

## SENATE BILL No. 341

By Committee on Ways and Means

2-21

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AN ACT concerning crimes, criminal procedure and punishment; relating to domestic violence; assessment of certain fees; amending K.S.A. 22-2802 and K.S.A. 2000 Supp. 21-4603d and repealing the existing sections.

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

Section 1. K.S.A. 2000 Supp. 21-4603d is hereby amended to read as follows: 21-4603d. (a) Whenever any person has been found guilty of a crime, the court may adjudge any of the following:

(1) Commit the defendant to the custody of the secretary of corrections if the current crime of conviction is a felony and the sentence presumes imprisonment, or the sentence imposed is a dispositional departure to imprisonment; or, if confinement is for a misdemeanor, to jail for the term provided by law;

(2) impose the fine applicable to the offense;

(3) release the defendant on probation if the current crime of conviction and criminal history fall within a presumptive nonprison category or through a departure for substantial and compelling reasons subject to such conditions as the court may deem appropriate. In felony cases except for violations of K.S.A. 8-1567 and amendments thereto, the court may include confinement in a county jail not to exceed 60 days, which need not be served consecutively, as a condition of an original probation sentence and up to 60 days in a county jail upon each revocation of the probation sentence, or community corrections placement;

(4) assign the defendant to a community correctional services program as provided in K.S.A. 75-5291, and amendments thereto, or through a departure for substantial and compelling reasons subject to such conditions as the court may deem appropriate, including orders requiring full or partial restitution;

(5) assign the defendant to a conservation camp for a period not to exceed six months as a condition of probation followed by a six-month period of follow-up through adult intensive supervision by a community correctional services program, if the offender successfully completes the conservation camp program;

(6) assign the defendant to a house arrest program pursuant to K.S.A.

1 21-4603b and amendments thereto;

2 (7) order the defendant to attend and satisfactorily complete an al-  
3cohol or drug education or training program as provided by subsection  
4(3) of K.S.A. 21-4502 and amendments thereto;

5 (8) order the defendant to repay the amount of any reward paid by  
6any crime stoppers chapter, individual, corporation or public entity which  
7materially aided in the apprehension or conviction of the defendant; repay  
8the amount of any costs and expenses incurred by any law enforcement  
9agency in the apprehension of the defendant, if one of the current crimes  
10of conviction of the defendant includes escape, as defined in K.S.A. 21-  
113809 and amendments thereto or aggravated escape, as defined in K.S.A.  
1221-3810 and amendments thereto; or repay the amount of any public  
13funds utilized by a law enforcement agency to purchase controlled sub-  
14stances from the defendant during the investigation which leads to the  
15defendant's conviction. Such repayment of the amount of any such costs  
16and expenses incurred by a law enforcement agency or any public funds  
17utilized by a law enforcement agency shall be deposited and credited to  
18the same fund from which the public funds were credited to prior to use  
19by the law enforcement agency;

20 (9) order the defendant to pay the administrative fee authorized by  
21K.S.A. 2000 Supp. 22-4529 and amendments thereto, unless waived by  
22the court;

23 (10) *order the defendant to pay a domestic violence special program*  
24*fee authorized by section 3, and amendments thereto;*

25 (11) impose any appropriate combination of (1), (2), (3), (4), (5), (6),  
26(7), (8) ~~and~~, (9) *and* (10); or

27 ~~(11)~~ (12) suspend imposition of sentence in misdemeanor cases.

28 (b) (1) In addition to or in lieu of any of the above, the court shall  
29order the defendant to pay restitution, which shall include, but not be  
30limited to, damage or loss caused by the defendant's crime, unless the  
31court finds compelling circumstances which would render a plan of res-  
32titution unworkable. If the court finds a plan of restitution unworkable,  
33the court shall state on the record in detail the reasons therefor.

