

SENATE BILL No. 182

By Committee on Judiciary

2-3

9 AN ACT concerning crimes, punishment and criminal procedure;
10 amending K.S.A. 2004 Supp. 21-4603d and repealing the existing
11 section.
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; *or repay the amount of any*
18*medical costs and expenses incurred by any law enforcement agency or*
19*county*. Such repayment of the amount of any such costs and expenses
20incurred by a *county*, law enforcement agency, fire district, fire depart-
21ment or fire company or any public funds utilized by a law enforcement
22agency shall be deposited and credited to the same fund from which the
23public funds were credited to prior to use by the *county*, law enforcement
24agency, fire district, fire department or fire company;
- 25 (9) order the defendant to pay the administrative fee authorized by
26K.S.A. 2004 Supp. 22-4529 and amendments thereto, unless waived by
27the court;
- 28 (10) order the defendant to pay a domestic violence special program
29fee authorized by K.S.A. 2004 Supp.20-369, and amendments thereto;
- 30 (11) impose any appropriate combination of (1), (2), (3), (4), (5), (6),
31(7), (8), (9) and (10); or
- 32 (12) suspend imposition of sentence in misdemeanor cases.
- 33 (b) (1) In addition to or in lieu of any of the above, the court shall
34order the defendant to pay restitution, which shall include, but not be
35limited to, damage or loss caused by the defendant's crime, unless the
36court finds compelling circumstances which would render a plan of res-
37titution unworkable. If the court finds a plan of restitution unworkable,
38the court shall state on the record in detail the reasons therefor.
- 39 (2) If the court orders restitution, the restitution shall be a judgment
40against the defendant which may be collected by the court by garnishment
41or other execution as on judgments in civil cases. If, after 60 days from
42the date restitution is ordered by the court, a defendant is found to be in
43noncompliance with the plan established by the court for payment of

1 restitution, and the victim to whom restitution is ordered paid has not
2 initiated proceedings in accordance with K.S.A. 2004 Supp. 60-4301 *et*
3 *seq.* and amendments thereto, the court shall assign an agent procured
4 by the attorney general pursuant to K.S.A. 75-719 and amendments
5 thereto to collect the restitution on behalf of the victim. The administra-
6 tive judge of each judicial district may assign such cases to an appropriate
7 division of the court for the conduct of civil collection proceedings.

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

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

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

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

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

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

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

43 (i) In addition to any of the above, the court shall order the defendant

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

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

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

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

1 to the sentencing court and the county or district attorney. The inmate
2 shall then be assigned by the court to six months of follow-up supervision
3 conducted by the appropriate community corrections services program.
4 The court may also order that supervision continue thereafter for the
5 length of time authorized by K.S.A. 21-4611 and amendments thereto.

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

9 (n) Except as provided by subsection (f) of K.S.A. 21-4705, and
10 amendments thereto, in addition to any of the above, for felony violations
11 of K.S.A. 65-4160 or 65-4162, and amendments thereto, the court shall
12 require the defendant who meets the requirements established in K.S.A.
13 2004 Supp. 21-4729, and amendments thereto, to participate in a certified
14 drug abuse treatment program, as provided in K.S.A. 2004 Supp. 75-
15 52,144, and amendments thereto, including but not limited to, an ap-
16 proved after-care plan. If the defendant fails to participate in or has a
17 pattern of intentional conduct that demonstrates the offender's refusal to
18 comply with or participate in the treatment program, as established by
19 judicial finding, the defendant shall be subject to revocation of probation
20 and the defendant shall serve the underlying prison sentence as estab-
21 lished in K.S.A. 21-4705, and amendments thereto. For those offenders
22 who are convicted on or after the effective date of this act, upon com-
23 pletion of the underlying prison sentence, the defendant shall not be
24 subject to a period of postrelease supervision. The amount of time spent
25 participating in such program shall not be credited as service on the un-
26 derlying prison sentence.

27 Sec. 2. K.S.A. 2004 Supp. 21-4603d is hereby repealed.

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