer certifies that the person refused the test, the scope of the hearing shall be limited to whether:
- (A) A law enforcement officer had reasonable grounds to believe the person was operating or attempting to operate a vehicle while under the influence of alcohol or drugs, or both, or had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system or was under the age of 21 years and was operating or attempting to operate a vehicle while having alcohol or other drugs in such person's system;
 - (B) the person was in custody or arrested or was involved in a vehicle accident or collision resulting in property damage, personal injury or death;
 - (C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto;
 - (D) the person refused to submit to and complete a test as requested by a law enforcement officer.
- (2) If the officer certifies that the person failed a breath test, the scope of the hearing shall be limited to whether:
- (A) A law enforcement officer had reasonable grounds to believe the person was operating a vehicle while under the influence of alcohol or drugs, or both, or had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system or was under the age of 21 years and was operating or attempting to operate a vehicle while having alcohol or other drugs in such person's system;
 - (B) the person was in custody or arrested or was involved in a vehicle accident or collision resulting in property damage, personal injury or death;
 - (C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto;
 - (D) the testing equipment used was certified by the Kansas department of health and environment;
 - (E) the person who operated the testing equipment was certified by the Kansas department of health and environment;
 - (F) the testing procedures used substantially complied with the procedures set out by the Kansas department of health and environment;
 - (G) the test result determined that the person had an alcohol concentration of .08 or greater in such person's breath; and
 - (H) the person was operating or attempting to operate a vehicle.
- (3) If the officer certifies that the person failed a blood test, the scope of the hearing shall be limited to whether:

KANSAS STATUTES

8-1020 (Continued)

- (A) A law enforcement officer had reasonable grounds to believe the person was operating a vehicle while under the influence of alcohol or drugs, or both, or had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system or was under the age of 21 years and was operating or attempting to operate a vehicle while having alcohol or other drugs in such person's system;
 - (B) the person was in custody or arrested or was involved in a vehicle accident or collision resulting in property damage, personal injury or death;
 - (C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001, and amendments thereto;
 - (D) the testing equipment used was reliable;
 - (E) the person who operated the testing equipment was qualified;
 - (F) the testing procedures used were reliable;
 - (G) the test result determined that the person had an alcohol concentration of .08 or greater in such person's blood; and
 - (H) the person was operating or attempting to operate a vehicle.
- (i) At a hearing pursuant to this section, or upon court review of an order entered at such a hearing, an affidavit of the custodian of records at the Kansas department of health and environment stating that the breath testing device was certified and the operator of such device was certified on the date of the test shall be admissible into evidence in the same manner and with the same force and effect as if the certifying officer or employee of the Kansas department of health and environment had testified in person. A certified operator of a breath testing device shall be competent to testify regarding the proper procedures to be used in conducting the test.
- (j) At a hearing pursuant to this section, or upon court review of an order entered at such a hearing, in which the report of blood test results have been prepared by the Kansas bureau of investigation or other forensic laboratory of a state or local law enforcement agency are to be introduced as evidence, the report, or a copy of the report, of the findings of the forensic examiner shall be admissible into evidence in the same manner and with the same force and effect as if the forensic examiner who performed such examination, analysis, comparison or identification and prepared the report thereon had testified in person.
- (k) At the hearing, the licensee has the burden of proof by a preponderance of the evidence to show that the facts set out in the officer's certification are false or insufficient and that the order suspending or suspending and restricting the licensee's driving privileges should be dismissed.
- (l) Evidence at the hearing shall be limited to the following:
- (1) The documents set out in subsection (e);
 - (2) the testimony of the licensee;
 - (3) the testimony of any certifying officer;
 - (4) the testimony of any witness present at the time of the issuance of the certification and called by the licensee;
 - (5) any affidavits submitted from other witnesses;
 - (6) any documents submitted by the licensee to show the existence of a medical condition, as described in K.S.A. 8-1001, and amendments thereto; and

KANSAS STATUTES

8-1020 (Continued)

- (7) any video or audio tape record of the events upon which the administrative action is based.
- (m) After the hearing, the representative of the director shall enter an order affirming the order of suspension or suspension and restriction of driving privileges or for good cause appearing therefor, dismiss the administrative action. If the representative of the director enters an order affirming the order of suspension or suspension and restriction of driving privileges, the suspension or suspension and restriction shall begin on the 30th day after the effective date of the order of suspension or suspension and restriction. If the person whose privileges are suspended is a nonresident licensee, the license of the person shall be forwarded to the appropriate licensing authority in the person's state of residence if the result at the hearing is adverse to such person or if no timely request for a hearing is received.
- (n) The representative of the director may issue an order at the close of the hearing or may take the matter under advisement and issue a hearing order at a later date. If the order is made at the close of the hearing, the licensee or the licensee's attorney shall be served with a copy of the order by the representative of the director. If the matter is taken under advisement or if the hearing was by telephone conference call, the licensee and any attorney who appeared at the administrative hearing upon behalf of the licensee each shall be served with a copy of the hearing order by mail. Any law enforcement officer who appeared at the hearing also may be mailed a copy of the hearing order. The effective date of the hearing order shall be the date upon which the hearing order is served, whether served in person or by mail.
- (o) The licensee may file a petition for review of the hearing order pursuant to K.S.A. 8-259, and amendments thereto. Upon filing a petition for review, the licensee shall serve the secretary of revenue with a copy of the petition and summons. Upon receipt of a copy of the petition for review by the secretary, the temporary license issued pursuant to subsection (b) shall be extended until the decision on the petition for review is final.
- (p) Such review shall be in accordance with this section and the Kansas judicial review act. To the extent that this section and any other provision of law conflicts, this section shall prevail. The petition for review shall be filed within 14 days after the effective date of the order. Venue of the action for review is the county where the person was arrested or the accident occurred, or, if the hearing was not conducted by telephone conference call, the county where the administrative proceeding was held. The action for review shall be by trial de novo to the court and the evidentiary restrictions of subsection (l) shall not apply to the trial de novo. The court shall take testimony, examine the facts of the case and determine whether the petitioner is entitled to driving privileges or whether the petitioner's driving privileges are subject to suspension or suspension and restriction under the provisions of this act. Notwithstanding K.S.A. 77-617, and amendments thereto, the court: (1) May also consider and determine any constitutional issue, including, but not limited to, the lawfulness of the law enforcement encounter, even if such issue was not raised before the agency; and (2) shall also consider and determine any constitutional issue, including, but not limited to, the lawfulness of the law enforcement encounter, if such issue is raised by the petitioner in the petition for review, even if such issue was not raised before the agency. If the court finds that the grounds for action by the agency have been met, the court shall affirm.

KANSAS STATUTES

8-1020 (Continued)

- (q) Upon review, the licensee shall have the burden to show that the decision of the agency should be set aside.
- (r) Notwithstanding the requirement to issue a temporary license in K.S.A. 8-1002, and amendments thereto, and the requirements to extend the temporary license in this section, any such temporary driving privileges are subject to restriction, suspension, revocation or cancellation as provided in K.S.A. 8-1014, and amendments thereto, or for other cause.
- (s) Upon motion by a party, or on the court's own motion, the court may enter an order restricting the driving privileges allowed by the temporary license provided for in K.S.A. 8-1002, and amendments thereto, and in this section. The temporary license also shall be subject to restriction, suspension, revocation or cancellation, as set out in K.S.A. 8-1014, and amendments thereto, or for other cause.
- (t) The facts found by the hearing officer or by the district court upon a petition for review shall be independent of the determination of the same or similar facts in the adjudication of any criminal charges arising out of the same occurrence. The disposition of those criminal charges shall not affect the suspension or suspension and restriction to be imposed under this section.
- (u) All notices affirming or canceling a suspension under this section, all notices of a hearing held under this section and all issuances of temporary driving privileges pursuant to this section shall be sent by first-class mail and a United States post office certificate of mailing shall be obtained therefor. All notices so mailed shall be deemed received three days after mailing, except that this provision shall not apply to any licensee where such application would result in a manifest injustice.
- (v) The provisions of K.S.A. 60-206, and amendments thereto, regarding the computation of time shall be applicable in determining the time for requesting an administrative hearing as set out in subsection (a) and to the time for filing a petition for review pursuant to subsection (o) and K.S.A. 8-259, and amendments thereto.

8-1023. Testing not considered medical care; information to be provided law enforcement officer; costs, assessment; privileges not applicable

- (a) The testing and method of testing consented to under K.S.A. 8-1001, and amendments thereto, shall not be considered to have been conducted for any medical care or treatment purpose. The results of such test, the person's name whose bodily substance is drawn or tested, the location of the test or procedure, the names of all health care providers and personnel who participated in the procedure or test, and the date and time of the test or procedure are required by law to be provided to the requesting law enforcement officer or the law enforcement officer's designee after the requesting law enforcement officer has complied with K.S.A. 8-1001, and amendments thereto.
- (b) All costs of conducting any procedure or test requested by a law enforcement agency and authorized by K.S.A. 8-1001, and amendments thereto, including the costs of the evidence collection kits shall be charged to and paid by the county where the alleged offense was committed. Such county may be reimbursed such costs upon the costs being paid by the defendant as court costs assessed pursuant to K.S.A. 28-172a, and amendments thereto.
- (c) The cost assessed under K.S.A. 8-1001, and amendments thereto, shall be the then current medicaid rate for any such procedure or test, or both.

KANSAS STATUTES

8-1023 (Continued)

- (d) Notwithstanding any other law to the contrary, the collection and delivery of the sample and required information to the law enforcement officer pursuant to K.S.A. 8-1001, and amendments thereto, shall not be subject to the physician-patient privilege or any other law that prohibits the transfer, release or disclosure of the sample or of the required information.

8-1024. Immunity of persons and entities involved in testing from liability

No medical care facility, clinical laboratory, medical clinic, other medical institution, person licensed to practice medicine or surgery, person acting under the direction of any such licensed person, licensed physician assistant, registered nurse, licensed practical nurse, medical technician, paramedic, advanced emergency medical technician, phlebotomist, health care provider or person who participates in good faith in the obtaining, withdrawal, collection or testing of blood, breath, urine or other bodily substance at the direction of a law enforcement officer pursuant to K.S.A. 8-1001, and amendments thereto, or as otherwise authorized by law, shall incur any civil, administrative or criminal liability as a result of such participation, regardless of whether or not the patient resisted or objected to the administration of the procedure or test.

8-1567. Driving under influence of alcohol or drugs; blood alcohol concentration; penalties.

- (a) 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 K.S.A. 8-1013(f)(1), and amendments thereto, is .08 or more;
 - (2) the alcohol concentration in the person's blood or breath, as measured within 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;
 - (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.
- (b) (1) Driving under the influence is:
- (A) On a first conviction a class B, nonperson misdemeanor. 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 \$750 nor more than \$1,000. The person convicted 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 K.S.A. 2011 Supp. 21-6609, and amendments thereto, to serve the remainder of the sentence only after such person has served 48 consecutive hours' imprisonment;
 - (B) on a second conviction a class A, nonperson misdemeanor. The person convicted shall be sentenced to not less than 90 days nor more than one year's

KANSAS STATUTES

8-1567 (Continued)

- imprisonment and fined not less than \$1,250 nor more than \$1,750. The person convicted 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 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. 2011 Supp. 21-6609, and amendments thereto, to serve the five days' imprisonment mandated by this subsection 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 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;
- (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 1,260 hours of confinement. Such 1,260 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. 2011 Supp. 21-6609, and amendments thereto, to serve the 90 days' imprisonment mandated by this subsection 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 2,160 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 2,160 hours;
- (D) on a third conviction a nonperson felony if the person has a prior conviction which occurred within the preceding 10 years, not including any period of

KANSAS STATUTES

8-1567 (Continued)

- 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 \$1750 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 2,160 hours of confinement. Such 2,160 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. 2011 Supp. 21-6609, and amendments thereto, to serve the 90 days' imprisonment mandated by this subsection only after such person has served the 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 2,160 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 2,160 hours; and
- (E) on a fourth or subsequent conviction a nonperson felony. 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 subsection 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 2,160 hours of confinement. Such 2,160 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 K.S.A. 2011 Supp. 21-6609, and amendments thereto, to serve the 90 days' imprisonment mandated by this subsection 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 2,160 hours of confinement within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the 2,160 hours.
- (2) The court may order that the term of imprisonment imposed pursuant to 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

KANSAS STATUTES

8-1567 (Continued)

abuse treatment pursuant to the provisions of K.S.A. 2011 Supp. 21-6804, 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.

