

SENATE BILL No. 37

By Committee on Judiciary

1-19

1 AN ACT concerning crimes, punishment and criminal procedure;
2 relating to sentencing; payment of fines; employment of county and
3 city prisoners; amending K.S.A. 22-4603 and section 244 of chapter
4 136 of the 2010 Session Laws of Kansas and repealing the existing
5 sections; also repealing K.S.A. 2009 Supp. 21-4603d, as amended
6 by section 7 of chapter 101 of the 2010 Session Laws of Kansas, and
7 K.S.A. 2010 Supp. 21-4603d.
8

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

10 Section 1. K.S.A. 22-4603 is hereby amended to read as follows:
11 22-4603. (1) Whenever any able-bodied prisoner is confined in the
12 county jail or the jail of any town or city, having been convicted of a
13 misdemeanor or of a violation of an ordinance of such town or city, the
14 sheriff of such county, or the marshal or the chief of police of such
15 town or city, under the direction of the county commissioners or the
16 governing body of the town or city, may ~~cause~~ *allow* such persons to
17 work at suitable public *or charitable* employment for not ~~to exceed~~
18 *more than* eight hours on each working day.

19 (2) A person so employed shall ~~be given credit at the rate of five~~
20 ~~dollars a day on any fine and costs imposed upon him.~~ *receive a credit*
21 *on any fine and costs imposed in an amount equal to \$5 for each full*
22 *hour spent by the person in the specified work.*

23 (3) Persons held in jail and awaiting trial or held on civil process,
24 may, with their consent, be likewise so employed and shall receive *a*
25 *credit on any fines and costs in an amount equal to \$5 for each full*
26 *hour spent by the person in the specified work, or if there are no such*
27 *fines and costs, compensation at the rate of five dollars a day for such*
28 *employment in an amount agreed to by the person and the city or*
29 *county, but not less than \$5 a day, to be paid by the city or the county.*

30 (4) Any prisoner employed as above provided, shall continue to be
31 deemed prisoners during the hours of their employment and subject to
32 all laws, rules and regulations relating to prisoners.

33 Sec. 2. Section 244 of chapter 136 of the 2010 Session Laws of

1 Kansas is hereby amended to read as follows: Sec. 244. (a) Whenever
2 any person has been found guilty of a crime, the court may adjudge any
3 of the following:

4 (1) Commit the defendant to the custody of the secretary of
5 corrections if the current crime of conviction is a felony and the
6 sentence presumes imprisonment, or the sentence imposed is a
7 dispositional departure to imprisonment; or, if confinement is for a
8 misdemeanor, to jail for the term provided by law;

9 (2) impose the fine applicable to the offense *and may impose the*
10 *provisions of subsection (q)*;

11 (3) release the defendant on probation if the current crime of
12 conviction and criminal history fall within a presumptive nonprison
13 category or through a departure for substantial and compelling reasons
14 subject to such conditions as the court may deem appropriate. In felony
15 cases except for violations of K.S.A. 8-1567, and amendments thereto,
16 the court may include confinement in a county jail not to exceed 60
17 days, which need not be served consecutively, as a condition of an
18 original probation sentence and up to 60 days in a county jail upon each
19 revocation of the probation sentence, or community corrections
20 placement;

21 (4) assign the defendant to a community correctional services
22 program as provided in K.S.A. 75-5291, and amendments thereto, or
23 through a departure for substantial and compelling reasons subject to
24 such conditions as the court may deem appropriate, including orders
25 requiring full or partial restitution;

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

31 (6) assign the defendant to a house arrest program pursuant to
32 section 249 *of chapter 136 of the 2010 Session Laws of Kansas*, and
33 amendments thereto;

34 (7) order the defendant to attend and satisfactorily complete an
35 alcohol or drug education or training program as provided by
36 subsection (c) of section 242 *of chapter 136 of the 2010 Session Laws*
37 *of Kansas*, and amendments thereto;

38 (8) order the defendant to repay the amount of any reward paid by
39 any crime stoppers chapter, individual, corporation or public entity

1 which materially aided in the apprehension or conviction of the
2 defendant; repay the amount of any costs and expenses incurred by any
3 law enforcement agency in the apprehension of the defendant, if one of
4 the current crimes of conviction of the defendant includes escape **from**
5 **custody** or aggravated escape **from custody**, as defined in section 136
6 *of chapter 136 of the 2010 Session Laws of Kansas*, and amendments
7 thereto; repay expenses incurred by a fire district, fire department or
8 fire company responding to a fire which has been determined to be
9 arson ~~under~~ **or aggravated arson as defined in** section 98 *of chapter*
10 *136 of the 2010 Session Laws of Kansas*, and amendments thereto, if
11 the defendant is convicted of such crime; repay the amount of any
12 public funds utilized by a law enforcement agency to purchase
13 controlled substances from the defendant during the investigation
14 which leads to the defendant's conviction; or repay the amount of any
15 medical costs and expenses incurred by any law enforcement agency or
16 county. Such repayment of the amount of any such costs and expenses
17 incurred by a county, law enforcement agency, fire district, fire
18 department or fire company or any public funds utilized by a law
19 enforcement agency shall be deposited and credited to the same fund
20 from which the public funds were credited to prior to use by the county,
21 law enforcement agency, fire district, fire department or fire company;
22 (9) order the defendant to pay the administrative fee authorized by
23 K.S.A. 22-4529, and amendments thereto, unless waived by the court;
24 (10) order the defendant to pay a domestic violence special
25 program fee authorized by K.S.A. 20-369, and amendments thereto;
26 (11) *if the defendant is convicted of a misdemeanor or convicted*
27 *of a felony provision of specified in subsection (i) of section 285 of*
28 *chapter 136 of the 2010 Session Laws of Kansas, and amendments*
29 *thereto, assign the defendant to a work release program, other than a*
30 *program at a correctional institution under the control of the secretary*
31 *of corrections as defined in K.S.A. 75-5202, and amendments thereto,*
32 *provided such work release program requires such defendant to return*
33 *to confinement at the end of each day in the work release program;*
34 ~~(12)~~ (12) impose any appropriate combination of (1), (2), (3), (4),
35 (5), (6), (7), (8), (9) ~~and~~, (10) *and* (11); or
36 ~~(13)~~ (13) suspend imposition of sentence in misdemeanor cases.
37 (b) (1) In addition to or in lieu of any of the above, the court shall
38 order the defendant to pay restitution, which shall include, but not be
39 limited to, damage or loss caused by the defendant's crime, unless the

