

HOUSE BILL No. 2861

By Committee on Corrections and Juvenile Justice

2-12

9 AN ACT concerning crimes and punishment; relating to driving under
10 the influence; amending K.S.A. 2003 Supp. 8-1567, 21-4603d, 21-4610
11 and 21-4704 and repealing the existing sections.

12

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

14 Section 1. K.S.A. 2003 Supp. 8-1567 is hereby amended to read as
15 follows: 8-1567. (a) No person shall operate or attempt to operate any
16 vehicle within this state while:

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

21 (2) the alcohol concentration in the person's blood or breath, as meas-
22 ured within two hours of the time of operating or attempting to operate
23 a vehicle, is .08 or more;

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

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

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

31 (b) No person shall operate or attempt to operate any vehicle within
32 this state if the person is a habitual user of any narcotic, hypnotic, som-
33 nifacient or stimulating drug.

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

38 (d) Upon a first conviction of a violation of this section, a person shall
39 be guilty of a class B, nonperson misdemeanor and sentenced to not less
40 than 48 consecutive hours nor more than six months' imprisonment, or
41 in the court's discretion 100 hours of public service, and fined not less
42 than \$500 nor more than \$1,000. The person convicted must serve at
43 least 48 consecutive hours' imprisonment or 100 hours of public service

1 either before or as a condition of any grant of probation or suspension,
2 reduction of sentence or parole. In addition, the court shall enter an order
3 which requires that the person enroll in and successfully complete an
4 alcohol and drug safety action education program or treatment program
5 as provided in K.S.A. 8-1008, and amendments thereto, or both the ed-
6 ucation and treatment programs.

7 (e) On a second conviction of a violation of this section, a person shall
8 be guilty of a class A, nonperson misdemeanor and sentenced to not less
9 than 90 days nor more than one year's imprisonment and fined not less
10 than \$1,000 nor more than \$1,500. The person convicted must serve at
11 least five consecutive days' imprisonment before the person is granted
12 probation, suspension or reduction of sentence or parole or is otherwise
13 released. The five days' imprisonment mandated by this subsection may
14 be served in a work release program only after such person has served
15 48 consecutive hours' imprisonment, provided such work release program
16 requires such person to return to confinement at the end of each day in
17 the work release program. The court may place the person convicted
18 under a house arrest program pursuant to K.S.A. 21-4603b, and amend-
19 ments thereto, to serve the remainder of the minimum sentence only
20 after such person has served 48 consecutive hours' imprisonment. As a
21 condition of any grant of probation, suspension of sentence or parole or
22 of any other release, the person shall be required to enter into and com-
23 plete a treatment program for alcohol and drug abuse as provided in
24 K.S.A. 8-1008, and amendments thereto.

25 (f) On the third conviction of a violation of this section, a person shall
26 be guilty of a *class A, nonperson felony* ~~felony~~ *misdemeanor* and sentenced to
27 not less than 90 days nor more than one year's imprisonment and fined
28 not less than \$1,500 nor more than \$2,500. The person convicted shall
29 not be eligible for release on probation, suspension or reduction of sen-
30 tence or parole until the person has served at least 90 days' imprisonment.
31 The court may also require as a condition of *any grant of probation,*
32 *suspension of sentence or parole or of any other release* that such person
33 enter into and complete a treatment program for alcohol and drug abuse
34 as provided by K.S.A. 8-1008, and amendments thereto. The 90 days'
35 imprisonment mandated by this subsection may be served in a work re-
36 lease program only after such person has served 48 consecutive hours'
37 imprisonment, provided such work release program requires such person
38 to return to confinement at the end of each day in the work release
39 program. The court may place the person convicted under a house arrest
40 program pursuant to K.S.A. 21-4603b, and amendments thereto, to serve
41 the remainder of the minimum sentence only after such person has served
42 48 consecutive hours' imprisonment.