- (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 K.S.A. 2011 Supp. 21-6711, 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 Kansas department for aging and disability 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 Kansas department of aging and disability services 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 pursuant to subsection (b)(1)(A) or (b)(1)(B), the court shall order the person to participate in an alcohol and drug

KANSAS STATUTES

8-1567 (Continued)

- 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.
- (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) 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; and (2) Kansas bureau of investigation central repository all criminal history record information concerning such person.
 - (h) The court shall report every conviction of a violation of this section and every diversion agreement entered into in lieu of further criminal proceedings 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.
 - (i) For the purpose of determining whether a conviction is a first, second, third, fourth or subsequent conviction in sentencing under this section:
 - (1) Convictions for a violation of this section, or a violation of 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 on a complaint alleging any such violations, shall be taken into account, but only convictions or diversions occurring on or after July 1, 2001. Nothing in this provision

KANSAS STATUTES

8-1567 (Continued)

- shall be construed as preventing any court from considering any convictions or diversions occurring during the person's lifetime in determining the sentence to be imposed within the limits provided for a first, second, third, fourth or subsequent offense;
- (2) any convictions for a violation of the following sections occurring during a person's lifetime shall be taken into account: (A) Refusing to submit to a test to determine the presence of alcohol or drugs, 8-1025, and amendments thereto; (B) driving a commercial motor vehicle under the influence, K.S.A. 8-2,144, and amendments thereto; (C) operating a vessel under the influence of alcohol or drugs, K.S.A. 32-1131, and amendments thereto; (D) involuntary manslaughter while driving under the influence of alcohol or drugs, K.S.A. 21-3442, prior to its repeal, or K.S.A. 2017 Supp. 21-5405(a)(3) or (a)(5), and amendments thereto; (E) aggravated battery as described in K.S.A. 2017 Supp. 21-5413(b)(3) or (b)(4), and amendments thereto; and (F) aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was committed while committing a violation of K.S.A. 8-1567, and amendments thereto;
 - (3) "conviction" includes: (A) Entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of a crime described in subsection (i)(2); (B) conviction of a violation of an ordinance of a city in this state, a resolution of a county in this state or any law of another state which would constitute a crime described in subsection (i)(1) or (i)(2); and (C) receiving punishment under the uniform code of military justice or Kansas code of military justice for an act which was committed on a military reservation and which would constitute a crime described in subsection (i)(1) or (i)(2) if committed off a military reservation in this state;
 - (4) multiple convictions of any crime described in subsection (i)(1) or (i)(2) arising from the same arrest shall only be counted as one conviction;
 - (5) it is irrelevant whether an offense occurred before or after conviction for a previous offense; and
 - (6) 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.
- (j) 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.
 - (k) (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.
 - (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.

KANSAS STATUTES

8-1567 (Continued)

- (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.
- (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.
- (l) (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; and
 - (B) Kansas bureau of investigation central repository all criminal history record information concerning such person.
- (2) If 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, the city attorney shall refer the violation to the appropriate county or district attorney for prosecution.
- (m) 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.
- (n) 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.
- (o) 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. 21-5712, and amendments thereto.
- (p) (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 each 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

KANSAS STATUTES

8-1567 (Continued)

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 K.S.A. 2011 Supp. 75-52,113, and amendments thereto.

8-1567a. Driving under the influence of alcohol or drugs by any person less than 21 years of age; blood alcohol concentration; penalties.

- (a) It shall be unlawful for any person less than 21 years of age to operate or attempt to operate a vehicle in this state with a breath or blood alcohol content of .02 or greater.
- (b) Whenever a law enforcement officer determines that a breath or blood alcohol test is to be required of a person less than 21 years of age pursuant to K.S.A. 8-1001 or K.S.A. 8-2,142 and amendments thereto, in addition to any other notices required by law, the law enforcement officer shall provide written and oral notice that: (1) It is unlawful for any person less than 21 years of age to operate or attempt to operate a vehicle in this state with a breath or blood alcohol content of .02 or greater; and (2) if the person is less than 21 years of age at the time of the test request and submits to and completes the test or tests and the test results show an alcohol concentration of .02 or greater, but less than .08, on the person's first occurrence, the person's driving privileges will be suspended for 30 days and on the person's second or subsequent occurrence, the person's driving privileges shall be suspended for one year.
- (c) Any suspension and restriction of driving privileges pursuant to this section shall be in addition to any disqualification from driving a commercial motor vehicle pursuant to K.S.A. 8-2,142 and amendments thereto.
- (d) Whenever a breath or blood alcohol test is requested pursuant to K.S.A. 8-1001 and amendments thereto, from a person less than 21 years of age, and results in a test result of .02 or greater, but less than .08, a law enforcement officer's certification under this section shall be prepared. The certification required by this section shall be signed by one or more officers to certify that:
 - (1) (A) There existed reasonable grounds to believe the person was operating a vehicle while under the influence of alcohol or drugs, or both, or to believe that the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128 and amendments thereto, while having alcohol or other drugs in such person's system or was under the age of 21 years and was operating or attempting to operate a vehicle while having alcohol or other drugs in such person's system; (B) the person had been placed under arrest, was in custody or had been involved in a vehicle accident or collision; (C) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001 and amendments thereto, and the oral and written notice required by this section; (D) that the person was less than 21 years of age at the time of the test request; and (E) the result of the test showed that the person had an alcohol concentration of .02 or greater in such person's blood or breath.

KANSAS STATUTES

8-1567a (Continued)

- (2) With regard to a breath test, in addition to those matters required to be certified under subsection (d) (1), that: (A) The testing equipment used was certified by the Kansas department of health and environment; (B) the testing procedures used were in accordance with the requirements set out by the Kansas department of health and environment; and (C) the person who operated the testing equipment was certified by the Kansas department of health and environment to operate such equipment.
- (e) If a hearing is requested as a result of a law enforcement officer's certification under this section, the scope of the hearing shall be limited to whether: (1) A law enforcement officer had reasonable grounds to believe the person was operating a vehicle while under the influence of alcohol or drugs, or both, or to believe that the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128 and amendments thereto, while having alcohol or other drugs in such person's system or was under the age of 21 years and was operating or attempting to operate a vehicle while having alcohol or other drugs in such person's system; (2) the person had been placed under arrest, was in custody or was involved in a motor vehicle accident or collision resulting in property damage, personal injury or death; (3) a law enforcement officer had presented the person with the oral and written notice required by K.S.A. 8-1001 and amendments thereto, and the oral and written notice required by this section; (4) the testing equipment used was reliable; (5) the person who operated the testing equipment was qualified; (6) the testing procedures used were reliable; (7) the test result determined that the person had an alcohol concentration of .02 or greater in such person's blood or breath; (8) the person was operating a vehicle; and (9) the person was less than 21 years of age at the time a test was requested.
- (f) If a person less than 21 years of age submits to a breath or blood alcohol test requested pursuant to K.S.A. 8-1001 or K.S.A. 8-2,142 and amendments thereto, and produces a test result of .02 or greater, but less than .08, on the person's first occurrence, the person's driving privileges shall be suspended for 30 days and then restricted as provided by K.S.A. 8-1015, and amendments thereto, for an additional 330 days, and on the person's second or subsequent occurrence, the person's driving privileges shall be suspended for one year.
- (g) Except where there is a conflict between this section and K.S.A. 8-1001 and 8-1002 and amendments thereto, the provisions of K.S.A. 8-1001 and 8-1002 and amendments thereto, shall be applicable to proceedings under this section.
- (h) Any determination under this section that a person less than 21 years of age had a test result of .02 or greater, but less than .08, and any resulting administrative action upon the person's driving privileges, upon the first occurrence of such test result and administrative action, shall not be considered by any insurance company in determining the rate charged for any automobile liability insurance policy or whether to cancel any such policy under the provisions of subsection (4)(a) of K.S.A. 40-277 and amendments thereto.

DC-28

CERTIFICATION AND NOTICE OF SUSPENSION OF TEST RESULT OF .02 OR GREATER, BUT LESS THAN .08 FOR PERSONS UNDER 21 YEARS OF AGE (SEE REVERSE SIDE FOR HEARING INFORMATION)

INSTRUCTIONS: This form is to be used to certify a completed test result by a person less than 21 years of age of .02 or greater, but less than .08. A copy of the completed form is required to be served upon the person; a copy is to be forwarded to the Division of Vehicles within seven days after service on the driver, and a copy should be retained by a certifying officer. If the person refuses the test or completes a test with a test result of .08 or greater, complete Form DC-27 instead of this form.

DRIVER INFORMATION			
Name (Last)	(First)	(MI)	Date of Birth
Current Address		City	
		State	
Driver's License No.	State of Issuance	Zip	

ADDRESS: The above address will be treated as a change of address if different from that on file with the Division of Vehicles and will be used for all correspondence with the person unless the Division of Vehicles is notified by the person in writing of a different address or a change of address. You can change your address on the Internet, by mail or fax to Central Office Operations, or by going to any Kansas Driver's License Examining Station.

LAW ENFORCEMENT OFFICER'S CERTIFICATION

CERTIFICATION INSTRUCTIONS: To certify that a person less than 21 years of age has completed a breath or blood alcohol test with a result of .02 or greater, but less than .08, (1) each officer must complete the statement, if necessary, (2) at least one officer must initial on the line to the left of each of the statements intended to be certified and (3) each officer who initials a statement must sign in the space provided below.

1. On _____, 20____, reasonable grounds/probable cause existed to believe that the above-named person, within the State of Kansas in _____ County, had been
 - operating a vehicle while under the influence of alcohol and/or drugs in violation of state statute, city ordinance or county resolution,
 - driving a commercial vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system, or
 - was under the age of 21 years and had been operating or attempting to operate a vehicle while having alcohol or other drugs in such person's system.
2. The person had been placed under arrest, was in custody or had been involved in a vehicle accident or collision.
3. The person was presented oral and written notice as required by Kansas law.
4. The person was less than 21 years of age at the time of the test request.
5. The result of the test showed that the person had an alcohol concentration of .02 or greater, but less than .08 in such person's blood or breath. **NOTE: Please attach a readable copy of the test report.**
6. Reasonable grounds/probable cause for the initial contact and/or stop: committed traffic violation(s) (explain below); officer arrived at scene of accident; vehicle already stopped; other (explain) _____
7. Reasonable ground/probable cause for my belief that the person was operating or attempting to operate a vehicle: saw person operate; person identified self as driver; other (explain) _____
8. Reasonable grounds/probable cause for my belief that the person was under the influence of alcohol and/or drugs: odor of alcoholic beverages; alcoholic beverages found in vehicle; sobriety tests indicated impairment; refused sobriety tests; slurred speech; bloodshot eyes; difficulty in communicating; poor balance or coordination; person stated that alcohol/drugs consumed; failed preliminary screening test; refused preliminary screening test; other (explain) _____
9. A copy of this document which contains a Notice of Driver's License Suspension was served on the above-named person on _____, 20____, by (check one)
 - personal service; or mailing by first-class mail to the address shown above. **NOTE: Personal service is required if a determination of the test result is made while the person is in custody.**

IF CERTIFYING A BREATH TEST RESULT, STATEMENTS 10, 11 AND 12 MUST ALSO BE COMPLETED AND CERTIFIED.

10. The testing equipment used was certified by the Kansas Department of Health and Environment.
11. The testing procedures used were in accordance with the requirements set out by the Kansas Department of Health and Environment.
12. The person who operated the testing equipment was certified by the Kansas Department of Health and Environment to operate such equipment.

I hereby certify to the Division of Vehicles that each of the statements I have initialed above are true and accurate, under penalty of K.S.A. 8-1002(b), and amendments thereto.

Title and name (printed): _____	Title and name (printed): _____
Agency name: _____	Agency name: _____
Agency address: _____	Agency address: _____
City/state/zip: _____	City/state/zip: _____
Signature of Law Enforcement Officer _____	Signature of Law Enforcement Officer _____

TEMPORARY DRIVER'S LICENSE

THIS NOTICE IS:

- NOT VALID** as a temporary license for the reason that your license: has expired; has been revoked; has been suspended; has been cancelled; or you have no driver's license.
- VALID** as a temporary license until the 30th day after the date of service of this document. You must carry this notice with you when driving. This temporary license allows the operation of the same classes of vehicles and is subject to the same restrictions as the driver's license surrendered.