34 (2) If the court orders restitution, the restitution shall be a judgment  
35against the defendant which may be collected by the court by garnishment  
36or other execution as on judgments in civil cases. If, after 60 days from  
37the date restitution is ordered by the court, a defendant is found to be in  
38noncompliance with the plan established by the court for payment of  
39restitution, and the victim to whom restitution is ordered paid has not  
40initiated proceedings in accordance with K.S.A. 2000 Supp. 60-4301 *et*  
41*seq.* and amendments thereto, the court shall assign an agent procured  
42by the attorney general pursuant to K.S.A. 75-719 and amendments  
43thereto to collect the restitution on behalf of the victim. The administra-

1 tive judge of each judicial district may assign such cases to an appropriate  
2 division of the court for the conduct of civil collection proceedings.

3 (c) In addition to or in lieu of any of the above, the court shall order  
4 the defendant to submit to and complete an alcohol and drug evaluation,  
5 and pay a fee therefor, when required by subsection (4) of K.S.A. 21-  
6 4502 and amendments thereto.

7 (d) In addition to any of the above, the court shall order the defend-  
8 ant to reimburse the county general fund for all or a part of the expend-  
9 itures by the county to provide counsel and other defense services to the  
10 defendant. Any such reimbursement to the county shall be paid only after  
11 any order for restitution has been paid in full. In determining the amount  
12 and method of payment of such sum, the court shall take account of the  
13 financial resources of the defendant and the nature of the burden that  
14 payment of such sum will impose. A defendant who has been required  
15 to pay such sum and who is not willfully in default in the payment thereof  
16 may at any time petition the court which sentenced the defendant to  
17 waive payment of such sum or any unpaid portion thereof. If it appears  
18 to the satisfaction of the court that payment of the amount due will im-  
19 pose manifest hardship on the defendant or the defendant's immediate  
20 family, the court may waive payment of all or part of the amount due or  
21 modify the method of payment.

22 (e) In imposing a fine the court may authorize the payment thereof  
23 in installments. In releasing a defendant on probation, the court shall  
24 direct that the defendant be under the supervision of a court services  
25 officer. If the court commits the defendant to the custody of the secretary  
26 of corrections or to jail, the court may specify in its order the amount of  
27 restitution to be paid and the person to whom it shall be paid if restitution  
28 is later ordered as a condition of parole or conditional release.

29 (f) When a new felony is committed while the offender is incarcerated  
30 and serving a sentence for a felony or while the offender is on probation,  
31 assignment to a community correctional services program, parole, con-  
32 ditional release, or postrelease supervision for a felony, a new sentence  
33 shall be imposed pursuant to the consecutive sentencing requirements of  
34 K.S.A. 21-4608, and amendments thereto, and the court may sentence  
35 the offender to imprisonment for the new conviction, even when the new  
36 crime of conviction otherwise presumes a nonprison sentence. In this  
37 event, imposition of a prison sentence for the new crime does not con-  
38 stitute a departure. When a new felony is committed while the offender  
39 is on release for a felony pursuant to the provisions of article 28 of chapter  
40 22 of the Kansas Statutes Annotated, a new sentence may be imposed  
41 pursuant to the consecutive sentencing requirements of K.S.A. 21-4608  
42 and amendments thereto, and the court may sentence the offender to  
43 imprisonment for the new conviction, even when the new crime of con-

1 viction otherwise presumes a nonprison sentence. In this event, imposi-  
2 tion of a prison sentence for the new crime does not constitute a  
3 departure.