43 (g) On the fourth or subsequent conviction of a violation of this sec-

1 tion, a person shall be guilty of a *class A*, nonperson ~~felony~~ *misdemeanor*
2 and sentenced to not less than 90 days nor more than one year's impris-
3 onment and fined \$2,500. The person convicted shall not be eligible for
4 release on probation, suspension or reduction of sentence or parole until
5 the person has served at least 90 days' imprisonment. The 90 days' im-
6 prisonment mandated by this subsection may be served in a work release
7 program only after such person has served 72 consecutive hours' impris-
8 onment, provided such work release program requires such person to
9 return to confinement at the end of each day in the work release program.
10 ~~At the time of the filing of the judgment form or journal entry as required~~
11 ~~by K.S.A. 21-4620 or 22-3426, and amendments thereto, the court shall~~
12 ~~cause a certified copy to be sent to the officer having the offender in~~
13 ~~charge. The law enforcement agency maintaining custody and control of~~
14 ~~a defendant for imprisonment shall cause a certified copy of the judgment~~
15 ~~form or journal entry to be sent to the secretary of corrections within~~
16 ~~three business days of receipt of the judgment form or journal entry from~~
17 ~~the court and notify the secretary of corrections when the term of im-~~
18 ~~prisonment expires and upon expiration of the term of imprisonment shall~~
19 ~~deliver the defendant to a location designated by the secretary. After the~~
20 ~~term of imprisonment imposed by the court, the person shall be placed~~
21 ~~in the custody of the secretary of corrections for a mandatory one-year~~
22 ~~period of postrelease supervision, which such period of postrelease su-~~
23 ~~perVISION shall not be reduced. During such postrelease supervision, the~~
24 ~~person shall be required to participate in an inpatient or outpatient pro-~~
25 ~~gram for alcohol and drug abuse, including, but not limited to, an ap-~~
26 ~~proved aftercare plan or mental health counseling, as determined by the~~
27 ~~secretary and satisfy conditions imposed by the Kansas parole board as~~
28 ~~provided by K.S.A. 22-3717, and amendments thereto. Any violation of~~
29 ~~the conditions of such postrelease supervision may subject such person~~
30 ~~to revocation of postrelease supervision pursuant to K.S.A. 75-5217 et~~
31 ~~seq., and amendments thereto and as otherwise provided by law.~~

32 (h) Any person convicted of violating this section or an ordinance
33 which prohibits the acts that this section prohibits who had a child under
34 the age of 14 years in the vehicle at the time of the offense shall have
35 such person's punishment enhanced by one month of imprisonment. This
36 imprisonment must be served consecutively to any other penalty imposed
37 for a violation of this section or an ordinance which prohibits the acts that
38 this section prohibits. During the service of the one month enhanced
39 penalty, the judge may order the person on house arrest, work release or
40 other conditional release.

41 (i) The court may establish the terms and time for payment of any
42 fines, fees, assessments and costs imposed pursuant to this section. Any
43 assessment and costs shall be required to be paid not later than 90 days

1 after imposed, and any remainder of the fine shall be paid prior to the
2 final release of the defendant by the court.

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

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

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

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

26 (A) Whether the impoundment or immobilization of the motor ve-
27 hicle would result in the loss of employment by the convicted person or
28 a member of such person's family; and

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

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

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

40 (l) The court shall report every conviction of a violation of this section
41 and every diversion agreement entered into in lieu of further criminal
42 proceedings or a complaint alleging a violation of this section to the di-
43 vision. Prior to sentencing under the provisions of this section, the court

1 shall request and shall receive from the division a record of all prior
2 convictions obtained against such person for any violations of any of the
3 motor vehicle laws of this state.

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

7 (1) "Conviction" includes being convicted of a violation of this section
8 or entering into a diversion agreement in lieu of further criminal pro-
9 ceedings on a complaint alleging a violation of this section;

10 (2) "conviction" includes being convicted of a violation of a law of
11 another state or an ordinance of any city, or resolution of any county,
12 which prohibits the acts that this section prohibits or entering into a di-
13 version agreement in lieu of further criminal proceedings in a case alleg-
14 ing a violation of such law, ordinance or resolution;

15 (3) any convictions occurring during a person's lifetime shall be taken
16 into account when determining the sentence to be imposed for a first,
17 second, third, fourth or subsequent offender;

18 (4) it is irrelevant whether an offense occurred before or after con-
19 viction for a previous offense; and

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

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

29 (o) (1) Nothing contained in this section shall be construed as pre-
30 venting any city from enacting ordinances, or any county from adopting
31 resolutions, declaring acts prohibited or made unlawful by this act as
32 unlawful or prohibited in such city or county and prescribing penalties
33 for violation thereof. Except as specifically provided by this subsection,
34 the minimum penalty prescribed by any such ordinance or resolution shall
35 not be less than the minimum penalty prescribed by this act for the same
36 violation, and the maximum penalty in any such ordinance or resolution
37 shall not exceed the maximum penalty prescribed for the same violation.