Any temporary driver's license will end and your driving privileges will be suspended on the 30th day after service of this document unless an administrative hearing has been timely requested. THE INSTRUCTIONS FOR REQUESTING AN ADMINISTRATIVE HEARING ARE ON THE REVERSE SIDE OF THIS FORM.

Before a test or tests are administered, the officer is required by Kansas law to provide the person the oral and written notices. If the person is under the age of 21, the oral and written notice required by K.S.A. 8-1687a should also be given.

Distribution: 1st copy (white) copy to Division of Vehicles 2nd copy (yellow) for your file 3rd copy (pink) to licensee/driver

DC-28

NOTICE OF DRIVER'S LICENSE SUSPENSION (Pursuant to K.S.A. 8-1567a)

Based upon the certification on the reverse side of this form, your driving privileges are hereby suspended, pursuant to K.S.A. 8-1567a, effective the 30th day after the date of service of this notice, unless a timely request for hearing is made (see below). The action taken on your license depends upon whether you have had a prior test result of .02 or greater, but less than .08.

If this is the first time you have had a test result of .02 or greater, but less than .08, your driving privileges will be suspended for 30 days and then restricted as provided by K.S.A. 8-1015, and amendments thereto, for an additional 330 days.

If this is the second or subsequent time you have had a test result of .02 or greater, but less than .08, your driving privileges will be suspended for one year.

PROCEDURE FOR REQUESTING AN ADMINISTRATIVE HEARING

• A hearing request may be made either by mailing a written request which is postmarked within 14 calendar days after the date of service of this form, or by sending a written request by electronic facsimile (fax) to the Division of Vehicles within 14 calendar days after the date of service of this form. If this form was served on you by mail, you will have an additional 3 days, pursuant to K.S.A. 60-206(d).

• The hearing request must include your full name, driver's license number, birth date and a telephone number at which you or your legal representative can be reached if necessary.

• The hearing request must include your current address. If the address you provide in your written request for a hearing is different than the address on the reverse side of this form, the address in your hearing request will be treated as a change of address pursuant to K.S.A. 8-248. All correspondence will be sent to the address provided in the hearing request.

• The hearing request must state whether you want to have the certifying officer(s) subpoenaed to the administrative hearing. If you wish to contest the facts contained in the officer's certification at the administrative hearing, you have the burden of disproving those facts, and you may need to compel the appearance of the certifying officer(s) to do so. If you fail to request any officer's attendance at the time you make a hearing request, your right to compel that attendance by subpoena will be deemed waived and the Law Enforcement Officer's Certification will be admitted as evidence at the hearing.

• HEARING LOCATION. Upon receipt of your timely written hearing request, a hearing will be scheduled by telephone conference call. You may request that the hearing be conducted in person before a representative of the Director of Vehicles. Any request for an in person hearing must be made at the time you request a hearing. A written notice will be mailed to you setting out the time, date and place of the hearing. Any temporary driving privileges granted on the reverse side of this document will be extended until a final determination is made.

• Constitutional issues cannot be decided at the administrative hearing, but may be preserved and raised in a petition for review of the hearing to a State district court, if such petition for review is timely made pursuant to law.

• Mail hearing requests to: DL Administrative Hearing Section
Kansas Department of Revenue
P.O. Box 2744
Topeka, KS 66601-2744
(785) 296-6911

• Send electronic facsimile (fax) requests to: (785) 296-0275

KANSAS STATUTES

8-2,136. Same; prohibiting driving with alcohol in person's system; out-of-service order.

- (a) Notwithstanding any other provisions of this act, a driver shall not drive, operate or be in physical control of a commercial motor vehicle while having alcohol in such driver's system.
- (b) A driver who drives, operates or is in physical control of a commercial motor vehicle while having alcohol in such driver's system or who refuses to take a test to determine their alcohol content as provided by K.S.A. 8-2,142, and amendments thereto, shall be placed out-of-service for 24 hours.
- (c) A driver convicted of violating an out-of-service order while driving or operating a commercial motor vehicle shall be subject to the following disqualifications:
 - (1) First conviction, the driver is disqualified for 90 days;
 - (2) second conviction, the driver is disqualified for one year;
 - (3) third and subsequent conviction, the driver is disqualified for three years.

8-2,144. Commercial motor vehicles; driving under influence of alcohol or drugs; blood alcohol concentration; penalties.

- (a) Driving a commercial motor vehicle under the influence is operating or attempting to operate any commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, 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 K.S.A. 8-1013(f)(1), and amendments thereto, is 0.04 or more;
 - (2) the alcohol concentration in the person's blood or breath, as measured within three hours of the time of driving a commercial motor vehicle, is .04 or more; or
 - (3) committing a violation of K.S.A. 8-1567(a), and amendments thereto, or the ordinance of a city or resolution of a county which prohibits any of the acts prohibited thereunder or is otherwise comparable.
- (b) (1) Driving a commercial motor vehicle under the influence is:
 - (A) On a first conviction a class, nonperson misdemeanor. 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 \$750 nor more than \$1,000. The person convicted 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, suspension or reduction of sentence or parole or other release;
 - (B) on a second conviction a class A, nonperson misdemeanor. The person convicted shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,250 nor more than \$1,750. The person convicted 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

KANSAS STATUTES

8-2,144 (Continued)

- 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. 2014 Supp. 21-6609, and amendments thereto, to serve the five days' imprisonment mandated by this subsection 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; and
- (C) on a third or subsequent conviction a nonperson felony. 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 2,160 hours of confinement. Such 2,160 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. 2014 Supp. 21-6609, and amendments thereto, to serve the 90 days' imprisonment mandated by this subsection 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 2,160 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 2,160 hours.
- (2) In addition, for any conviction pursuant to subsection (b)(1)(C), at the time of the filing of the judgment form or journal entry as required by K.S.A. 22-3426 or K.S.A. 2014 Supp. 21-6711, 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

KANSAS STATUTES

8-2,144 (Continued)

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 Kansas department for aging and disability 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 aging and disability services department designated treatment provider and the offender. An offender for whom a warrant has been issued by the court alleging a violation of such supervision shall be considered a fugitive from justice if it is found that the warrant cannot be served. If it is found the offender has violated the provisions of this supervision, the court shall determine whether the time from the issuing of the warrant to the date of the court's determination of an alleged violation, or any part of it, shall be counted as time served on supervision. 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. The term of supervision may be extended at the court's discretion beyond one year, and any violation of the conditions of such extended term of supervision may subject such person to the revocation of supervision and imprisonment in jail of up to the remainder of the original sentence, not the term of the extended supervision.

- (3) In addition, prior to sentencing for any conviction pursuant to subsection (b)(1)(A) or (b)(1)(B), 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.
- (c) Any person 18 years of age or older convicted of a violation of this section, or a violation of a city ordinance or county resolution prohibiting the acts prohibited by this section, who had one or more children under the age of 18 years in the vehicle at the time of the offense shall have such person's punishment enhanced by one month of imprisonment. This imprisonment shall be served consecutively to any other minimum mandatory penalty imposed for a violation of this section, or a violation of a city ordinance or county resolution prohibiting the acts prohibited by this section. 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 K.S.A. 8-1567(a)(4) or (a)(5), and amendments thereto, as incorporated in this section, 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.

KANSAS STATUTES

8-2,144 (Continued)

- (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) 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; and (2) Kansas bureau of investigation central repository all criminal history record information concerning such person.
- (h) The court shall electronically report every conviction of 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: (1) Division a record of all prior convictions obtained against such person for any violation of any of the motor vehicle laws of this state; and (2) Kansas bureau of investigation central repository all criminal history record information concerning such person.
- (i) 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: (1) Disqualify the person from driving a commercial motor vehicle under K.S.A. 8-2,142, and amendments thereto.; and (2) suspend, restrict or suspend and restrict the person's driving privileges as provided by K.S.A. 8-1014, and amendments thereto.
- (j) (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 section as unlawful or prohibited in such city or county and prescribing penalties for violation thereof.
(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.
(3) 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.
- (k) (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 of vehicles a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state; and (B) Kansas bureau

KANSAS STATUTES

8-2,144 (Continued)

of investigation central repository all criminal history record information concerning such person.

- (2) If 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, the city attorney shall refer the violation to the appropriate county or district attorney for prosecution. The county or district attorney shall accept such referral and pursue a disposition of such violation, and shall not refer any such violation back to the city attorney.
- (l) 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 or resolution.
- (m) The alternatives set out in subsection (a) may be pleaded in the alternative, and the state, city or county may, but shall not be required to, elect one or more of such alternatives prior to submission of the case to the fact finder.
- (n) For the purpose of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section:
 - (1) Convictions for a violation of K.S.A. 8-1567, and amendments thereto, or a violation of an ordinance of any city or resolution of any county that prohibits the acts that such section prohibits, or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging any such violations, shall be taken into account, but only convictions or diversions occurring on or after July 1, 2001. Nothing in this provision shall be construed as preventing any court from considering any convictions or diversions occurring during the person's lifetime in determining the sentence to be imposed within the limits provided for a first, second, third, fourth or subsequent offense;
 - (2) any convictions for a violation of the following sections occurring during a person's lifetime shall be taken into account: (A) This section; (B) operating a vessel under the influence of alcohol or drugs, K.S.A. 32-1131, and amendments thereto; (C) involuntary manslaughter while driving under the influence of alcohol or drugs, K.S.A. 21-3442, prior to its repeal, or K.S.A. 2014 Supp. 21-5405(a)(3) or (a)(5), and amendments thereto; (D) aggravated battery as described in K.S.A. 2014 Supp. 21-5413(b)(3) or (b)(4), and amendments thereto; and (E) aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was committed while committing a violation of K.S.A. 8-1567, and amendments thereto;
 - (3) "conviction" includes: (A) Entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of a crime described in subsection (n)(2); and (B) conviction of a violation of an ordinance of a city in this state, a resolution of a county in this state or any law of another jurisdiction that would constitute an offense that is comparable to the offense described in subsection (n)(1) or (n)(2);
 - (4) it is irrelevant whether an offense occurred before or after conviction for a previous offense; and

KANSAS STATUTES

8-2,144 (Continued)

- (5) multiple convictions of any crime described in subsection (n)(1) or (n)(2) arising from the same arrest shall only be counted as one conviction.
- (o) For the purposes of determining whether an offense is comparable, the following shall be considered:
 - (1) The name of the out-of-jurisdiction offense;
 - (2) the elements of the out-of-jurisdiction offense; and
 - (3) whether the out-of-jurisdiction offense prohibits similar conduct to the conduct prohibited by the closest approximate Kansas offense.
- (p) For the purpose of 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. 2014 Supp. 21-5712, and amendments thereto.
- (q) 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 each such remittance, the state treasurer shall credit the entire amount to the community corrections supervision fund established by K.S.A. 2014 Supp. 75-52,113, and amendments thereto.

8-2,145. Tests for alcohol or drugs; notices; certification by officer; hearing; disqualification of driver.

