

## SENATE BILL No. 224

By Senator Journey

2-8

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9 AN ACT concerning crimes and punishment; relating to sentencing;  
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. 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) *commit the defendant to the custody of the secretary of correc-*  
29*tions if the current crime of conviction is a felony, the sentence presumes*  
30*imprisonment, and within 120 days after the sentence is imposed a party*  
31*to the action has filed a motion to impose a dispositional or durational*  
32*departure. If such a motion is filed, the court may modify such sentence*  
33*by directing that a less severe penalty be imposed in lieu of that originally*  
34*adjudged within statutory limits unless the court finds and sets forth with*  
35*particularity the reasons for finding that the safety of members of the*  
36*public will be jeopardized or that the welfare of the offender will not be*  
37*served by such modifications.*

38 (12) impose any appropriate combination of (1), (2), (3), (4), (5), (6),  
39(7), (8), (9) and (10); or

40 ~~(12)~~ (13) suspend imposition of sentence in misdemeanor cases.

41 (b) (1) In addition to or in lieu of any of the above, the court shall  
42order the defendant to pay restitution, which shall include, but not be  
43limited to, damage or loss caused by the defendant's crime, unless the

1 court finds compelling circumstances which would render a plan of res-  
2 titution unworkable. If the court finds a plan of restitution unworkable,  
3 the court shall state on the record in detail the reasons therefor.

4 (2) If the court orders restitution, the restitution shall be a judgment  
5 against the defendant which may be collected by the court by garnishment  
6 or other execution as on judgments in civil cases. If, after 60 days from  
7 the date restitution is ordered by the court, a defendant is found to be in  
8 noncompliance with the plan established by the court for payment of  
9 restitution, and the victim to whom restitution is ordered paid has not  
10 initiated proceedings in accordance with K.S.A. 2004 Supp. 60-4301 *et*  
11 *seq.* and amendments thereto, the court shall assign an agent procured  
12 by the attorney general pursuant to K.S.A. 75-719 and amendments  
13 thereto to collect the restitution on behalf of the victim. The administra-  
14 tive judge of each judicial district may assign such cases to an appropriate  
15 division of the court for the conduct of civil collection proceedings.

16 (c) In addition to or in lieu of any of the above, the court shall order  
17 the defendant to submit to and complete an alcohol and drug evaluation,  
18 and pay a fee therefor, when required by subsection (4) of K.S.A. 21-  
19 4502 and amendments thereto.

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

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

43 (f) When a new felony is committed while the offender is incarcer-

1 ated and serving a sentence for a felony or while the offender is on pro-  
2 bation, assignment to a community correctional services program, parole,  
3 conditional release, or postrelease supervision for a felony, a new sentence  
4 shall be imposed pursuant to the consecutive sentencing requirements of  
5 K.S.A. 21-4608, and amendments thereto, and the court may sentence  
6 the offender to imprisonment for the new conviction, even when the new  
7 crime of conviction otherwise presumes a nonprison sentence. In this  
8 event, imposition of a prison sentence for the new crime does not con-  
9 stitute a departure. When a new felony is committed while the offender  
10 is on release for a felony pursuant to the provisions of article 28 of chapter  
11 22 of the Kansas Statutes Annotated, a new sentence may be imposed  
12 pursuant to the consecutive sentencing requirements of K.S.A. 21-4608  
13 and amendments thereto, and the court may sentence the offender to  
14 imprisonment for the new conviction, even when the new crime of con-  
15 viction otherwise presumes a nonprison sentence. In this event, imposi-  
16 tion of a prison sentence for the new crime does not constitute a  
17 departure.

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

1 states on the record the reasons for not placing the defendant in a con-  
2 servation camp or a community intermediate sanction center.

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

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

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

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

37 (l) The secretary of corrections is authorized to make direct place-  
38 ment to the Labette correctional conservation camp or a conservation  
39 camp established by the secretary pursuant to K.S.A. 75-52,127, and  
40 amendments thereto, of an inmate sentenced to the secretary's custody  
41 if the inmate: (1) Has been sentenced to the secretary for a probation  
42 revocation, as a departure from the presumptive nonimprisonment grid  
43 block of either sentencing grid, for an offense which is classified in grid

1 blocks 5-H, 5-I, or 6-G of the sentencing guidelines grid for nondrug  
2 crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing  
3 guidelines grid for drug crimes, or for an offense which is classified in  
4 gridblocks 4-E or 4-F of the sentencing guidelines grid for drug crimes  
5 and such offense does not meet the requirements of K.S.A. 2004 Supp.  
6 21-4729, and amendments thereto, and (2) otherwise meets admission  
7 criteria of the camp. If the inmate successfully completes a conservation  
8 camp program, the secretary of corrections shall report such completion  
9 to the sentencing court and the county or district attorney. The inmate  
10 shall then be assigned by the court to six months of follow-up supervision  
11 conducted by the appropriate community corrections services program.  
12 The court may also order that supervision continue thereafter for the  
13 length of time authorized by K.S.A. 21-4611 and amendments thereto.

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

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

35 (o) (1) *In those cases in which the court revokes an order of probation*  
36 *or assignment to community corrections due to a violation of the terms*  
37 *and conditions of such order and the court orders the offender committed*  
38 *to the custody of the secretary of corrections to serve the offender's un-*  
39 *derlying sentence pursuant to this section the court shall retain jurisdic-*  
40 *tion for up to 120 days to modify the sentence or the order of revocation*  
41 *and may, upon motion of one of the party's, reinstate probation or as-*  
42 *ignment to community corrections, according to the orders' original*  
43 *terms and conditions or with additional terms and conditions, unless the*

1 *court finds that the safety of members of the public will be jeopardized*  
2 *or that the welfare of the inmate will not be served by such modification*  
3 *or reinstatement.*

4 (2) *If the offender is reinstated on probation or assignment to com-*  
5 *munity corrections pursuant to paragraph (1), and the offender on a sec-*  
6 *ond occurrence violates the terms and conditions of such reinstated pro-*  
7 *bation or assignment to community corrections, the court may order the*  
8 *offender committed to the custody of the secretary of corrections to serve*  
9 *the offender's underlying sentence pursuant to this section.*

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

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

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