38 Any such ordinance or resolution shall authorize the court to order that
39 the convicted person pay restitution to any victim who suffered loss due
40 to the violation for which the person was convicted. Except as provided
41 in paragraph (5), any such ordinance or resolution may require or au-
42 thorize the court to order that the convicted person's motor vehicle or
43 vehicles be impounded or immobilized for a period not to exceed one

1 year and that the convicted person pay all towing, impoundment and
2 storage fees or other immobilization costs.

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

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

10 (A) Whether the impoundment or immobilization of the motor ve-
11 hicle would result in the loss of employment by the convicted person or
12 a member of such person's family; and

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

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

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

24 (p) No plea bargaining agreement shall be entered into nor shall any
25 judge approve a plea bargaining agreement entered into for the purpose
26 of permitting a person charged with a violation of this section, or a vio-
27 lation of any ordinance of a city or resolution of any county in this state
28 which prohibits the acts prohibited by this section, to avoid the mandatory
29 penalties established by this section or by the ordinance. For the purpose
30 of this subsection, entering into a diversion agreement pursuant to K.S.A.
31 12-4413 *et seq.* or 22-2906 *et seq.*, and amendments thereto, shall not
32 constitute plea bargaining.

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

37 (r) Upon a fourth or subsequent conviction, the judge of any court in
38 which any person is convicted of violating this section, may revoke the
39 person's license plate or temporary registration certificate of the motor
40 vehicle driven during the violation of this section for a period of one year.
41 Upon revoking any license plate or temporary registration certificate pur-
42 suant to this subsection, the court shall require that such license plate or
43 temporary registration certificate be surrendered to the court.

1 (s) For the purpose of this section: (1) “Alcohol concentration” means
2 the number of grams of alcohol per 100 milliliters of blood or per 210
3 liters of breath.

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

8 (3) “Drug” includes toxic vapors as such term is defined in K.S.A. 65-
9 4165, and amendments thereto.

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

19 Sec. 2. K.S.A. 2003 Supp. 21-4603d is hereby amended to read as
20 follows: 21-4603d. (a) Whenever any person has been found guilty of a
21 crime, the court may adjudge any of the following:

22 (1) Commit the defendant to the custody of the secretary of correc-
23 tions if the current crime of conviction is a felony and the sentence pre-
24 sumes imprisonment, or the sentence imposed is a dispositional departure
25 to imprisonment; or, if confinement is for a misdemeanor, to jail for the
26 term provided by law;

27 (2) impose the fine applicable to the offense;

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

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

42 (5) assign the defendant to a conservation camp for a period not to
43 exceed six months as a condition of probation followed by a six-month

- 1 period of follow-up through adult intensive supervision by a community
2 correctional services program, if the offender successfully completes the
3 conservation camp program;
- 4 (6) assign the defendant to a house arrest program pursuant to K.S.A.
5 21-4603b and amendments thereto;
- 6 (7) order the defendant to attend and satisfactorily complete an al-
7 cohol or drug education or training program as provided by subsection
8 (3) of K.S.A. 21-4502 and amendments thereto;
- 9 (8) order the defendant to repay the amount of any reward paid by
10 any crime stoppers chapter, individual, corporation or public entity which
11 materially aided in the apprehension or conviction of the defendant; repay
12 the amount of any costs and expenses incurred by any law enforcement
13 agency in the apprehension of the defendant, if one of the current crimes
14 of conviction of the defendant includes escape, as defined in K.S.A. 21-
15 3809 and amendments thereto or aggravated escape, as defined in K.S.A.
16 21-3810 and amendments thereto; repay expenses incurred by a fire dis-
17 trict, fire department or fire company responding to a fire which has been
18 determined to be arson under K.S.A. 21-3718 or 21-3719, and amend-
19 ments thereto, if the defendant is convicted of such crime; or repay the
20 amount of any public funds utilized by a law enforcement agency to pur-
21 chase controlled substances from the defendant during the investigation
22 which leads to the defendant's conviction. Such repayment of the amount
23 of any such costs and expenses incurred by a law enforcement agency,
24 fire district, fire department or fire company or any public funds utilized
25 by a law enforcement agency shall be deposited and credited to the same
26 fund from which the public funds were credited to prior to use by the
27 law enforcement agency, fire district, fire department or fire company;
- 28 (9) order the defendant to pay the administrative fee authorized by
29 K.S.A. 2003 Supp. 22-4529 and amendments thereto, unless waived by
30 the court;
- 31 (10) order the defendant to pay a domestic violence special program
32 fee authorized by K.S.A. 2003 Supp. 20-369, and amendments thereto;
- 33 (11) impose any appropriate combination of (1), (2), (3), (4), (5), (6),
34 (7), (8), (9) and (10); or
- 35 (12) suspend imposition of sentence in misdemeanor cases.
- 36 (b) (1) In addition to or in lieu of any of the above, the court shall
37 order the defendant to pay restitution, which shall include, but not be
38 limited to, damage or loss caused by the defendant's crime, unless the
39 court finds compelling circumstances which would render a plan of res-
40 titution unworkable. If the court finds a plan of restitution unworkable,
41 the court shall state on the record in detail the reasons therefor.
- 42 (2) If the court orders restitution, the restitution shall be a judgment
43 against the defendant which may be collected by the court by garnishment