- (a) Prior to requesting a test or tests pursuant to K.S.A. 8-2,137, and amendments thereto, in addition to any notices provided pursuant to K.S.A. 8-1001, and amendments thereto, the following notice shall be provided orally and in writing: Whenever a law enforcement officer has reasonable grounds to believe a person has been driving a commercial motor vehicle while having alcohol or other drugs in such person's system and the person refuses to submit to and complete a test or tests requested by a law enforcement officer or submits to and completes a test requested by a law enforcement officer which determines that the person's alcohol concentration is .04 or greater, the person will be disqualified from driving a commercial motor vehicle for at least one year, pursuant to Kansas law.
- (b) It shall not be a defense that the person did not understand the notices required by this section.
- (c) Upon completion of the notices set out in K.S.A. 8-1001, and amendments thereto, and the notices in subsection (a), the law enforcement officer shall proceed to request a test or tests. In addition to the completion of any certification required under K.S.A. 8-1002, and amendments thereto, a law enforcement officer's certification shall be prepared and signed by one or more officers to certify:
 - (1) There existed reasonable grounds to believe the person had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system;

KANSAS STATUTES

8-2,145 (Continued)

- (2) the person had been placed under arrest, was in custody or had been involved in a motor vehicle accident or collision;
 - (3) a law enforcement officer had presented the person with the notices required by this section; and
 - (4) the person refused to submit to and complete a test or the test result for alcohol content of blood or breath was .04 or greater.
- (d) For purposes of this section, certification shall be complete upon signing, and no additional acts of oath, affirmation, acknowledgment or proof of execution shall be required. The signed certification or a copy or photostatic reproduction thereof shall be admissible in evidence in all proceedings brought pursuant to this act, and receipt of any such certification, copy or reproduction shall accord the division authority to proceed as set forth herein. Any person who signs a certification submitted to the division knowing it contains a false statement is guilty of a class B misdemeanor.
- (e) Upon completing a certification under subsection (c), the officer shall serve upon the person notice of disqualification of the privilege to drive a commercial motor vehicle pursuant to K.S.A. 8-2,142, and amendments thereto, together with a copy of the certification. In cases where a .04 or greater test result is established by a subsequent analysis of a breath or blood sample, the officer shall serve notice of such suspension in person or by another designated officer or by mailing the notice to the person at the address provided at the time of the test. If the determination of a test refusal or .04 or greater test result is made while the person is still in custody, service shall be made in person by the officer on behalf of the division of vehicles.
- (f) The notice shall contain the following information:
- (1) The person's name, driver's license number and current address pursuant to K.S.A. 8-248, and amendments thereto;
 - (2) the reason and statutory grounds for the disqualification;
 - (3) the date notice is being served and the effective date of the disqualification, which shall be the 20th day after the date of service;
 - (4) the right of the person to request an administrative hearing; and
 - (5) the procedure the person must follow to request an administrative hearing. The notice of disqualification shall also inform the person that all correspondence will be mailed to the person at the address contained in the notice of disqualification unless the person notifies the division in writing of a different address or change of address. The address provided will be considered a change of address for purposes of K.S.A. 8-248, and amendments thereto, if the address furnished is different from that on file with the division.
- (g) If the person mails a written request which is postmarked within 10 calendar days after service of the notice, if by personal service, or 13 calendar days after service, if by mail, the division shall schedule a hearing in the county where the alleged violation occurred, or in a county adjacent thereto. The licensee may request that subpoenas be issued in accordance with the notice provided pursuant to subsection (d). Any request made by the licensee to subpoena witnesses must be made in writing at the time the hearing is requested and must include the name and current address of such witness and, except for the certifying law enforcement officer or officers, a statement of how the testimony of such witness is relevant. Upon receiving a timely request for a hearing, the division shall mail to the person notice of the time, date and place of hearing in accordance with

KANSAS STATUTES

8-2,145 (Continued)

subsection (i) and extend the person's temporary driving privileges until the date set for the hearing by the division, unless otherwise disqualified, suspended, revoked or canceled.

- (h) The law enforcement officer shall forward the certification required under subsection (c) to the director within five days of the date of certification. Upon receipt of the certification, the division shall review the certification to determine that it meets the requirements of subsection (c). Upon so determining, the director shall proceed to disqualify the driver from driving a commercial motor vehicle in accordance with the notice of disqualification previously served.
- (i) All notices of disqualification under this section and all notices of a hearing held under this section shall be sent by first-class mail and a United States post office certificate of mailing shall be obtained therefor. All notices so mailed shall be deemed received three days after mailing.
- (j) Failure of a person to provide an adequate breath sample or samples as directed shall constitute a refusal unless the person shows that the failure was due to physical inability caused by a medical condition unrelated to any ingested alcohol or drugs.
- (k) The rules regarding evidence and procedure at hearings held under K.S.A. 8-1020, and amendments thereto, shall be applicable to hearings held under this section. At the hearing on a disqualification of commercial driving privileges, the issues shall be limited to those set out in the certification.
- (l) The division shall prepare and distribute forms for use by law enforcement officers in giving the notice required by this section.

CDL-5

OFFICER'S REPORT AND NOTICE OF DISQUALIFICATION OF COMMERCIAL DRIVING PRIVILEGES (SEE REVERSE SIDE FOR HEARING INFORMATION)

DRIVER INFORMATION

Name (Last)	(First)	(M/I)	Driver's License No.	State
Current Address			Date of Birth	Type of Vehicle
City	State	Zip	License Plate No.	Hazardous Material Involved? <input type="checkbox"/> YES <input type="checkbox"/> NO

INSTRUCTIONS: This form must be used to certify a refusal or test result of .04 or greater when a commercial motor vehicle is involved. The CDL advisory in the DC-70 form should be provided together with the Implied Consent Notice because it will not be known at the time the notices are given whether the person will refuse a test, produce a sample of .08 or above, produce a sample from .04 to .079, or produce a sample lower than .04. If the person refuses a test or has a test result of .08 or greater, Form DC-27 must also be completed. A copy of this completed form must be served upon the licensee, along with a completed DC-27 form, if applicable.

LAW ENFORCEMENT OFFICER'S CERTIFICATION

INSTRUCTIONS: To certify a test refusal or test result of .04 or greater, the officer or officers must complete the appropriate statements and initial each of the statements intended to be certified in the indicated space to the left of each statement and sign in the space provided below. **NOTE: TO PROPERLY CERTIFY A STATEMENT, THE STATEMENT MUST BE INITIALED AND THE OFFICER WHO INITIALS THE STATEMENT MUST ALSO SIGN BELOW.**

- _____ 1. On the _____ day of _____, 20____, reasonable grounds existed to believe that the above-named person within the State of Kansas in _____ County, had been driving a commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having alcohol or other drugs in such person's system.
- _____ 2. The person had been placed under arrest, was in custody or had been involved in a vehicle accident or collision.
- _____ 3. The person was presented oral and written notice as required by K.S.A. 8-2,145 and amendments thereto.
- _____ 4. The person refused to submit to or complete a test or the test result for alcohol content of blood or breath was .04 or greater.
Please check to indicate which applies:
 the person refused to submit to or complete a test
 the result of the test showed that the person had an alcohol concentration of .04 or greater in such person's blood or breath. (**Attach copy of test report.**)
- _____ 5. Reason(s) for the initial contact and/or stop: committed traffic violation(s) (explain below) officer arrived at scene of accident
 vehicle already stopped other (explain) _____
- _____ 6. Reasonable grounds for my belief that the person was driving a commercial motor vehicle:
 saw person operate person identified self as driver saw person in physical control of a commercial motor vehicle
 other (explain) _____
- _____ 7. Reasonable grounds for my belief that the person had alcohol or other drugs in his/her system.
 odor of alcoholic beverages alcoholic beverage containers found in vehicle failed sobriety tests
 slurred speech bloodshot eyes difficulty in communicating
 poor balance or coordination person stated alcohol/drugs consumed failed preliminary screening test
 other (explain) _____
- _____ 8. A copy of this document which contains a Notice of Disqualification of Commercial Driving Privileges is being served by me on the above-named person on _____, 20____ by (check one) Personal Service Mailing by first-class mail to the above address.
NOTE: PERSONAL SERVICE IS REQUIRED IF THE DETERMINATION OF REFUSAL OR FAILURE IS MADE WHILE THE PERSON IS STILL IN CUSTODY.

I hereby certify to the Department of Revenue, Division of Vehicles that each of the statements I have initialed above are true and accurate, under penalty of K.S.A. 8-2,145(d), and amendments thereto.

Title and name (printed): _____ Title and name (printed): _____

Agency name: _____ Agency name: _____

Agency address: _____ Agency address: _____

City/state/zip: _____ City/state/zip: _____

Signature of Law Enforcement Officer

Signature of Law Enforcement Officer

Completion date of certification: _____

TEMPORARY COMMERCIAL DRIVER'S LICENSE

THIS NOTICE IS:

- NOT VALID** as a temporary license because your license: has expired has been revoked has been suspended has been cancelled you have no driver's license. If the reason for invalidity is removed, you may apply for temporary driving privileges within 20 days from the date of service of this notice.
- VALID** as a temporary license for twenty (20) days from the date of service of this document, subject to any out of service order issued by a law enforcement officer. You must carry this notice with you when driving. This temporary license allows the operation of the same classes of vehicles and is subject to the same restrictions as the driver's license surrendered.

Any temporary commercial driver's license will end and your commercial driving privileges will be suspended 20 days after service of this document unless an administrative hearing has been timely requested, as set out in the INSTRUCTIONS FOR REQUESTING AN ADMINISTRATIVE HEARING ON THE REVERSE SIDE OF THIS FORM.

CDL-5

NOTICE OF DISQUALIFICATION OF COMMERCIAL DRIVING PRIVILEGES

(Pursuant to K.S.A. 8-2,145, and amendments thereto.)

Based upon the certification by one or more law enforcement officers that you have refused to submit to and complete a test requested by a law enforcement officer or that the test results upon completion of a test showed that you had an alcohol concentration in your breath or blood of .04 or greater, you are hereby disqualified from driving a commercial motor vehicle, effective twenty (20) days from the date of service of this notice.

The length of the period of disqualification from driving a commercial motor vehicle will be one (1) year unless you were transporting a hazardous material required to be placarded or you have a prior occurrence of any offense or test refusal or test failure, as defined by K.S.A. 8-2,142, and amendments thereto. If you were transporting a hazardous material required to be placarded at the time you refused to submit to and complete a test or the test results upon completion of a test showed that you had an alcohol concentration in your system of .04 or greater, the length of the period of disqualification from driving a commercial motor vehicle will be three (3) years.

If you have a prior occurrence of any offense or test refusal or test failure, listed in and as defined by K.S.A. 8-2,142, and amendments thereto, at the time you refused to submit to and complete a test or the test results upon completion of a test showed that you had an alcohol concentration in your system of .04 or greater, the length of the period of disqualification from driving a commercial motor vehicle will be for life.

PROCEDURE FOR REQUESTING AN ADMINISTRATIVE HEARING

- **If this form was personally served upon you**, a hearing request may be made either by mailing a written request which is postmarked **within 14 calendar days** after the date of service of this form, or by sending a written request by electronic facsimile (fax) to the Division of Vehicles **within 14 calendar days** after the date of service of this form.
- **If this form was served upon you by mail**, a hearing request may be made either by mailing a written request which is postmarked **within 17 calendar days** after the date of service of this form, or by sending a written request by electronic facsimile (fax) to the Division of Vehicles **within 17 calendar days** after the date of service of this form.
- The hearing request must include your full name, driver's license number and birth date. You should also include a telephone number where you or your legal representative can be reached if necessary.
- The hearing request must include your current address. If the address you provide in your written request for a hearing is different than the address on the reverse side of this form, the address in your hearing request will be treated as a change of address pursuant to K.S.A. 8-248. All correspondence will be sent to the address provided in the hearing request.
- The hearing request must state whether you want to have the certifying officer(s) subpoenaed to the administrative hearing. If you wish to contest the facts contained in the officer's certification at the administrative hearing, you have the burden of disproving those facts, and you may need to compel the appearance of the certifying officer(s) to do so. If you fail to request any officer's attendance at the time you make a hearing request, your right to compel that attendance by subpoena will be deemed waived and the Law Enforcement Officer's Certification will be admitted as evidence at the hearing.
- **HEARING LOCATION.** Upon receipt of your timely written hearing request and fee, a hearing will be scheduled for you within the county where the alleged violation occurred, or a county adjacent thereto, and you will receive by mail written notice of the time, date, and place of the hearing. Any temporary driving privileges granted on the reverse side of this document will be extended until a final determination is made.
- **SUBPOENAING WITNESSES.** If you request an administrative hearing, you may request that witnesses be subpoenaed. Any request you make to issue subpoenas must be made in writing at the time the hearing is requested and must include the name and current address of each witness requested and, except for the certifying law enforcement officer or officers, a statement of how the testimony of such witness is relevant.
- Constitutional issues cannot be decided at the administrative hearing, but may be preserved and raised in a petition for review of the initial administrative hearing to a State district court, if such petition for review is timely made pursuant to law.
- Mail hearing requests to: DL Administrative Hearing Section
Kansas Department of Revenue
P. O. Box 2744
Topeka, KS 66601-2744
(785) 296-6911
- Send electronic facsimile (fax) requests to: (785) 296-0275

KANSAS ADMINISTRATIVE REGULATIONS

28-32-8. Definitions.

The following terms and abbreviations as used in this article shall have the following meanings, unless the context requires otherwise.