4 (g) Prior to imposing a dispositional departure for a defendant whose  
5 offense is classified in the presumptive nonprison grid block of either  
6 sentencing guideline grid, prior to sentencing a defendant to incarceration  
7 whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing  
8 guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H,  
9 3-I, 4-E or 4-F of the sentencing guidelines grid for drug crimes, or prior  
10 to revocation of a nonprison sanction of a defendant whose offense is  
11 classified in the presumptive nonprison grid block of either sentencing  
12 guideline grid or grid blocks 5-H, 5-I or 6-G of the sentencing guidelines  
13 grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H, 3-I, 4-E or  
14 4-F of the sentencing guidelines grid for drug crimes, the court shall  
15 consider placement of the defendant in the Labette correctional conser-  
16 vation camp, conservation camps established by the secretary of correc-  
17 tions pursuant to K.S.A. 75-52,127, and amendment thereto or a com-  
18 munity intermediate sanction center. Pursuant to this paragraph the  
19 defendant shall not be sentenced to imprisonment if space is available in  
20 a conservation camp or a community intermediate sanction center and  
21 the defendant meets all of the conservation camp's or a community in-  
22 termediate sanction center's placement criteria unless the court states on  
23 the record the reasons for not placing the defendant in a conservation  
24 camp or a community intermediate sanction center.

25 (h) The court in committing a defendant to the custody of the sec-  
26 retary of corrections shall fix a term of confinement within the limits  
27 provided by law. In those cases where the law does not fix a term of  
28 confinement for the crime for which the defendant was convicted, the  
29 court shall fix the term of such confinement.

30 (i) In addition to any of the above, the court shall order the defendant  
31 to reimburse the state general fund for all or a part of the expenditures  
32 by the state board of indigents' defense services to provide counsel and  
33 other defense services to the defendant. In determining the amount and  
34 method of payment of such sum, the court shall take account of the  
35 financial resources of the defendant and the nature of the burden that  
36 payment of such sum will impose. A defendant who has been required  
37 to pay such sum and who is not willfully in default in the payment thereof  
38 may at any time petition the court which sentenced the defendant to  
39 waive payment of such sum or any unpaid portion thereof. If it appears  
40 to the satisfaction of the court that payment of the amount due will im-  
41 pose manifest hardship on the defendant or the defendant's immediate  
42 family, the court may waive payment of all or part of the amount due or  
43 modify the method of payment. The amount of attorney fees to be in-

1 cluded in the court order for reimbursement shall be the amount claimed  
2 by appointed counsel on the payment voucher for indigents' defense serv-  
3 ices or the amount prescribed by the board of indigents' defense services  
4 reimbursement tables as provided in K.S.A. 22-4522, and amendments  
5 thereto, whichever is less.

6 ~~(j)~~ Dispositions which do not involve commitment to the custody  
7 of the secretary of corrections shall not entail the loss by the defendant  
8 of any civil rights. Placement of offenders in a conservation camp estab-  
9 lished by the secretary of corrections pursuant to K.S.A. 75-52,127, and  
10 amendments thereto, as a nonimprisonment disposition shall not entail  
11 the loss by the defendant of any civil rights.

12 ~~(k)~~ This section shall not deprive the court of any authority con-  
13 ferred by any other Kansas statute to decree a forfeiture of property,  
14 suspend or cancel a license, remove a person from office, or impose any  
15 other civil penalty as a result of conviction of crime.

16 ~~(l)~~ An application for or acceptance of probation or assignment to  
17 a community correctional services program shall not constitute an acqui-  
18 escence in the judgment for purpose of appeal, and any convicted person  
19 may appeal from such conviction, as provided by law, without regard to  
20 whether such person has applied for probation, suspended sentence or  
21 assignment to a community correctional services program.

22 ~~(m)~~ The secretary of corrections is authorized to make direct  
23 placement to the Labette correctional conservation camp or a conserva-  
24 tion camp established by the secretary pursuant to K.S.A. 75-52,127, and  
25 amendments thereto, of an inmate sentenced to the secretary's custody  
26 if the inmate: (1) Has been sentenced to the secretary for a probation  
27 revocation, as a departure from the presumptive nonimprisonment grid  
28 block of either sentencing grid, or for an offense which is classified in  
29 grid blocks 5-H, 5-I, or 6-G of the sentencing guidelines grid for nondrug  
30 crimes or in grid blocks 3-E, 3-F, 3-G, 3-H, 3-I, 4-E, or 4-F of the sen-  
31 tencing guidelines grid for drug crimes; and (2) otherwise meets admis-  
32 sion criteria of the camp. If the inmate successfully completes a conser-  
33 vation camp program, the secretary of corrections shall report such  
34 completion to the sentencing court and the county or district attorney.  
35 The inmate shall then be assigned by the court to six months of follow-  
36 up supervision conducted by the appropriate community corrections serv-  
37 ices program. The court may also order that supervision continue there-  
38 after for the length of time authorized by K.S.A. 21-4611 and  
39 amendments thereto.