1 or other execution as on judgments in civil cases. If, after 60 days from
2 the date restitution is ordered by the court, a defendant is found to be in
3 noncompliance with the plan established by the court for payment of
4 restitution, and the victim to whom restitution is ordered paid has not
5 initiated proceedings in accordance with K.S.A. 2003 Supp. 60-4301 *et*
6 *seq.* and amendments thereto, the court shall assign an agent procured
7 by the attorney general pursuant to K.S.A. 75-719 and amendments
8 thereto to collect the restitution on behalf of the victim. The administra-
9 tive judge of each judicial district may assign such cases to an appropriate
10 division of the court for the conduct of civil collection proceedings.

11 (c) In addition to or in lieu of any of the above, the court shall order
12 the defendant to submit to and complete an alcohol and drug evaluation,
13 and pay a fee therefor, when required by subsection (4) of K.S.A. 21-
14 4502 and amendments thereto.

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

30 (e) In imposing a fine the court may authorize the payment thereof
31 in installments. In releasing a defendant on probation, the court shall
32 direct that the defendant be under the supervision of a court services
33 officer. If the court commits the defendant to the custody of the secretary
34 of corrections or to jail, the court may specify in its order the amount of
35 restitution to be paid and the person to whom it shall be paid if restitution
36 is later ordered as a condition of parole, conditional release or postrelease
37 supervision.

38 (f) When a new felony is committed while the offender is incarcer-
39 ated and serving a sentence for a felony or while the offender is on pro-
40 bation, assignment to a community correctional services program, parole,
41 conditional release, or postrelease supervision for a felony, a new sentence
42 shall be imposed pursuant to the consecutive sentencing requirements of
43 K.S.A. 21-4608, and amendments thereto, and the court may sentence

1 the offender to imprisonment for the new conviction, even when the new
2 crime of conviction otherwise presumes a nonprison sentence. In this
3 event, imposition of a prison sentence for the new crime does not con-
4 stitute a departure. When a new felony is committed while the offender
5 is on release for a felony pursuant to the provisions of article 28 of chapter
6 22 of the Kansas Statutes Annotated, a new sentence may be imposed
7 pursuant to the consecutive sentencing requirements of K.S.A. 21-4608
8 and amendments thereto, and the court may sentence the offender to
9 imprisonment for the new conviction, even when the new crime of con-
10 viction otherwise presumes a nonprison sentence. In this event, imposi-
11 tion of a prison sentence for the new crime does not constitute a
12 departure.

13 (g) Prior to imposing a dispositional departure for a defendant whose
14 offense is classified in the presumptive nonprison grid block of either
15 sentencing guideline grid, prior to sentencing a defendant to incarceration
16 whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing
17 guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H
18 or 3-I of the sentencing guidelines grid for drug crimes, prior to sen-
19 tencing a defendant to incarceration whose offense is classified in grid
20 blocks 4-E or 4-F of the sentencing guideline grid for drug crimes and
21 whose offense does not meet the requirements of K.S.A. 2003 Supp. 21-
22 4729, and amendments thereto, prior to revocation of a nonprison sanc-
23 tion of a defendant whose offense is classified in grid blocks 4-E or 4-F
24 of the sentencing guideline grid for drug crimes and whose offense does
25 not meet the requirements of K.S.A. 2003 Supp. 21-4729, and amend-
26 ments thereto, or prior to revocation of a nonprison sanction of a de-
27 fendant whose offense is classified in the presumptive nonprison grid
28 block of either sentencing guideline grid or grid blocks 5-H, 5-I or 6-G
29 of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-
30 E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes,
31 the court shall consider placement of the defendant in the Labette cor-
32 rectional conservation camp, conservation camps established by the sec-
33 retary of corrections pursuant to K.S.A. 75-52,127, and amendment
34 thereto or a community intermediate sanction center. Pursuant to this
35 paragraph the defendant shall not be sentenced to imprisonment if space
36 is available in a conservation camp or a community intermediate sanction
37 center and the defendant meets all of the conservation camp's or a com-
38 munity intermediate sanction center's placement criteria unless the court
39 states on the record the reasons for not placing the defendant in a con-
40 servation camp or a community intermediate sanction center.