- (a) "Agency" means any law enforcement agency under whose authority evidential breath alcohol tests are performed.
- (b) "Agency custodian" means the employee at a certified agency who is responsible for administering the certified agency's EBAT program.
- (c) "Alcohol" means any substance containing any form of alcohol, including ethanol, methanol, propanol, and isopropanol.
- (d) "Alcohol concentration" means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.
- (e) "Certified agency" means a law enforcement agency that meets the requirements of K.A.R. 28-32-9.
- (f) "Certified operator" means an individual who meets the requirements of K.A.R. 28-32-10.
- (g) "Department" means the Kansas department of health and environment.
- (h) "Device custodian" means the certified operator employed by a certified agency who is responsible for oversight of the certified agency's EBAT device.
- (i) "Evidential breath alcohol test" and "EBAT" mean a quantitative chemical test for alcohol performed on a sample or samples of breath of an individual suspected of an offense that subjects the individual to the provisions of K.S.A. 8-1001 through K.S.A. 8-1022 and amendments thereto.
- (j) "Evidential breath alcohol test device" and "EBAT device" mean an instrument designed to perform a quantitative chemical test for alcohol on a sample of breath of an individual, which yields test results that are admissible as evidence in a court of law.
- (k) "Preliminary breath-screening test device" means an instrument designed to perform a qualitative or quantitative chemical test for alcohol on a sample of breath of an individual to determine the presence or absence of alcohol pursuant to K.S.A. 8-1012 and amendments thereto.
- (l) "Quality control" means a test of an evidential breath alcohol test device that is administered at the direction of the secretary and that uses a known alcohol standard to evaluate the accuracy of the device.
- (m) "Secretary" means the secretary of the Kansas department of health and environment or the secretary's designee. (Authorized by and implementing K.S.A. 2006 Supp. 65-1,107; effective March 14, 2008.)

28-32-9. Agency certification.

- (a) Application. Each agency head seeking agency certification shall submit an application for agency certification on forms provided by the department.
- (b) Certification requirements. Each agency for which certification is sought shall demonstrate to the secretary that all of the following requirements are met:
 - (1) The agency head shall specify each certified EBAT device proposed for conducting evidential breath alcohol testing.
 - (2) The agency head shall provide and maintain a roster of the certified operators who perform evidential breath alcohol testing for the agency.
 - (3) Each certified operator shall use only EBAT devices certified by the secretary.
 - (4) Each certified operator shall follow the standard operating procedure provided by the secretary for the EBAT device in use.

KANSAS ADMINISTRATIVE REGULATIONS

K.A.R. 28-32-9 (Continued)

- (5) For quality control, each device custodian or the device custodian's designee shall test each EBAT device once each calendar week using the alcohol standards furnished by the department. The agency custodian shall report the test results to the department monthly on forms provided by the department.
- (c) Inspection. An annual inspection of each certified agency shall be made by the secretary or the secretary's designee to ensure compliance with this article.
- (d) Certificate term. Each agency that meets the requirements of this regulation shall be issued a certificate by the secretary. Each certificate shall expire at midnight on December 31 of the year of the certificate's issuance.
- (e) Certificate renewal. Each agency head of a certified agency seeking to renew the agency's certificate shall submit an application for renewal on forms provided by the department. If an application for renewal is submitted and approved before the expiration date, the certificate shall be considered renewed even if the agency does not have physical possession of the renewal certificate.
- (f) Certificate suspension or revocation. The failure to comply with this regulation may be grounds for suspension or revocation of the agency's certification. (Authorized by and implementing K.S.A. 2006 Supp. 65-1,107; effective March 14, 2008.)

28-32-10. Operator certification.

- (a) Application. Each individual seeking certification shall submit an application for operator certification through that individual's certified agency on forms provided by the department. Each applicant shall be a duly appointed Kansas law enforcement officer or have the written endorsement of a supervisory law enforcement officer or an agency custodian.
- (b) Certification requirements. Each applicant for operator certification shall be required to successfully complete the course of instruction and written examination approved by the secretary. Additional instruction may be required by the secretary to qualify a certified operator to perform evidential breath alcohol tests using additional EBAT devices.
- (c) Certificate term. Each applicant that meets the requirements for conducting evidential breath alcohol testing shall be issued a certificate by the secretary. Each operator certificate that is issued in an even-numbered year shall expire at midnight on December 31 of the next even-numbered year. Each operator certificate that is issued in an odd-numbered year shall expire at midnight on December 31 of the next odd-numbered year.
- (d) Certificate renewal. Each certified operator seeking to renew the operator certificate shall submit an application for renewal through that individual's certified agency on forms provided by the department. As a condition of an operator's certificate renewal, each certified operator shall biennially complete EBAT continuing education as approved by the secretary. If an application for renewal is submitted and approved before the certificate's expiration date, the certificate shall be considered renewed even if the operator does not have physical possession of the renewal certificate.
- (e) Effect of military service or official leave of absence.
 - (1) Any operator who returns from active military service or an official leave of absence that does not exceed two years may renew an inactive certification by meeting all of the following requirements and submitting the required information to the department on forms provided by the department:

KANSAS ADMINISTRATIVE REGULATIONS

K.A.R. 28-32-10 (Continued)

- (A) Provide proof of active military duty or official leave of absence;
 - (B) provide proof of the last operator certification before going on active duty or taking leave of absence;
 - (C) pass the current department-approved written operator examination; and
 - (D) provide proof of satisfactory performance of EBAT device operation in the presence of a device custodian.
- (2) Any operator who returns from active military service or an official leave of absence that exceeds two years may renew an expired certification by meeting all of the following requirements and submitting the required information to the department on forms provided by the department:
- (A) Provide proof of active military duty or official leave of absence;
 - (B) provide proof of the last operator certification before going on active duty or taking leave of absence;
 - (C) provide proof of completion of EBAT continuing education within 180 days of the date of return to the agency;
 - (D) pass the current department-approved written operator examination; and
 - (E) provide proof of satisfactory performance of EBAT device operation in the presence of a device custodian.
- (f) Certificate denial, suspension, and revocation. The failure of an applicant or a certified operator to comply with this regulation may be grounds for denial of the application or renewal or for suspension or revocation of the operator's certificate. (Authorized by and implementing K.S.A. 2006 Supp. 65-1,107; effective March 14, 2008.)

28-32-11. EBAT device certification.

- (a) Application. Each agency custodian seeking EBAT device certification shall submit an application on forms provided by the department for certification of each EBAT device that the certified agency intends to use in the certified agency's EBAT program.
- (b) Initial certification requirements. Each EBAT device shall be certified by the secretary before being used by an agency.
- (c) Inspection. Once an EBAT device is certified, an inspection of the EBAT device may be made by the secretary at any time. Any EBAT device may be removed from service at the time of the inspection if deemed necessary.
- (d) Maintenance. Each EBAT device shall be maintained by the device custodian or the device custodian's designee as directed by the secretary.
- (e) Repair. Each EBAT device removed from service for repair shall be repaired by the manufacturer or the manufacturer's authorized repair service. When the EBAT device is returned to the agency, the EBAT device shall be tested for accuracy by the device custodian or the device custodian's designee. The device custodian or the device custodian's designee shall notify the department of the date on which the instrument is placed back into service.
- (f) Modification. No modification shall be made to any EBAT device without the prior written consent of the secretary. For purposes of this regulation, "modification" shall mean any change in the operating software of or any physical change to a certified EBAT device that alters the accuracy or precision of the EBAT device. (Authorized by and implementing K.S.A. 2017 Supp. 65-1,107; effective March 14, 2008; amended, T-28-12-18-17, Dec. 18, 2017; amended April 6, 2018.)

KANSAS ADMINISTRATIVE REGULATIONS

28-32-12. Certified operator instruction and continuing education requirements.

- (a) Agency personnel may be trained to administer evidential breath alcohol tests by any of the following entities:
 - (1) The department;
 - (2) a certified agency;
 - (3) a college or university; or
 - (4) a law enforcement training center.
- (b) Both of the following shall be approved in advance by the secretary:
 - (1) Each course instructor; and
 - (2) each course of instruction offered to fulfill operator certification and EBAT continuing education requirements. (Authorized by and implementing K.S.A. 2006 Supp. 65-1,107; effective March 14, 2008.)

28-32-13. Records and reports.

- (a) Records.
 - (1) Each agency custodian or the agency custodian's designee shall maintain the following records on file at the certified agency's office for at least three years:
 - (A) Records of each current certified operator;
 - (B) records showing that a quality control check was completed at least once each week for each EBAT device assigned to the agency; and
 - (C) records documenting any maintenance or repair made to each EBAT device.
 - (2) The records specified in this subsection shall be subject to inspection by the secretary at least annually.
- (b) Reports. Each agency custodian or the agency custodian's designee shall maintain a record of the number of individuals tested by each certified operator under the certified agency's supervision (Authorized by and implementing K.S.A. 2012 Supp. 65-1,107; effective March 14, 2008; amended March 8, 2013.)

28-32-14. Preliminary breath-screening test devices.

- (a) Each preliminary breath-screening test conducted shall be performed on a preliminary breath-screening test device approved by the secretary. The devices approved for use as preliminary breath-screening test devices in Kansas shall consist of the following devices and any other device approved by the secretary as specified in subsection (b):

Manufacturer

Alcohol Countermeasure Systems Corporation
CMI, Inc.
CMI, Inc.
CMI, Inc.
CMI, Inc.
 Draeger Safety, Inc.
 Draeger Safety, Inc.
 Draeger Safety, Inc.
 Guth Laboratories, Inc.
 Guth Laboratories, Inc.
 Intoximeters, Inc.

Model

Alert J5
Intoxilyzer 300
Intoxilyzer 400
Intoxilyzer S-D2
Intoxilyzer S-D5
Alcotest 6510
Alcotest 6810
Breathalyzer 7410
WAT89EC-1
Alcotector BAC-100
Alco-Sensor

KANSAS ADMINISTRATIVE REGULATIONS

K.A.R. 28-32-14 (Continued)

Intoximeters, Inc.	Alco-Sensor Pass-Warn-Fail
Intoximeters, Inc.	Alco-Sensor III
Intoximeters, Inc.	Alco-Sensor Digital
Intoximeters, Inc.	Alco-Sensor IV Digital
Intoximeters, Inc.	Alco-Sensor IV Pass-Warn-Fail
Intoximeters, Inc.	Alco-Sensor FST
Lifeloc Technologies, Inc.	FC10
Lifeloc Technologies, Inc.	FC10Plus
Lifeloc Technologies, Inc.	FC20
Lifeloc Technologies, Inc.	PBA 3000
Sound-Off, Inc.	AlcoData

- (b) Each agency custodian seeking to use a preliminary breath-screening test device that is not specified in subsection (a) shall submit the device to the secretary for examination and evaluation to determine if the device meets the criteria for approval. In order for a preliminary breath-screening test device to be approved, whether the device meets the following requirements shall be determined by the secretary:
- (1) Each preliminary breath-screening test device shall meet the manufacturer's performance criteria when operated according to the procedures specified in the manufacturer's instruction manual for the device in use.
 - (2) Each reusable preliminary breath-screening test device shall have a disposable mouthpiece.
- (c) Each approved preliminary breath-screening test device shall be operated according to the procedures specified in the manufacturer's instruction manual for the device in use.
- (d) All training of preliminary breath-screening test device operators shall be the responsibility of each agency. All training shall follow the operational instructions supplied by the manufacturer for the device in use. (Authorized by and implementing K.S.A. 2006 Supp. 65-1,107; effective March 14, 2008.)

NOTE: Most current approved PBT list can be found on the Breath Alcohol Program website: <http://www.kdheks.gov/lipo/alcohol.html>.

Alcohol Properties & Production



Alcohol Properties & Production



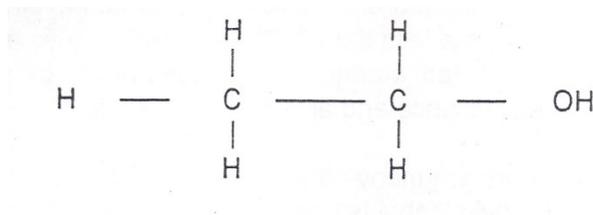
- Clear and colorless liquid
- Water-loving (hydrophilic), easily mixes with water
- **Volatile** substance: readily goes from a liquid to a gas

To protect and improve the health and environment of all Kansans

The two properties of alcohol important to breath testing are:

1. Alcohol is easily brought into the bloodstream due to the water solubility of alcohol and
2. Alcohol's readiness to go from a liquid state in the blood to a gaseous state in the lungs is because of its volatility.

