

SENATE BILL No. 162

By Committee on Judiciary

2-1

9 AN ACT concerning crimes, punishment and criminal procedure; relat-
10 ing to sentencing to a nonprison sanction; amending K.S.A. 2004 Supp.
11 21-4603d and 21-4729 and repealing the existing sections.
12

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

14 Section 1. K.S.A. 2004 Supp. 21-4603d is hereby amended to read
15 as follows: 21-4603d. (a) Whenever any person has been found guilty of
16 a crime, the court may adjudge any of the following:

17 (1) Commit the defendant to the custody of the secretary of correc-
18 tions if the current crime of conviction is a felony and the sentence pre-
19 sumes imprisonment, or the sentence imposed is a dispositional departure
20 to imprisonment; or, if confinement is for a misdemeanor, to jail for the
21 term provided by law;

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

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

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

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

42 (6) assign the defendant to a house arrest program pursuant to K.S.A.
43 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; repay expenses incurred by a fire dis-
12trict, fire department or fire company responding to a fire which has been
13determined to be arson under K.S.A. 21-3718 or 21-3719, and amend-
14ments thereto, if the defendant is convicted of such crime; or repay the
15amount of any public funds utilized by a law enforcement agency to pur-
16chase controlled substances from the defendant during the investigation
17which leads to the defendant's conviction. Such repayment of the amount
18of any such costs and expenses incurred by a law enforcement agency,
19fire district, fire department or fire company or any public funds utilized
20by a law enforcement agency shall be deposited and credited to the same
21fund from which the public funds were credited to prior to use by the
22law enforcement agency, fire district, fire department or fire company;
- 23 (9) order the defendant to pay the administrative fee authorized by
24K.S.A. 2004 Supp. 22-4529 and amendments thereto, unless waived by
25the court;
- 26 (10) order the defendant to pay a domestic violence special program
27fee authorized by K.S.A. 2004 Supp. 20-369, and amendments thereto;
- 28 (11) impose any appropriate combination of (1), (2), (3), (4), (5), (6),
29(7), (8), (9) and (10); or
- 30 (12) suspend imposition of sentence in misdemeanor cases.
- 31 (b) (1) In addition to or in lieu of any of the above, the court shall
32order the defendant to pay restitution, which shall include, but not be
33limited to, damage or loss caused by the defendant's crime, unless the
34court finds compelling circumstances which would render a plan of res-
35titution unworkable. If the court finds a plan of restitution unworkable,
36the court shall state on the record in detail the reasons therefor.
- 37 (2) If the court orders restitution, the restitution shall be a judgment
38against the defendant which may be collected by the court by garnishment
39or other execution as on judgments in civil cases. If, after 60 days from
40the date restitution is ordered by the court, a defendant is found to be in
41noncompliance with the plan established by the court for payment of
42restitution, and the victim to whom restitution is ordered paid has not
43initiated proceedings in accordance with K.S.A. 2004 Supp. 60-4301 et

1 seq., and amendments thereto, the court shall assign an agent procured
2 by the attorney general pursuant to K.S.A. 75-719 and amendments
3 thereto to collect the restitution on behalf of the victim. The administra-
4 tive judge of each judicial district may assign such cases to an appropriate
5 division of the court for the conduct of civil collection proceedings.

6 (c) In addition to or in lieu of any of the above, the court shall order
7 the defendant to submit to and complete an alcohol and drug evaluation,
8 and pay a fee therefor, when required by subsection (4) of K.S.A. 21-
9 4502 and amendments thereto.

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

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

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

1 22 of the Kansas Statutes Annotated, a new sentence may be imposed
2 pursuant to the consecutive sentencing requirements of K.S.A. 21-4608
3 and amendments thereto, and the court may sentence the offender to
4 imprisonment for the new conviction, even when the new crime of con-
5 viction otherwise presumes a nonprison sentence. In this event, imposi-
6 tion of a prison sentence for the new crime does not constitute a
7 departure.