41 (h) The court in committing a defendant to the custody of the sec-
42 retary of corrections shall fix a term of confinement within the limits
43 provided by law. In those cases where the law does not fix a term of

1 confinement for the crime for which the defendant was convicted, the
2 court shall fix the term of such confinement.

3 (i) In addition to any of the above, the court shall order the defendant
4 to reimburse the state general fund for all or a part of the expenditures
5 by the state board of indigents' defense services to provide counsel and
6 other defense services to the defendant. In determining the amount and
7 method of payment of such sum, the court shall take account of the
8 financial resources of the defendant and the nature of the burden that
9 payment of such sum will impose. A defendant who has been required
10 to pay such sum and who is not willfully in default in the payment thereof
11 may at any time petition the court which sentenced the defendant to
12 waive payment of such sum or any unpaid portion thereof. If it appears
13 to the satisfaction of the court that payment of the amount due will im-
14 pose manifest hardship on the defendant or the defendant's immediate
15 family, the court may waive payment of all or part of the amount due or
16 modify the method of payment. The amount of attorney fees to be in-
17 cluded in the court order for reimbursement shall be the amount claimed
18 by appointed counsel on the payment voucher for indigents' defense serv-
19 ices or the amount prescribed by the board of indigents' defense services
20 reimbursement tables as provided in K.S.A. 22-4522, and amendments
21 thereto, whichever is less.

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

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

32 (l) The secretary of corrections is authorized to make direct place-
33 ment to the Labette correctional conservation camp or a conservation
34 camp established by the secretary pursuant to K.S.A. 75-52,127, and
35 amendments thereto, of an inmate sentenced to the secretary's custody
36 if the inmate: (1) Has been sentenced to the secretary for a probation
37 revocation, as a departure from the presumptive nonimprisonment grid
38 block of either sentencing grid, for an offense which is classified in grid
39 blocks 5-H, 5-I, or 6-G of the sentencing guidelines grid for nondrug
40 crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing
41 guidelines grid for drug crimes, or for an offense which is classified in
42 gridblocks 4-E or 4-F of the sentencing guidelines grid for drug crimes
43 and such offense does not meet the requirements of K.S.A. 2003 Supp.

1 21-4729, and amendments thereto, and (2) otherwise meets admission
2 criteria of the camp. If the inmate successfully completes a conservation
3 camp program, the secretary of corrections shall report such completion
4 to the sentencing court and the county or district attorney. The inmate
5 shall then be assigned by the court to six months of follow-up supervision
6 conducted by the appropriate community corrections services program.
7 The court may also order that supervision continue thereafter for the
8 length of time authorized by K.S.A. 21-4611 and amendments thereto.

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

12 (n) Except as provided by subsection (f) of K.S.A. 21-4705, and
13 amendments thereto, in addition to any of the above, for felony violations
14 of K.S.A. 65-4160 or 65-4162, and amendments thereto, the court shall
15 require the defendant who meets the requirements established in K.S.A.
16 2003 Supp. 21-4729, and amendments thereto, to participate in a certified
17 drug abuse treatment program, as provided in K.S.A. 2003 Supp. 75-
18 52,144, and amendments thereto, including but not limited to, an ap-
19 proved after-care plan. If the defendant fails to participate in or has a
20 pattern of intentional conduct that demonstrates the offender's refusal to
21 comply with or participate in the treatment program, as established by
22 judicial finding, the defendant shall be subject to revocation of probation
23 and the defendant shall serve the underlying prison sentence as estab-
24 lished in K.S.A. 21-4705, and amendments thereto. For those offenders
25 who are convicted on or after the effective date of this act, upon com-
26 pletion of the underlying prison sentence, the defendant shall not be
27 subject to a period of postrelease supervision. The amount of time spent
28 participating in such program shall not be credited as service on the un-
29 derlying prison sentence.

30 Sec. 3. K.S.A. 2003 Supp. 21-4610 is hereby amended to read as
31 follows: 21-4610. (a) Except as required by this subsection and subsection
32 (d), nothing in this section shall be construed to limit the authority of the
33 court to impose or modify any general or specific conditions of probation,
34 suspension of sentence or assignment to a community correctional serv-
35 ices program, except that the court shall condition any order granting
36 probation, suspension of sentence or assignment to a community correc-
37 tional services program on the defendant's obedience of the laws of the
38 United States, the state of Kansas and any other jurisdiction to the laws
39 of which the defendant may be subject. The provisions of K.S.A. 75-5291,
40 and amendments thereto, shall be applicable to any assignment to a com-
41 munity correctional services program pursuant to this section.