Alcohol is an organic compound which has one hydroxyl group (OH) attached to one or more carbon atoms. The following picture depicts the chemical structure of a specific alcohol. The 'H' is a hydrogen molecule, the 'C' is a carbon molecule and the 'OH' is an oxygen molecule attached to a hydrogen molecule.



Types of Alcohol

Ethyl alcohol: This type of alcohol is found in alcoholic beverages. Other common names for ethyl alcohol include grain alcohol, neutral spirits and ethanol. The chemical formula is $\text{C}_2\text{H}_5\text{OH}$ and the chemical structure is shown above. It is a clear, colorless liquid that imparts a burning sensation to the mouth and throat when swallowed. Pure ethanol has a very slight, pleasant odor; the odor commonly associated with an

Alcohol Properties & Production

alcoholic beverage usually comes from the raw material used to make the drink, or from added flavoring. It is freely soluble in water. Ethyl alcohol has a depressant effect on the body. It is generally harmless when consumed in moderation but can be highly toxic when consumed in large quantities.

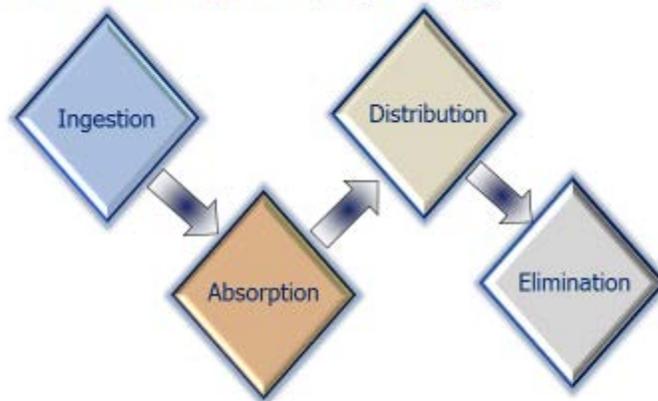
Methyl alcohol: Methyl alcohol is commonly known as wood alcohol. It is usually made synthetically. It is also known as methanol. Its chemical formula is CH_3OH . Methyl alcohol is a colorless liquid with a wine-like odor and a burning taste. It is used in the manufacture of industrial solvents and chemicals and is highly poisonous if swallowed or inhaled. Ethyl alcohol can be used as a treatment for methanol poisoning. It competes with the methanol for the enzymes used to break down both methanol and ethanol. Slowing down the breakdown of methanol gives the body time to eliminate any toxic by-products.

Endogenous alcohol: Endogenous alcohol refers to alcohol that exists “normally” in the body regardless of whether a person consumes any alcoholic beverages. There is considerable disagreement among experts regarding the existence of “normal” alcohol in the body; however, both “normal” methyl and ethyl alcohol have been reported in the research literature. The values reported have not exceeded a BAC of 0.003 g/210L and generally are less than 0.001 g/210L. These values are too low to be of any medicolegal significance and are of academic interest only.

Other alcohols: There are many other types of alcohols used for various purposes. For example, isopropyl alcohol is used as rubbing alcohol.

Physiology of Alcohol

■ The four keys of physiology



Our Mission: To protect and improve the health and environment of all Kansans.



Ingestion:

There are several ways to introduce ethanol into the blood stream. Two ways are ineffective at increasing blood alcohol levels; however, the other three ways can lead to high ethanol levels in the blood.

The following are the two ineffective ways of introducing ethanol into the body:

Skin contact: In experimental situations, no detectable blood levels have been obtained from alcohol rubs. If absorbed via this route, apparently the rate of absorption is less than the rate of elimination.

Inhalation: Ethanol can be absorbed by the lung tissue. However, if ethanol is inhaled, it is irritating to the cilia in the trachea. This can cause coughing and expulsion of the ethanol from the airways. Industrial exposure to alcohol solvents requires personal protective equipment.

The next three methods of ingestion are effective means of bringing ethanol into the body:

Injection: Alcohol is detectable in the blood within 5 to 15 minutes after a subcutaneous or intramuscular injection. Since ethanol is directly introduced into the blood stream this can create a toxic effect.

Insertion: When given as an enema, ethanol is readily absorbed by the large intestine (colon). This can quickly lead to alcohol poisoning as the body's natural rejection methods (vomiting) cannot be used to eliminate the excess alcohol. Another trend sometimes seen in young adults is to soak a tampon in alcohol and insert it.

Physiology of Alcohol

Ingestion: Ingestion by consuming ethanol is the most common method encountered by law enforcement. This method does have some limitations as to the amount of ethanol absorbed into the bloodstream.

Absorption:

The most common route of absorption is through the gastrointestinal (GI) tract. The following information describes the pathway ethanol takes through the digestive tract and into the bloodstream.

Mouth: Ethanol can be absorbed through the lining of the mouth; however, the amount absorbed is very limited since ethanol is quickly swallowed. Normal body processes will eliminate residual “mouth alcohol” within fifteen minutes.

Stomach: About 20% of the ingested ethanol is absorbed directly into the blood stream through the stomach wall. The exact amount is variable and influenced by the emptying time of the stomach.

Small intestine: The remainder, approximately 75-80%, of the ethanol is absorbed within the small intestine.

Absorption rate factors:

Since ethanol is absorbed through the small intestine by simple diffusion, there is no true rate of absorption for individuals. However, there are some factors which can affect the absorption of ethanol.

Dilution: Beverages containing low or high concentrations of ethanol will not absorb quickly.

Food in the stomach: Food in the stomach delays ethanol absorption, especially high carbohydrate and/or protein-rich foods. Absorption is slowed since stomach emptying time is delayed. This applies to eating while drinking and to eating just before drinking.

Distribution:

The following describes how ethanol goes through the body.

Pathway: Ethanol is absorbed into the blood through the walls of the stomach and small intestine. Ethanol first travels through the portal vein to the liver. At this point it enters the main circulatory pathway going to the heart, lungs, back to the heart and the rest of the body.

Physiology of Alcohol

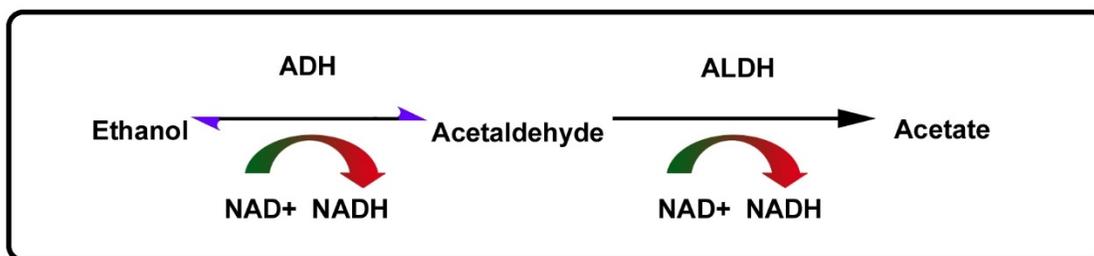
Elimination:

This section discusses the various methods used by the body to eliminate ethanol since it is a toxic substance.

Excretion/Direct Method: A small amount of ethanol leaves the body directly through breath, urine, tears, saliva, perspiration, etc. The amount expelled in this way is generally about 5% and rarely exceeds 10% of the quantity absorbed.

Metabolism/Indirect Method: Most ethanol (between 90 to 95%) is broken down into carbon dioxide and water. **This process takes place in the liver.** The indirect method of ethanol metabolism is illustrated in the picture below. The ethanol is broken down into the intermediate compound, acetaldehyde, by the enzyme alcohol dehydrogenase (ADH). The acetaldehyde is then broken down into acetate by the enzyme aldehyde dehydrogenase (ALDH). Once acetate is formed it is broken down into carbon dioxide and water.

Ethanol Breakdown in the Human Body:



Rate of elimination: As soon as ethanol is absorbed into the blood system and travels to the liver, the body starts to eliminate it. The **average rate of elimination** is reported as **0.015 g/210L per hour**. The elimination rate can vary between 0.007 g/210L and 0.037g/210L per hour depending on the body's exposure to ethanol and genetic variations.

Elimination rate factors: In general, the rate of elimination is not affected by stimulants, disease states, or exercise. Where changes in rates have been noted, they are too small to be of any practical value. Because of the small quantity excreted directly, any attempt aimed at eliminating ethanol through increasing breathing rate, urine, or perspiration has little to no effect.

Henry's Law

Basis for all breath testing:

Definition:

Weight of any gas that dissolves in a definite volume of liquid is directly proportional to the vapor pressure that the gas exerts above the liquid (dependent on temperature).

This means if one shakes a closed bottle containing an ethanol solution and air, the amount of ethanol in the air will build up to a certain point and stop. This point is known as equilibrium. At equilibrium, for any given solution temperature and pressure, there will be a definite ratio between the amount of alcohol in the air and in the solution.

Three things required for Henry's Law to apply:

1. Closed container

For breath testing purposes deep lung air (alveolar air) best simulates a closed container

2. Volatile substance

Ethanol in the blood

3. Constant temperature

The average temperature of solution is 34.0°C

Scientists were able to dose individuals with ethanol and determine the ratio of the ethanol concentration in blood to the ethanol concentration in breath, which was found to be 1 milliliter (mL) of blood to 2100 mL of breath (1:2100).

Application to breath testing:

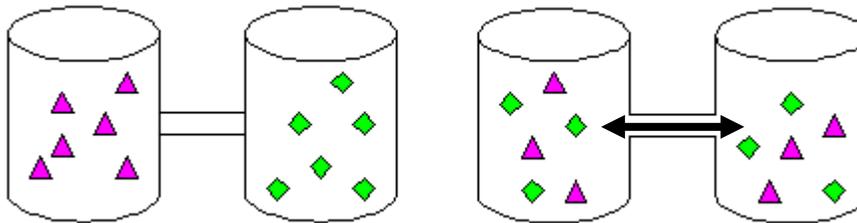
The ethanol in the alveolar air comes into equilibrium with the ethanol in the blood. Thus, if the constant is known and the amount of ethanol in the breath can be measured, the amount of ethanol in the blood can be determined. The average temperature at which the breath leaves the mouth is 34.0° Celsius (C). This ratio was found to be approximately 2100:1. Thus, 1 mL of blood will contain the same weight of ethanol as 2100 mL of the alveolar air with which it has come to equilibrium.

Conversion: $\frac{2100}{1} \times \frac{100}{100} = \frac{210,000}{100}$ mL or 210 liters (L) of breath per 100 milliliters of blood

Now we have the statute's definition of ethanol concentration and we could report the results as the number of grams of ethanol per 210 liters of breath.

Summary Review

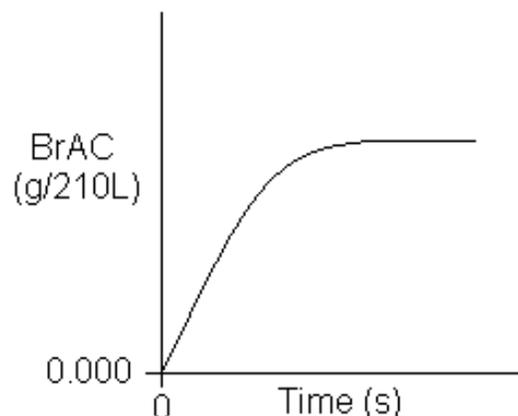
1. Ethanol is volatile; therefore, it can exist as a liquid or gas, depending on the temperature.
2. The type of alcohol that is typically consumed is ethyl alcohol, also known as ethanol.
3. Most of the ingested ethanol is absorbed through the small intestine.
4. Most of the absorbed ethanol is eliminated through metabolism in the liver.
5. The organ most obviously affected by alcohol is the brain. This is exhibited by difficulty walking and speech impairment.
6. Average ethanol elimination rate for a person is 0.015 g/210L.
7. The fatal ethanol level is approximately 0.450 g/210 L.
8. This picture illustrates equilibrium. When the containers are closed, they contain only their shape. When the containers are opened to each other, they mix together until they are balanced (or at equilibrium).