8 (g) Prior to imposing a dispositional departure for a defendant whose
9 offense is classified in the presumptive nonprison grid block of either
10 sentencing guideline grid, prior to sentencing a defendant to incarceration
11 whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing
12 guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H
13 or 3-I of the sentencing guidelines grid for drug crimes, prior to sen-
14 tencing a defendant to incarceration whose offense is classified in grid
15 blocks 4-E or 4-F of the sentencing guideline grid for drug crimes and
16 whose offense does not meet the requirements of K.S.A. 2004 Supp. 21-
17 4729, and amendments thereto, prior to revocation of a nonprison sanc-
18 tion of a defendant whose offense is classified in grid blocks 4-E or 4-F
19 of the sentencing guideline grid for drug crimes and whose offense does
20 not meet the requirements of K.S.A. 2004 Supp. 21-4729, and amend-
21 ments thereto, or prior to revocation of a nonprison sanction of a de-
22 fendant whose offense is classified in the presumptive nonprison grid
23 block of either sentencing guideline grid or grid blocks 5-H, 5-I or 6-G
24 of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-
25 E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes,
26 the court shall consider placement of the defendant in the Labette cor-
27 rectional conservation camp, conservation camps established by the sec-
28 retary of corrections pursuant to K.S.A. 75-52,127, and amendment
29 thereto or a community intermediate sanction center. Pursuant to this
30 paragraph the defendant shall not be sentenced to imprisonment if space
31 is available in a conservation camp or a community intermediate sanction
32 center and the defendant meets all of the conservation camp's or a com-
33 munity intermediate sanction center's placement criteria unless the court
34 states on the record the reasons for not placing the defendant in a con-
35 servation camp or a community intermediate sanction center.

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

41 (i) In addition to any of the above, the court shall order the defendant
42 to reimburse the state general fund for all or a part of the expenditures
43 by the state board of indigents' defense services to provide counsel and

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

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

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

27 (l) The secretary of corrections is authorized to make direct place-
28 ment to the Labette correctional conservation camp or a conservation
29 camp established by the secretary pursuant to K.S.A. 75-52,127, and
30 amendments thereto, of an inmate sentenced to the secretary's custody
31 if the inmate: (1) Has been sentenced to the secretary for a probation
32 revocation, as a departure from the resumptive nonimprisonment grid
33 block of either sentencing grid, for an offense which is classified in grid
34 blocks 5-H, 5-I, or 6-G of the sentencing guidelines grid for nondrug
35 crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing
36 guidelines grid for drug crimes, or for an offense which is classified in
37 gridblocks 4-E or 4-F of the sentencing guidelines grid for drug crimes
38 and such offense does not meet the requirements of K.S.A. 2004 Supp.
39 21-4729, and amendments thereto, and (2) otherwise meets admission
40 criteria of the camp. If the inmate successfully completes a conservation
41 camp program, the secretary of corrections shall report such completion
42 to the sentencing court and the county or district attorney. The inmate
43 shall then be assigned by the court to six months of follow-up supervision

1 conducted by the appropriate community corrections services program.
2 The court may also order that supervision continue thereafter for the
3 length of time authorized by K.S.A. 21-4611 and amendments thereto.

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

7 (n) Except as provided by subsection (f) of K.S.A. 21-4705, and
8 amendments thereto, *and as provided further*, in addition to any of the
9 above, for felony violations of K.S.A. 65-4160 or 65-4162, and amend-
10 ments thereto, *or any attempt, conspiracy or solicitation as defined in*
11 *K.S.A. 21-3301, 21-3302 or 21-3303, and amendments thereto, to commit*
12 *a felony violation of K.S.A. 65-4160 or 65-4162, and amendments thereto,*
13 the court shall require the defendant who meets the requirements estab-
14 lished in K.S.A. 2004 Supp. 21-4729, and amendments thereto, to partic-
15 ipate in a certified drug abuse treatment program, as provided in K.S.A.
16 2004 Supp. 75-52,144, and amendments thereto, including but not lim-
17 ited to, an approved after-care plan. If the defendant fails to participate
18 in or has a pattern of intentional conduct that demonstrates the offender's
19 refusal to comply with or participate in the treatment program, as estab-
20 lished by judicial finding, the defendant shall be subject to revocation of
21 probation and the defendant shall serve the underlying prison sentence
22 as established in K.S.A. 21-4705, and amendments thereto. For those
23 offenders who are convicted on or after the effective date of this act, upon
24 completion of the underlying prison sentence, the defendant shall not be
25 subject to a period of postrelease supervision. The amount of time spent
26 participating in such program shall not be credited as service on the un-
27 derlying prison sentence. *The court, in its discretion, may sentence a*
28 *defendant who meets the requirements of K.S.A. 2004 Supp. 21-4729, and*
29 *amendments thereto, as otherwise provided by law and no participation*
30 *in a certified drug abuse treatment program may be imposed hereunder*
31 *if the defendant is a resident of another state or is not lawfully present in*
32 *the United States.*