42 (b) The court services officer or community correctional services of-
43 ficer may recommend, and the court may order, the imposition of any

1 conditions of probation, suspension of sentence or assignment to a com-
2 munity correctional services program. For crimes committed on or after
3 July 1, 1993, in presumptive nonprison cases, the court services officer
4 or community correctional services officer may recommend, and the
5 court may order, the imposition of any conditions of probation or assign-
6 ment to a community correctional services program. The court may at
7 any time order the modification of such conditions, after notice to the
8 court services officer or community correctional services officer and an
9 opportunity for such officer to be heard thereon. The court shall cause a
10 copy of any such order to be delivered to the court services officer and
11 the probationer or to the community correctional services officer and the
12 community corrections participant, as the case may be. The provisions of
13 K.S.A. 75-5291, and amendments thereto, shall be applicable to any as-
14 signment to a community correctional services program pursuant to this
15 section.

16 (c) The court may impose any conditions of probation, suspension of
17 sentence or assignment to a community correctional services program
18 that the court deems proper, including but not limited to requiring that
19 the defendant:

20 (1) Avoid such injurious or vicious habits, as directed by the court,
21 court services officer or community correctional services officer;

22 (2) avoid such persons or places of disreputable or harmful character,
23 as directed by the court, court services officer or community correctional
24 services officer;

25 (3) report to the court services officer or community correctional
26 services officer as directed;

27 (4) permit the court services officer or community correctional serv-
28 ices officer to visit the defendant at home or elsewhere;

29 (5) work faithfully at suitable employment insofar as possible;

30 (6) remain within the state unless the court grants permission to
31 leave;

32 (7) pay a fine or costs, applicable to the offense, in one or several
33 sums and in the manner as directed by the court;

34 (8) support the defendant's dependents;

35 (9) reside in a residential facility located in the community and par-
36 ticipate in educational, counseling, work and other correctional or reha-
37 bilitative programs;

38 (10) perform community or public service work for local govern-
39 mental agencies, private corporations organized not for profit, or chari-
40 table or social service organizations performing services for the
41 community;

42 (11) perform services under a system of day fines whereby the de-
43 fendant is required to satisfy fines, costs or reparation or restitution ob-

1 ligations by performing services for a period of days determined by the
2 court on the basis of ability to pay, standard of living, support obligations
3 and other factors;

4 (12) participate in a house arrest program pursuant to K.S.A. 21-
5 4603b, and amendments thereto;

6 (13) order the defendant to pay the administrative fee authorized by
7 K.S.A. 2003 Supp. 22-4529 and amendments thereto, unless waived by
8 the court; or

9 (14) in felony cases, ~~except for violations of K.S.A. 8-1567 and amend-~~
10 ~~ments thereto~~, be confined in a county jail not to exceed 60 days, which
11 need not be served consecutively.

12 (d) In addition to any other conditions of probation, suspension of
13 sentence or assignment to a community correctional services program,
14 the court shall order the defendant to comply with each of the following
15 conditions:

16 (1) Make reparation or restitution to the aggrieved party for the dam-
17 age or loss caused by the defendant's crime, in an amount and manner
18 determined by the court and to the person specified by the court, unless
19 the court finds compelling circumstances which would render a plan of
20 restitution unworkable. If the court finds a plan of restitution unworkable,
21 the court shall state on the record in detail the reasons therefor;

22 (2) pay the probation or community correctional services fee pursu-
23 ant to K.S.A. 21-4610a, and amendments thereto; and

24 (3) reimburse the state general fund for all or a part of the expendi-
25 tures by the state board of indigents' defense services to provide counsel
26 and other defense services to the defendant. In determining the amount
27 and method of payment of such sum, the court shall take account of the
28 financial resources of the defendant and the nature of the burden that
29 payment of such sum will impose. A defendant who has been required
30 to pay such sum and who is not willfully in default in the payment thereof
31 may at any time petition the court which sentenced the defendant to
32 waive payment of such sum or of any unpaid portion thereof. If it appears
33 to the satisfaction of the court that payment of the amount due will im-
34 pose manifest hardship on the defendant or the defendant's immediate
35 family, the court may waive payment of all or part of the amount due or
36 modify the method of payment. The amount of attorney fees to be in-
37 cluded in the court order for reimbursement shall be the amount claimed
38 by appointed counsel on the payment voucher for indigents' defense serv-
39 ices or the amount prescribed by the board of indigents' defense services
40 reimbursement tables as provided in K.S.A. 22-4522, and amendments
41 thereto, whichever is less.