9. Equilibrium occurs between the ethanol in the blood and nearly all body tissues. For breath testing purposes we look at the equilibrium between the ethanol in the blood and the ethanol in the deep lung (alveolar) air.
10. The blood:breath ratio means that at 34.0°C, 1 milliliter of blood will contain the approximately the same weight of ethanol as 2100 milliliters of alveolar air.
11. Alcohol concentration means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.
12. The basis for human breath alcohol testing is Henry's Law. It has three requirements: closed container, volatile substance, and constant temperature.
13. A closed container is approximated by the deep lung or alveolar air sample.
14. The Kansas Protocol consists of seven steps which yield valid, objective test results.
15. The State of Kansas protocol **requires** a 20-minute deprivation period.

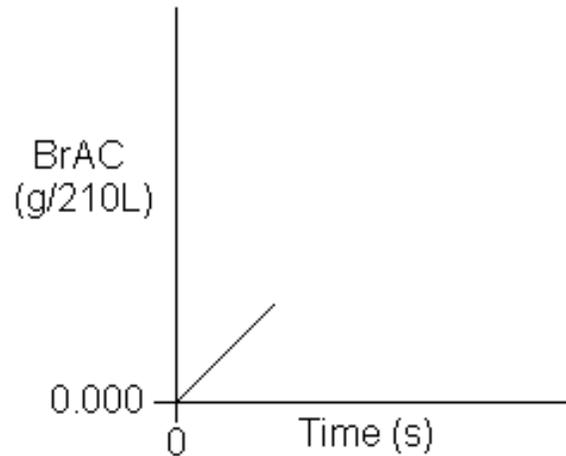
Summary Review

16. The Kansas approved sequence is Air Blank, Diagnostic Check, Air Blank, External Standard Check, Air Blank, Subject Test, Air Blank, also known as 'ADACABA'.
17. Operators, custodians and KDHE staff **never** calibrate an instrument; they only check the calibration using the dry gas.
18. The acceptable range for the external standard check is 0.075 - 0.085 g/210L, inclusive.
19. The dry gas cylinder contains ethanol balanced with nitrogen. The cylinder is used to check the instrument once per calendar week by the agency custodian or their designee.
20. The calendar week runs from Sunday through Saturday.
21. When ethanol is introduced into the sample chamber the amount of light going through the chamber and striking the detector is decreased.
22. If the instrument indicates mouth alcohol was present during testing it prints "Invalid Sample .XXX". You must restart a new 20-minute alcohol deprivation period if you are retesting the subject on the Intoxilyzer 9000.
23. If you get the message 'Interferent Detected' there may have been another chemical similar to ethanol in the person's breath sample. One solution is to take the person for a blood draw and seek medical attention.
24. If you get the message 'Ambient Failed' there may have been ethanol or other vapors in the air immediately around the instrument. The area should be ventilated and move your subject away from the instrument.
25. The **units** on a breath sample are **g/210L**. This indicates that the breath sample had some number of grams of ethanol in 210 liters of alveolar breath.
26. The graph for a completed sample would look similar to the graph shown below:

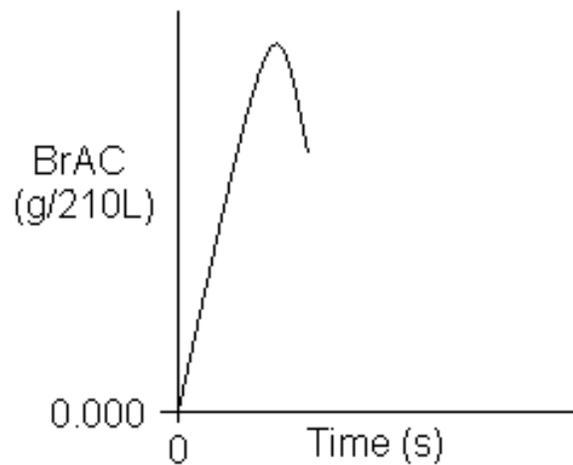


Summary Review

27. The graph for a deficient sample would look similar to the graph shown below:



28. The graph for an invalid sample would look similar to the graph shown below:



29. Prima facie evidence is obtained from a test taken within three hours of operating or attempting to operate a motor vehicle.
30. Other competent evidence is obtained from a test taken three or more hours after operating or attempting to operate a motor vehicle or a deficient sample.
31. A deficient sample occurs when a subject starts the test but does not complete it. The subject has up to three minutes to complete the test.
32. There are three commands to give an individual to aid in completing the subject test:
- Blow to get a tone
 - Blow steady to maintain the tone
 - Blow until I say stop

Summary Review

- 33.** The implied consent form, or DC-70, is the form used for any requested test, no matter what age, vehicle or type of test requested.
- 34.** The DC-27 is the form used for all failures (any test ≥ 0.080 g/210L) or refusals for any age and any vehicle. Remember, a deficient sample is considered a refusal even though the instrument gives you a reading.
- 35.** The DC-28 is the form used for an individual under 21 years of age with an ethanol concentration of 0.020 g/210L to 0.079 g/210L.
- 36.** The CDL-5 form is used when the subject is driving a commercial motor vehicle and their breath test result is ≥ 0.040 g/210L.

All Subjects get DC-70

Under 21 YOA:

- 0.020 – 0.079 g/210L
DC-28
- ≥ 0.080 g/210L or Refusal
DC-27
- In CMV 0.040 - 0.079
g/210L
CDL-5 & DC-28
- In CMV ≥ 0.080 g/210L
CDL-5 & DC-27.

Over 21 YOA:

- < 0.080 g/210L
Only DC-70
- ≥ 0.080 g/210L or Refusal
DC-27
- In CMV 0.040 - 0.079
g/210L
CDL-5
- In CMV ≥ 0.080 g/210L
CDL-5 & DC-27.

Page 64

Intoxilyzer 9000



GENERAL INFORMATION ABOUT THE INTOXILYZER 9000 EBAT DEVICE

The Intoxilyzer 9000 uses the scientific concept that molecules absorb light energy at specific wavelengths based on their chemical structures. The manufacturer used this knowledge to be able to measure the ethanol concentration in human breath samples. The four specific wavelengths of infrared (IR) light used in this instrument to detect ethanol levels in breath are in the 8 and 9-micron regions.

The heart of the Intoxilyzer 9000 instrument is a self-contained, heated optical bench. This optical bench consists of the heated sample chamber, pulsed IR light source and the pyroelectric detector. The sample chamber within the Intoxilyzer 9000 consists of two preheat chambers and the final sample chamber. At one end of the chamber the light source, a Micro-Electro-Mechanical Systems (MEMS) based IR source, emits IR light energy. This energy is directed through the chamber by a lens. At the other end of the chamber is a pyroelectric detector which changes the heat energy of the light source into an electrical response. This electrical response is then used to calculate the breath alcohol concentration (BrAC) of the sample.

The determination of the BrAC is based on the amount of light energy striking the detector. When no alcohol is present the IR light passes through the chamber unaffected creating a certain voltage level. This can be called X. As a sample with ethanol is introduced, some of the IR light is absorbed. As the ethanol level increases, the amount of light passing through the chamber and reaching the detector decreases. This new level of voltage can be called Y. The difference between X and Y represents the ethanol concentration in the sample. The greater the difference between the X and Y values the higher the BrAC reading. Therefore, the amount of decrease or difference between X and Y is directly proportional to the ethanol concentration in the breath sample.

If an interfering substance is present, the Intoxilyzer 9000 will detect a difference in the readings at the 8 and 9-micron wavelengths. The instrument will then abort the test giving the message 'Interferent Detected'.

Pages 70 – 82 show examples of several other informational messages or information the Intoxilyzer 9000 will indicate during testing.



Effective January 1, 2016

Intoxilyzer 9000 Protocol

1. Keep the subject in your immediate presence and deprive the subject of alcohol for 20 minutes immediately preceding the breath test.
2. Check to determine the power switch of the instrument has been activated and is in "Ready Mode".
3. Press the green Start Test button and follow the instructions displayed by the instrument.
4. The instrument will begin the Kansas approved sequence automatically. The sequence is Air Blank, Diagnostic Check, Air Blank, Ext Std Check, Air Blank, Subject Test, Air Blank.
5. The acceptable range for the External Standard Check is 0.075 to 0.085.
6. When prompted for Subject Test, place an unused mouth piece into the breath tube and request the subject provide a breath sample.
7. After the final Air Blank cycle, a test result will be printed.

Dry Gas Cylinder Information

Kansas uses a dry gas solution to check the calibration of the Intoxilyzer 9000 instruments used for evidential purposes and located at law enforcement agencies. During every breath test, standard change, Weekly Quality Control (QC) check and QC check this dry gas solution is pulled through the sample chamber and tested. This external standard (or calibration) check is just one mechanism among many fail safes built into our testing to ensure an accurate, objective and reliable subject test result.

1. KDHE purchases, tests and furnishes all verified dry gas cylinders to law enforcement agencies for use with their instrumentation and PBT calibration per regulation.
2. The cylinders are guaranteed for two years. Replacement cylinders are brought or sent to agencies prior to the cylinder's expiration date.
3. The cylinders can be requested by agencies at any time.
4. They are made of steel and are non-refillable. They can be recycled or land filled after the pressure is released. Your Agency or Device Custodian has an extraction device used to ventilate tanks. This releases the pressure which allows for their safe disposal.
5. The cylinders contain ethanol and nitrogen. The nitrogen is used as a propellant to help carry the ethanol into the instrument.
6. The cylinders are considered a hazardous material due to the pressure in the cylinder not the contents. In order to be able to ship the cylinders you must be Department of Transportation (DOT) Hazardous Materials Shipping Certified. KDHE Breath Alcohol Program staff has obtained the required training to be able to ship these cylinders.
7. When shipping an instrument for repair the dry gas cylinder needs to be removed to prevent fines and/or added expenses for shipping.

Intoxilyzer 9000 Informational Messages

Completed Test Printout

```
Department of Health
Intoxilyzer - Alcohol Analyzer
Model 9000          SN 90-002065
11/03/2015        09:48

Case Iden No = COMPLETEDSAMPLECHECK
Sub Name = JOHN
              A
              DOE
Sub DOB = 01/01/1990
Sub Driv Lic = 123456
State of Issue = KS
Arrest Officer = OPERATOR LEVEL ONE
Inst Operator = OPERATOR LEVEL ONE
Operator Cert No. = 11111
Deprivation Period Began = 06:00

Test          g/210L BrAC    Time
Air Blank     0.000          09:51
Diagnostics   Passed             09:51
Air Blank     0.000          09:52
Ext Std Check 0.079          09:52
Air Blank     0.000          09:53
Subject Test  0.117          09:53
Air Blank     0.000          09:54




---


OPERATOR LEVEL ONE
```

A completed test will show the subject's breath test result and the completed Kansas Approved Sequence with no informational messages.

Intoxilyzer 9000 Informational Messages

'Check Ambient Conditions'

Department of Health
Intoxilyzer - Alcohol Analyzer
Model 9000 SN 90-002030
01/20/2016 08:59

Case Iden No = AMBIENT CHECK
Sub Name = BENJAMIN
CALDWELL
ZILKIE
Sub DOB = 09/12/1975
Sub Driv Lic = K02-82-6200
State of Issue = KS
Arrest Officer = BREATH PROGRAM
Inst Operator = BREATH PROGRAM
Operator Cert No. = 44444
Deprivation Period Began = 08:00

Test	g/210L BrAC	Time
Air Blank	AMB*	09:01
Air Blank	0.000	09:01

*Check ambient conditions

BREATH PROGRAM

Possible Cause:

- This condition can occur if alcohol or other vapors are in the air immediately around the instrument.

Potential Solutions:

- Ventilate the room by whatever means possible and
- Redo the subject test- no new deprivation period needs to be performed as long as the subject was continually in your immediate presence.

Intoxilyzer 9000 Informational Messages

'Sequence Aborted'

Department of Health
Intoxilyzer - Alcohol Analyzer
Model 9000 SN 90-002030
01/20/2016 09:05

Case Iden No = X
Sub Name = JOHN
A
DOE
Sub DOB = 01/01/1997
Sub Driv Lic = X
State of Issue = KS
Arrest Officer = BREATH PROGRAM
Inst Operator = BREATH PROGRAM
Operator Cert No. = 44444
Deprivation Period Began = 08:00

Test	g/210L BrAC	Time
Air Blank	ABT*	09:08
Air Blank	0.000	09:09

*Sequence Aborted.



