

HOUSE BILL No. 2338

By Representative Carlin

2-12

AN ACT concerning crimes, punishment and criminal procedure; relating to sentencing; amending K.S.A. 2002 Supp. 21-4603d and repealing the existing section.

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

Section 1. K.S.A. 2002 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. 21-4603b and amendments thereto;

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

4 (8) order the defendant to repay the amount of any reward paid by
5any crime stoppers chapter, individual, corporation or public entity which
6materially aided in the apprehension or conviction of the defendant; repay
7the amount of any costs and expenses incurred by any law enforcement
8agency in the apprehension of the defendant, if one of the current crimes
9of conviction of the defendant includes escape, as defined in K.S.A. 21-
103809 and amendments thereto or aggravated escape, as defined in K.S.A.
1121-3810 and amendments thereto; or repay the amount of any public
12funds utilized by a law enforcement agency to purchase controlled sub-
13stances from the defendant during the investigation which leads to the
14defendant's conviction. Such repayment of the amount of any such costs
15and expenses incurred by a law enforcement agency or any public funds
16utilized by a law enforcement agency shall be deposited and credited to
17the same fund from which the public funds were credited to prior to use
18by the law enforcement agency;

19 (9) order the defendant to pay the administrative fee authorized by
20K.S.A. 2002 Supp. 22-4529 and amendments thereto, unless waived by
21the court;

22 (10) order the defendant to pay a domestic violence special program
23fee authorized by K.S.A. 2002 Supp. 20-369, and amendments thereto;

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

26 (12) suspend imposition of sentence in misdemeanor cases.

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

33 (2) If the court orders restitution, the restitution shall be a judgment
34against the defendant which may be collected by the court by garnishment
35or other execution as on judgments in civil cases. If, after 60 days from
36the date restitution is ordered by the court, a defendant is found to be in
37noncompliance with the plan established by the court for payment of
38restitution, and the victim to whom restitution is ordered paid has not
39initiated proceedings in accordance with K.S.A. 2002 Supp. 60-4301 *et*
40*seq.* and amendments thereto, the court shall assign an agent procured
41by the attorney general pursuant to K.S.A. 75-719 and amendments
42thereto to collect the restitution on behalf of the victim. The administra-
43tive judge of each judicial district may assign such cases to an appropriate

1 division of the court for the conduct of civil collection proceedings.

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

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

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

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

1 tion of a prison sentence for the new crime does not constitute a
2 departure.

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

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

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

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

5 (j) This section shall not deprive the court of any authority conferred
6 by any other Kansas statute to decree a forfeiture of property, suspend
7 or cancel a license, remove a person from office, or impose any other civil
8 penalty as a result of conviction of crime.

9 (k) An application for or acceptance of probation or assignment to a
10 community correctional services program shall not constitute an acqui-
11 escence in the judgment for purpose of appeal, and any convicted person
12 may appeal from such conviction, as provided by law, without regard to
13 whether such person has applied for probation, suspended sentence or
14 assignment to a community correctional services program.

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

33 (m) When it is provided by law that a person shall be sentenced pur-
34 suant to K.S.A. 1993 Supp. 21-4628, prior to its repeal, the provisions of
35 this section shall not apply.

36 (n) *(1) In those cases in which the court revokes an order of proba-*
37 *tion, assignment to community corrections, conditional release or post-*
38 *release supervision due to a technical violation of the terms and condition*
39 *of such order and the court orders the offender committed to the custody*
40 *of the secretary of corrections to serve the offender's underlying sentence*
41 *pursuant to this section the court shall retain jurisdiction for up to 120*
42 *days to modify the sentence or the order of revocation and shall reinstate*
43 *probation, assignment to community corrections, conditional release or*

1 *postrelease supervision according to the orders' original terms and con-*
2 *ditions or with additional terms and conditions, unless the court finds that*
3 *the safety of members of the public will be jeopardized or that the welfare*
4 *of the inmate will not be served by such modification or reinstatement.*

5 (2) *If the offender is reinstated on probation, assignment to commu-*
6 *nity corrections, conditional release or postrelease supervision pursuant*
7 *to paragraph (1), and the offender on a second occurrence violates the*
8 *terms and condition of such reinstated probation, assignment to com-*
9 *munity corrections, conditional release or postrelease supervision, the*
10 *court may order the offender committed to the custody of the secretary*
11 *of corrections to serve the offenders underlying sentence pursuant to this*
12 *section.*

13 (3) *In making this determination, the court shall consider and review*
14 *reports and recommendations of the secretary of corrections.*

15 Sec. 2. K.S.A. 2002 Supp. 21-4603d is hereby repealed.

16 Sec. 3. This act shall take effect and be in force from and after its
17 publication in the statute book.

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