42 Sec. 4. K.S.A. 2003 Supp. 21-4704 is hereby amended to read as
43 follows: 21-4704. (a) For purposes of sentencing, the following sentencing

1 guidelines grid for nondrug crimes shall be applied in felony cases for
2 crimes committed on or after July 1, 1993:
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SENTENCING RANGE - NONDRUG OFFENSES

Category	A	B	C	D	E	F	G	H	I
Severity Level I	3-4 Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3-4 Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2-4 Misdemeanors	1 Misdemeanor No Record
I	653 620 592	618 586 554	285 272 258	267 253 240	246 234 221	226 214 203	203 195 184	186 176 166	165 155 147
II	493 467 442	460 438 416	216 205 194	200 190 181	184 174 165	168 160 152	154 146 138	138 131 123	123 117 109
III	247 233 221	238 216 206	107 102 96	100 94 89	92 88 82	83 79 74	77 72 68	71 66 61	61 59 55
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	46 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	34 32 30
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 22	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	7 6 5

160000
Presumptive Probation
Presumptive Imprisonment

1 (b) The provisions of this section shall be applicable to the sentencing
2 guidelines grid for nondrug crimes. Sentences expressed in such grid
3 represent months of imprisonment.

4 (c) The sentencing guidelines grid is a two-dimensional crime severity
5 and criminal history classification tool. The grid's vertical axis is the crime
6 severity scale which classifies current crimes of conviction. The grid's
7 horizontal axis is the criminal history scale which classifies criminal
8 histories.

9 (d) The sentencing guidelines grid for nondrug crimes as provided in
10 this section defines presumptive punishments for felony convictions, sub-
11 ject to judicial discretion to deviate for substantial and compelling reasons
12 and impose a different sentence in recognition of aggravating and miti-
13 gating factors as provided in this act. The appropriate punishment for a
14 felony conviction should depend on the severity of the crime of conviction
15 when compared to all other crimes and the offender's criminal history.

16 (e) (1) The sentencing court has discretion to sentence at any place
17 within the sentencing range. The sentencing judge shall select the center
18 of the range in the usual case and reserve the upper and lower limits for
19 aggravating and mitigating factors insufficient to warrant a departure.

20 (2) In presumptive imprisonment cases, the sentencing court shall
21 pronounce the complete sentence which shall include the prison sen-
22 tence, the maximum potential reduction to such sentence as a result of
23 good time and the period of postrelease supervision at the sentencing
24 hearing. Failure to pronounce the period of postrelease supervision shall
25 not negate the existence of such period of postrelease supervision.

26 (3) In presumptive nonprison cases, the sentencing court shall pro-
27 nounce the prison sentence as well as the duration of the nonprison sanc-
28 tion at the sentencing hearing.

29 (f) Each grid block states the presumptive sentencing range for an
30 offender whose crime of conviction and criminal history place such of-
31 fender in that grid block. If an offense is classified in a grid block below
32 the dispositional line, the presumptive disposition shall be nonimprison-
33 ment. If an offense is classified in a grid block above the dispositional
34 line, the presumptive disposition shall be imprisonment. If an offense is
35 classified in grid blocks 5-H, 5-I or 6-G, the court may impose an optional
36 nonprison sentence upon making the following findings on the record:

37 (1) An appropriate treatment program exists which is likely to be
38 more effective than the presumptive prison term in reducing the risk of
39 offender recidivism; and

40 (2) the recommended treatment program is available and the of-
41 fender can be admitted to such program within a reasonable period of
42 time; or

43 (3) the nonprison sanction will serve community safety interests by

1 promoting offender reformation.

2 Any decision made by the court regarding the imposition of an optional
3 nonprison sentence if the offense is classified in grid blocks 5-H, 5-I or
4 6-G shall not be considered a departure and shall not be subject to appeal.

5 (g) The sentence for the violation of K.S.A. 21-3411, and amend-
6 ments thereto, aggravated assault against a law enforcement officer or
7 K.S.A. 21-3415, and amendments thereto, aggravated battery against a
8 law enforcement officer and amendments thereto which places the de-
9 fendant's sentence in grid block 6-H or 6-I shall be presumed impris-
10 onment. The court may impose an optional nonprison sentence upon
11 making a finding on the record that the nonprison sanction will serve
12 community safety interests by promoting offender reformation. Any de-
13 cision made by the court regarding the imposition of the optional non-
14 prison sentence, if the offense is classified in grid block 6-H or 6-I, shall
15 not be considered departure and shall not be subject to appeal.