40 ~~(n)~~ When it is provided by law that a person shall be sentenced  
41 pursuant to K.S.A. 1993 Supp. 21-4628, prior to its repeal, the provisions  
42 of this section shall not apply.

43 Sec. 2. K.S.A. 22-2802 is hereby amended to read as follows: 22-

1 2802. (1) Any person charged with a crime shall, at the person's first  
2 appearance before a magistrate, be ordered released pending preliminary  
3 examination or trial upon the execution of an appearance bond in an  
4 amount specified by the magistrate and sufficient to assure the appear-  
5 ance of such person before the magistrate when ordered and to assure  
6 the public safety. If the person is being bound over for a felony, the bond  
7 shall also be conditioned on the person's appearance in the district court  
8 or by way of a two-way electronic audio-video communication as provided  
9 in subsection (11) at the time required by the court to answer the charge  
10 against such person and at any time thereafter that the court requires.  
11 The magistrate may impose such of the following additional conditions of  
12 release as will reasonably assure the appearance of the person for prelim-  
13 inary examination or trial:

14 (a) Place the person in the custody of a designated person or organ-  
15 ization agreeing to supervise such person;

16 (b) place restrictions on the travel, association or place of abode of  
17 the person during the period of release;

18 (c) impose any other condition deemed reasonably necessary to as-  
19 sure appearance as required, including a condition requiring that the  
20 person return to custody during specified hours; ~~or~~

21 (d) place the person under a house arrest program pursuant to K.S.A.  
22 21-4603b, and amendments thereto; *or*

23 (e) *place the person under the supervision of a court services officer*  
24 *responsible for monitoring the person's compliance with any conditions*  
25 *of release ordered by the magistrate.*

26 (2) In addition to any conditions of release provided in subsection (1),  
27 for any person charged with a felony, the magistrate may order such  
28 person to submit to a drug abuse examination and evaluation in a public  
29 or private treatment facility or state institution and, if determined by the  
30 head of such facility or institution that such person is a drug abuser or  
31 incapacitated by drugs, to submit to treatment for such drug abuse, as a  
32 condition of release.

33 (3) The appearance bond shall be executed with sufficient solvent  
34 sureties who are residents of the state of Kansas, unless the magistrate  
35 determines, in the exercise of such magistrate's discretion, that requiring  
36 sureties is not necessary to assure the appearance of the person at the  
37 time ordered.

38 (4) A deposit of cash in the amount of the bond may be made in lieu  
39 of the execution of the bond by sureties.

40 (5) In determining which conditions of release will reasonably assure  
41 appearance and the public safety, the magistrate shall, on the basis of  
42 available information, take into account the nature and circumstances of  
43 the crime charged; the weight of the evidence against the defendant; the

1 defendant's family ties, employment, financial resources, character, men-  
2 tal condition, length of residence in the community, record of convictions,  
3 record of appearance or failure to appear at court proceedings or of flight  
4 to avoid prosecution; the likelihood or propensity of the defendant to  
5 commit crimes while on release, including whether the defendant will be  
6 likely to threaten, harass or cause injury to the victim of the crime or any  
7 witnesses thereto; and whether the defendant is on probation or parole  
8 from a previous offense at the time of the alleged commission of the  
9 subsequent offense.

10 (6) The appearance bond shall set forth all of the conditions of  
11 release.