33 Sec. 2. K.S.A. 2004 Supp. 21-4729 is hereby amended to read as
34 follows: 21-4729. On and after November 1, 2003: (a) There is hereby
35 established a nonprison sanction of certified drug abuse treatment pro-
36 grams for certain offenders who are sentenced on or after November 1,
37 2003. Placement of offenders in certified drug abuse treatment programs
38 by the court shall be limited to placement of adult offenders, convicted
39 of a felony violation of K.S.A. 65-4160 or 65-4162, and amendments
40 thereto, *or any attempt, conspiracy or solicitation as defined in K.S.A.*
41 *21-3301, 21-3302 or 21-3303, and amendments thereto, to commit a fel-*
42 *ony violation of K.S.A. 65-4160 or 65-4162, and amendments thereto, and*
43 *such felony violation is the only crime of conviction or the most severe*

1 *crime of conviction if such person is convicted of two or more crimes*
2 *based on the same acts or transactions:*

3 (1) Whose offense is classified in grid blocks 4-E, 4-F, 4-G, 4-H or
4 4-I of the sentencing guidelines grid for drug crimes and such offender
5 has no felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163
6 or 65-4164, and amendments thereto; *or any attempt, conspiracy or so-*
7 *licitation as defined in K.S.A. 21-3301, 21-3302 or 21-3303, and amend-*
8 *ments thereto, to commit a felony violation of K.S.A. 65-4142, 65-4159,*
9 *65-4161, 65-4163 or 65-4164, and amendments thereto;* or any substan-
10 tially similar offense from another jurisdiction; or

11 (2) whose offense is classified in grid blocks 4-A, 4-B, 4-C or 4-D of
12 the sentencing guidelines grid for drug crimes and such offender has no
13 felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-
14 4164, and amendments thereto; *or any attempt, conspiracy or solicitation*
15 *as defined in K.S.A. 21-3301, 21-3302 or 21-3303, and amendments*
16 *thereto, to commit a felony violation of K.S.A. 65-4142, 65-4159, 65-4161,*
17 *65-4163 or 65-4164, and amendments thereto;* or any substantially similar
18 offense from another jurisdiction, if such person felonies committed by
19 the offender were severity level 8, 9 or 10 or nongrid offenses of the
20 sentencing guidelines grid for nondrug crimes and the court finds and
21 sets forth with particularity the reasons for finding that the safety of the
22 members of the public will not be jeopardized by such placement in a
23 drug abuse treatment program.

24 (b) (1) As a part of the presentence investigation pursuant to K.S.A.
25 21-4714, and amendments thereto, offenders who meet the requirements
26 of subsection (a) shall be subject to a drug abuse assessment.

27 (2) The drug abuse assessment shall include a statewide, mandatory,
28 standardized risk assessment tool and an instrument validated for drug
29 abuse treatment program placements and shall include a clinical interview
30 with a mental health professional. Such assessment shall assign a high or
31 low risk status to the offender and include a recommendation concerning
32 drug abuse treatment for the offender.

33 (c) The sentencing court shall commit the offender to treatment in a
34 drug abuse treatment program until determined suitable for discharge by
35 the court but the term of treatment shall not exceed 18 months.

36 (d) Offenders shall be supervised by community correctional services.

37 (e) Placement of offenders under subsection (a)(2) shall be subject
38 to the departure sentencing statutes of the Kansas sentencing guidelines
39 act.

40 (f) (1) Offenders in drug abuse treatment programs shall be dis-
41 charged from such program if the offender:

42 (A) Is convicted of a new felony, other than a felony conviction of
43 K.S.A. 65-4160 or 65-4162, and amendments thereto; or

1 (B) has a pattern of intentional conduct that demonstrates the of-
2 fender's refusal to comply with or participate in the treatment program,
3 as established by judicial finding.

4 (2) Offenders who are discharged from such program shall be subject
5 to the revocation provisions of subsection (n) of K.S.A. 21-4603d, and
6 amendments thereto.

7 (g) As used in this section, "mental health professional" includes li-
8 censed social workers, licensed psychiatrists, licensed psychologists, li-
9 censed professional counselors or registered alcohol and other drug abuse
10 counselors licensed or certified as addiction counselors who have been
11 certified by the secretary of corrections to treat offenders pursuant to
12 K.S.A. 2004 Supp. 75-52,144, and amendments thereto.

13 Sec. 3. K.S.A. 2004 Supp. 21-4603d and 21-4729 are hereby
14 repealed.

15 Sec. 4. This act shall take effect and be in force from and after its
16 publication in the statute book.