16 (h) When a firearm is used to commit any person felony, the of-
17 fender's sentence shall be presumed imprisonment. The court may im-
18 pose an optional nonprison sentence upon making a finding on the record
19 that the nonprison sanction will serve community safety interests by pro-
20 moting offender reformation. Any decision made by the court regarding
21 the imposition of the optional nonprison sentence shall not be considered
22 a departure and shall not be subject to appeal.

23 (i) The sentence for the violation of ~~the felony provision of K.S.A. 8-~~
24 ~~1567 and~~, subsection (b)(3) of K.S.A. 21-3412a, and subsections (b)(3)
25 and (b)(4) of K.S.A. 21-3710, and amendments thereto, shall be as pro-
26 vided by the specific mandatory sentencing requirements of that section
27 and shall not be subject to the provisions of this section or K.S.A. 21-4707
28 and amendments thereto. If because of the offender's criminal history
29 classification the offender is subject to presumptive imprisonment or if
30 the judge departs from a presumptive probation sentence and the of-
31 fender is subject to imprisonment, the provisions of this section and
32 K.S.A. 21-4707, and amendments thereto, shall apply and the offender
33 shall not be subject to the mandatory sentence as provided in K.S.A. 21-
34 3710, and amendments thereto. Notwithstanding the provisions of any
35 other section, the term of imprisonment imposed for the violation of ~~the~~
36 ~~felony provision of K.S.A. 8-1567~~, subsection (b)(3) of K.S.A. 21-3412a
37 and subsections (b)(3) and (b)(4) of K.S.A. 21-3710, and amendments
38 thereto shall not be served in a state facility in the custody of the secretary
39 of corrections.

40 (j) The sentence for any persistent sex offender whose current con-
41 victed crime carries a presumptive term of imprisonment shall be double
42 the maximum duration of the presumptive imprisonment term. The sen-
43 tence for any persistent sex offender whose current conviction carries a

1 presumptive nonprison term shall be presumed imprisonment and shall
2 be double the maximum duration of the presumptive imprisonment term.
3 Except as otherwise provided in this subsection, as used in this subsection,
4 “persistent sex offender” means a person who: (1) Has been convicted in
5 this state of a sexually violent crime, as defined in K.S.A. 22-3717 and
6 amendments thereto; and (2) at the time of the conviction under subsec-
7 tion (1) has at least one conviction for a sexually violent crime, as defined
8 in K.S.A. 22-3717 and amendments thereto in this state or comparable
9 felony under the laws of another state, the federal government or a for-
10 eign government. The provisions of this subsection shall not apply to any
11 person whose current convicted crime is a severity level 1 or 2 felony.

12 (k) If it is shown at sentencing that the offender committed any felony
13 violation for the benefit of, at the direction of, or in association with any
14 criminal street gang, with the specific intent to promote, further or assist
15 in any criminal conduct by gang members, the offender’s sentence shall
16 be presumed imprisonment. Any decision made by the court regarding
17 the imposition of the optional nonprison sentence shall not be considered
18 a departure and shall not be subject to appeal. As used in this subsection,
19 “criminal street gang” means any organization, association or group of
20 three or more persons, whether formal or informal, having as one of its
21 primary activities the commission of one or more person felonies or felony
22 violations of the uniform controlled substances act, K.S.A. 65-4101 *et seq.*,
23 and amendments thereto, which has a common name or common iden-
24 tifying sign or symbol, whose members, individually or collectively engage
25 in or have engaged in the commission, attempted commission, conspiracy
26 to commit or solicitation of two or more person felonies or felony viola-
27 tions of the uniform controlled substances act, K.S.A. 65-4101 *et seq.*, and
28 amendments thereto, or any substantially similar offense from another
29 jurisdiction.

30 (l) The sentence for a violation of subsection (a) of K.S.A. 21-3715
31 and amendments thereto when such person being sentenced has a prior
32 conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715 or 21-
33 3716 and amendments thereto shall be presumed imprisonment.

34 Sec. 5. K.S.A. 2003 Supp. 8-1567, 21-4603d, 21-4610 and 21-4704
35 are hereby repealed.

36 Sec. 6. This act shall take effect and be in force from and after its
37 publication in the statute book.