BREATH PROGRAM

Possible Cause:

- The 'Start Test' button was pressed more than once which aborted the testing sequence.

A Potential Solution:

- Redo the subject test- no new deprivation period needs to be performed as long as the subject was continually in your immediate presence.

*Note: If the test is aborted during the data entry portion the instrument will give a series of hi-lo tones and display 'Sequence Aborted' but no printout will be given. No printout is given because the instrument is not in the testing sequence.

Intoxilyzer 9000 Informational Messages

'External Standard Out of Tolerance'

Department of Health
Intoxilyzer - Alcohol Analyzer
Model 9000 SN 90-002030
01/20/2016 09:21

Case Iden No = 123
Sub Name = JOHN
A
DOE
Sub DOB = 01/01/1990
Sub Driv Lic = 123
State of Issue = KS
Arrest Officer = BREATH PROGRAM
Inst Operator = BREATH PROGRAM
Operator Cert No. = 44444
Deprivation Period Began = 08:00

Test	g/210L BrAC	Time
Air Blank	0.000	09:23
Diagnostics:	Passed	09:23
Air Blank	0.000	09:24
Ext Std Check	TOL*	09:24
Air Blank	0.000	09:25

*External Standard out of tolerance



BREATH PROGRAM

Potential Solutions:

- Try ventilating the room and/or moving the subject away from the instrument.
- Check to ensure the black tube, which leads from the regulator to the calibration inlet on the back side of the instrument, is well seated.
- Check to ensure the cylinder is snug on the regulator.
- Redo the subject test- no new deprivation period needs to be performed as long as the subject was continually in your immediate presence.
- If the informational message is repeated, contact your agency/device custodian.

Intoxilyzer 9000 Informational Messages

'Sample Introduced at Improper Time'

Department of Health
Intoxilyzer - Alcohol Analyzer
Model 9000 SN 90-002030
01/20/2016 09:26

Case Iden No = 123
Sub Name = JOHN
A
DOE
Sub DOB = 01/01/1990
Sub Driv Lic = 123
State of Issue = KS
Arrest Officer = BREATH PROGRAM
Inst Operator = BREATH PROGRAM
Operator Cert No. = 44444
Deprivation Period Began = 08:00

Test	g/210L BrAC	Time
Air Blank	0.000	09:28
Diagnostics	IMP*	09:28
Air Blank	0.000	09:29

*Sample introduced at improper time



BREATH PROGRAM

Possible Cause:

- The subject introduced a breath sample at a time other than when the instrument displayed 'Please Blow'.

A Potential Solution:

- Redo the subject test- no new deprivation period needs to be performed as long as the subject was continually in your immediate presence.
- You will need to use a new mouthpiece for the next test sequence.

Intoxilyzer 9000 Informational Messages

'Deficient Sample'

Department of Health
Intoxilyzer - Alcohol Analyzer
Model 9000 SN 90-002030
01/20/2016 09:30

Case Iden No = DEFICIENT SAMPLE
Sub Name = JOHN
A
DOE
Sub DOB = 01/01/1990
Sub Driv Lic = 123
State of Issue = KS
Arrest Officer = BREATH PROGRAM
Inst Operator = BREATH PROGRAM
Operator Cert No. = 44444
Deprivation Period Began = 08:00

Test	g/210L BrAC	Time
Air Blank	0.000	09:32
Diagnostics	Passed	09:33
Air Blank	0.000	09:33
Ext Std Check	0.079	09:33
Air Blank	0.000	09:34
Subject Test	DEF*	09:37
Air Blank	0.000	09:38

*Deficient Sample - Highest Value Obtained = 0.000



BREATH PROGRAM

Possible Cause:

- The subject began to blow but never met the requirements to achieve a complete sample. The subject has up to 3 minutes to provide an adequate sample. The highest value obtained is displayed along with the message "Deficient Sample" on the display and printout.

A Potential Solution:

- Another test may be administered at the officer's discretion with no new deprivation period needed as long as the subject was continually in your immediate presence.
- You will need to use a new mouthpiece for the next testing sequence.

Intoxilyzer 9000 Informational Messages

'No Sample Given'

Department of Health
Intoxilyzer - Alcohol Analyzer
Model 9000 SN 90-002030
01/20/2016 09:39

Case Iden No = 123
Sub Name = JOHN
A
DOE
Sub DOB = 01/01/1990
Sub Driv Lic = 123
State of Issue = KS
Arrest Officer = BREATH PROGRAM
Inst Operator = BREATH PROGRAM
Operator Cert No. = 44444
Deprivation Period Began = 08:00

Test	g/210L BrAC	Time
Air Blank	0.000	09:40
Diagnostics	Passed	09:41
Air Blank	0.000	09:41
Ext Std Check	0.078	09:42
Air Blank	0.000	09:42
Subject Test	NSG*	09:46
Air Blank	0.000	09:46

*No sample given



BREATH PROGRAM

Possible Cause:

- The subject never provided a breath sample.

A Potential Solution:

- Another test may be administered at the officer's discretion with no new deprivation period needed as long as the subject was continually in your immediate presence.
- You may need to use a new mouthpiece.

Intoxilyzer 9000 Informational Messages

'Radio Frequency Detected'

Department of Health
Intoxilyzer - Alcohol Analyzer
Model 9000 SN 90-002030
01/20/2016 10:17

Case Iden No = RFI DETECTED
Sub Name = JOHN
A
DOE
Sub DOB = 01/01/1990
Sub Driv Lic = 123
State of Issue = KS
Arrest Officer = BREATH PROGRAM
Inst Operator = BREATH PROGRAM
Operator Cert No. = 44444
Deprivation Period Began = 08:00

Test.	g/210L BrAC	Time
Air Blank	0.000	10:19
Diagnostics	RFI*	10:19
Air Blank	0.000	10:20

*Radio Frequency detected



BREATH PROGRAM

Possible Cause:

- This instrument detected a radio frequency interference of some kind and aborted the testing sequence.

Potential Solutions:

- Limit radio transmissions and move cell phones away from the instrument.
- Redo the subject test- no new deprivation period needs to be performed as long as the subject was continually in your immediate presence.
- You may need to use a new mouthpiece.

Intoxilyzer 9000 Informational Messages

'Interferent Detected'

Department of Health
Intoxilyzer - Alcohol Analyzer
Model 9000 SN 90-002030
01/20/2016 09:48

Case Iden No = INTERFERENT DETECT
Sub Name = JOHN
A
DOE
Sub DOB = 01/01/1990
Sub Driv Lic = 123
State of Issue = KS
Arrest Officer = BREATH PROGRAM
Inst Operator = BREATH PROGRAM
Operator Cert No. = 44444
Deprivation Period Began = 08:00

Test	g/210L BrAC	Time
Air Blank	0.000	09:50
Diagnostics	Passed	09:50
Air Blank	0.000	09:51
Ext Std Check	0.077	09:51
Air Blank	0.000	09:52
Subject Test	INT*	09:52
Air Blank	0.000	09:53

*Interferent detected



BREATH PROGRAM

Possible Cause:

- The instrument may have detected an interfering substance during the subject's breath test.

Potential Solutions:

- A subsequent test may be administered with no new deprivation period as long as the subject was continually in your immediate presence or
- Seek medical attention and obtain a blood draw.

Intoxilyzer 9000 Informational Messages

'Invalid Sample'

Department of Health
Intoxilyzer - Alcohol Analyzer
Model 9000 SN 90-001078
10/20/2015 14:49

Case Iden No =
Sub Name =
Sub DOB =
Sub Driv Lic =
State of Issue =
Arrest Officer =
Inst Operator = OPERATOR LEVEL ONE
Operator Cert No. = 11111
Deprivation Period Began = 09:00

Test	g/210L BrAC	Time
Air Blank	0.000	14:50
Diagnostics	Passed	14:50
Air Blank	0.000	14:51
Ext Std Check	0.000	14:51
Air Blank	0.000	14:52
Subject Test	XXX*	14:53
Air Blank	0.000	14:53

*Invalid Sample

OPERATOR LEVEL ONE

Possible Cause:

- If the instrument detects a quick increase in alcohol concentration followed by a drop from the maximum value, i.e. 'mouth alcohol,' the above message is given.

Potential Solutions:

- If you are going to retest the subject, **you are required to repeat the 20 minute deprivation period** and
- You will need to use a new mouthpiece.
- If this message is repeatedly displayed, you may need to obtain a blood sample.

Intoxilyzer 9000 Informational Messages

'Range Exceeded'

Department of Health
Intoxilyzer - Alcohol Analyzer
Model 9000 SN 90-002030
01/20/2016 10:28

Case Iden No = RANGE EXCEEDED
Sub Name = JOHN
A
DOE
Sub DOB = 01/01/1990
Sub Driv Lic = 123
State of Issue = KS
Arrest Officer = BREATH PROGRAM
Inst Operator = BREATH PROGRAM
Operator Cert No. = 44444
Deprivation Period Began = 08:00

Test.	g/210L BrAC	Time
Air Blank	0.000	10:30
Diagnostics	Passed	10:30
Air Blank	0.000	10:31
Ext Std Check	0.078	10:31
Air Blank	0.000	10:32
Subject Test	RNG*	10:32
Air Blank	0.000	10:33

*Range Exceeded.



BREATH PROGRAM

Possible Cause:

- This message is given when the breath alcohol concentration exceeds the maximum measured by the instrument.

Potential Solutions:

- If the subject is experiencing medical problems have them evaluated by medical personnel and obtain a blood sample.
- If this message is repeatedly displayed you may need to notify your agency/device custodian.

Intoxilyzer 9000 Informational Messages

'Purge Failure'

Department of Health
Intoxilyzer - Alcohol Analyzer
Model 9000 SN 90-002030
01/20/2016 10:11

Case Iden No = PURGE FAIL
Sub Name = JOHN
A
DOE
Sub DOB = 01/01/1990
Sub Driv Lic = 123
State of Issue = KS
Arrest Officer = BREATH PROGRAM
Inst Operator = BREATH PROGRAM
Operator Cert No. = 44444
Deprivation Period Began = 08:00

Test	g/210L BrAC	Time
Air Blank	0.000	10:13
Diagnostics	Passed	10:14
Air Blank	0.000	10:14
Ext Std Check	0.078	10:14
Air Blank	0.000	10:15
Subject Test	0.108	10:16
Air Blank	PUR*	10:16

*Purge Failure



BREATH PROGRAM

Possible Cause:

- The instrument detected a certain level of ethanol in the sample chamber at the end of the air blank.

Potential Solutions:

- Make sure the subject is not too close to the breath hose after supplying their sample.
- Ensure the mouthpiece has been removed from the breath hose.
- Ventilate the room by whatever means possible.
- Repeat the subject test- no new deprivation period needs to be performed as long as the subject was continually in your immediate presence.
- You may need a new mouthpiece.
- If this message is repeatedly displayed you may need to notify your agency/device custodian.

Intoxilyzer 9000 Informational Messages

Cylinder Below Minimum

Possible Cause:

- This message may be given by the instrument when one of these conditions occurs:
 - The cylinder is no longer tight to the regulator, or
 - The regulator cables are not attached at the back of the instrument or
 - The pressure in the dry gas cylinder is below the minimum needed by the instrument
 1. The instrument will alert you once the pressure in the cylinder reaches 50 PSI
 2. Once the instrument reaches 25 PSI, the Intoxilyzer 9000 instrument will disable itself and no testing can occur

Potential Solutions:

- Check to ensure the cylinder is snug to the regulator.
- The regulator cables need to be reattached to the instrument. You may need to contact your agency/device custodian.
- The dry gas cylinder on the back of the instrument may need to be changed if the pressure is low or the instrument has disabled itself.
- You may need to contact your agency/device custodian to change the cylinder.

Diagnostic Fail

Possible Cause:

- The instrument conducts a diagnostic check whenever it goes into the 'Ready' mode and during the Kansas Approved Sequence. If this message is displayed, the instrument determined that it cannot conduct a test at that time.

Potential Solutions:

- You may rerun the subject's test- no new deprivation period needs to be performed as long as the subject was continually in your immediate presence.
- If this message is repeatedly displayed, notify your agency/device custodian.