12 (7) A person for whom conditions of release are imposed and who  
13 continues to be detained as a result of the person's inability to meet the  
14 conditions of release shall be entitled, upon application, to have the con-  
15 ditions reviewed without unnecessary delay by the magistrate who im-  
16 posed them. If the magistrate who imposed conditions of release is not  
17 available, any other magistrate in the county may review such conditions.

18 (8) A magistrate ordering the release of a person on any conditions  
19 specified in this section may at any time amend the order to impose  
20 additional or different conditions of release. If the imposition of additional  
21 or different conditions results in the detention of the person, the provi-  
22 sions of subsection (7) shall apply.

23 (9) Statements or information offered in determining the conditions  
24 of release need not conform to the rules of evidence. No statement or  
25 admission of the defendant made at such a proceeding shall be received  
26 as evidence in any subsequent proceeding against the defendant.

27 (10) The appearance bond and any security required as a condition  
28 of the defendant's release shall be deposited in the office of the magistrate  
29 or the clerk of the court where the release is ordered. If the defendant  
30 is bound to appear before a magistrate or court other than the one or-  
31 dering the release, the order of release, together with the bond and se-  
32 curity shall be transmitted to the magistrate or clerk of the court before  
33 whom the defendant is bound to appear.

34 (11) Proceedings before a magistrate as provided in this section to  
35 determine the release conditions of a person charged with a crime in-  
36 cluding release upon execution of an appearance bond may be conducted  
37 by two-way electronic audio-video communication between the defend-  
38 ant and the judge in lieu of personal presence of the defendant or de-  
39 fendant's counsel in the courtroom in the discretion of the court. The  
40 defendant may be accompanied by the defendant's counsel. The defend-  
41 ant shall be informed of the defendant's right to be personally present in  
42 the courtroom during such proceeding if the defendant so requests. Ex-  
43 ercising the right to be present shall in no way prejudice the defendant.

1     (12) *The magistrate may order the person to pay for any costs asso-*  
2 *ciated with the supervision of the conditions of release of the appearance*  
3 *bond.*

4     New Sec. 3. The court may impose a fee as provided in this section  
5 against any defendant for crimes involving a family or household member  
6 as defined in K.S.A. 21-3412, and amendments thereto. All moneys re-  
7 ceived by the clerk of the district court pursuant to this act shall be re-  
8 mitted to the state treasurer, and the state treasurer shall deposit such  
9 moneys in the state treasury in the domestic violence special program fee  
10 fund to the credit of a separate account established for each judicial dis-  
11 trict from which such moneys were remitted. The chief judge of each  
12 judicial district where such fee is imposed shall set the amount of such  
13 fee by rules adopted in such judicial district. Expenditures made in each  
14 judicial district shall be determined by the chief judge and shall be paid  
15 to domestic violence programs administered by the court and to local  
16 programs within the judicial district that enhance a coordinated com-  
17 munity justice response to the issue of domestic violence. All expenditures  
18 from such account shall be made in accordance with appropriation acts  
19 upon warrants of the director of accounts and reports issued pursuant to  
20 vouchers approved by the chief judge in each such judicial district or by  
21 a person or persons designated by the chief judge. On or before the 10th  
22 of each month, the director of accounts and reports shall transfer from  
23 the state general fund to the domestic violence special program fee fund  
24 interest earnings based on:

25     (a) The average daily balance of moneys in the domestic violence  
26 special program fee fund; and

27     (b) the net earnings rate for the pooled money investment portfolio  
28 for the preceding month. Such interest earnings shall be allocated to each  
29 individual account in proportion to the average daily balance of that ac-  
30 count for the preceding month.

31     Sec. 4. K.S.A. 22-2802 and K.S.A. 2000 Supp. 21-4603d are hereby  
32 repealed.

33     Sec. 5. This act shall take effect and be in force from and after its  
34 publication in the statute book.

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