1 court finds compelling circumstances which would render a plan of
2 restitution unworkable. In regard to a violation of section 177 of
3 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments
4 thereto, such damage or loss shall include, but not be limited to,
5 attorney fees and costs incurred to repair the credit history or rating of
6 the person whose personal identification documents were obtained and
7 used in violation of such section, and to satisfy a debt, lien or other
8 obligation incurred by the person whose personal identification
9 documents were obtained and used in violation of such section. If the
10 court finds a plan of restitution unworkable, the court shall state on the
11 record in detail the reasons therefor.

12 (2) If the court orders restitution, the restitution shall be a
13 judgment against the defendant which may be collected by the court by
14 garnishment or other execution as on judgments in civil cases. If, after
15 60 days from the date restitution is ordered by the court, a defendant is
16 found to be in noncompliance with the plan established by the court for
17 payment of restitution, and the victim to whom restitution is ordered
18 paid has not initiated proceedings in accordance with K.S.A. 60-4301
19 et seq., and amendments thereto, the court shall assign an agent
20 procured by the attorney general pursuant to K.S.A. 75-719, and
21 amendments thereto, to collect the restitution on behalf of the victim.
22 The ~~administrative~~ **chief** judge of each judicial district may assign such
23 cases to an appropriate division of the court for the conduct of civil
24 collection proceedings.

25 (c) In addition to or in lieu of any of the above, the court shall
26 order the defendant to submit to and complete an alcohol and drug
27 evaluation, and pay a fee therefor, when required by subsection (d) of
28 section 242 of *chapter 136 of the 2010 Session Laws of Kansas*, and
29 amendments thereto.

30 (d) In addition to any of the above, the court shall order the
31 defendant to reimburse the county general fund for all or a part of the
32 expenditures by the county to provide counsel and other defense
33 services to the defendant. Any such reimbursement to the county shall
34 be paid only after any order for restitution has been paid in full. In
35 determining the amount and method of payment of such sum, the court
36 shall take account of the financial resources of the defendant and the
37 nature of the burden that payment of such sum will impose. A
38 defendant who has been required to pay such sum and who is not
39 willfully in default in the payment thereof may at any time petition the

1 court which sentenced the defendant to waive payment of such sum or
2 any unpaid portion thereof. If it appears to the satisfaction of the court
3 that payment of the amount due will impose manifest hardship on the
4 defendant or the defendant's immediate family, the court may waive
5 payment of all or part of the amount due or modify the method of
6 payment.

7 (e) ~~In imposing a fine the court may authorize the payment thereof~~
8 ~~in installments.~~ In releasing a defendant on probation, the court shall
9 direct that the defendant be under the supervision of a court services
10 officer. If the court commits the defendant to the custody of the
11 secretary of corrections or to jail, the court may specify in its order the
12 amount of restitution to be paid and the person to whom it shall be paid
13 if restitution is later ordered as a condition of parole, conditional
14 release or postrelease supervision.

15 (f) (1) When a new felony is committed while the offender is
16 incarcerated and serving a sentence for a felony, or while the offender
17 is on probation, assignment to a community correctional services
18 program, parole, conditional release or postrelease supervision for a
19 felony, a new sentence shall be imposed pursuant to the consecutive
20 sentencing requirements of section 246 of chapter 136 of the 2010
21 *Session Laws of Kansas*, and amendments thereto, and the court may
22 sentence the offender to imprisonment for the new conviction, even
23 when the new crime of conviction otherwise presumes a nonprison
24 sentence. In this event, imposition of a prison sentence for the new
25 crime does not constitute a departure.

26 (2) When a new felony is committed while the offender is
27 incarcerated in a juvenile correctional facility pursuant to K.S.A. 38-
28 1671, prior to its repeal, or K.S.A. ~~2009~~ 2010 Supp. 38-2373, and
29 amendments thereto, for an offense, which if committed by an adult
30 would constitute the commission of a felony, upon conviction, the court
31 shall sentence the offender to imprisonment for the new conviction,
32 even when the new crime of conviction otherwise presumes a
33 nonprison sentence. In this event, imposition of a prison sentence for
34 the new crime does not constitute a departure. The conviction shall
35 operate as a full and complete discharge from any obligations, except
36 for an order of restitution, imposed on the offender arising from the
37 offense for which the offender was committed to a juvenile correctional
38 facility.

39 (3) When a new felony is committed while the offender is on

1 release for a felony pursuant to the provisions of article 28 of chapter
2 22 of the Kansas Statutes Annotated, and amendments thereto, or
3 similar provisions of the laws of another jurisdiction, a new sentence
4 may be imposed pursuant to the consecutive sentencing requirements of
5 section 246 of chapter 136 of the 2010 Session Laws of Kansas, and
6 amendments thereto, and the court may sentence the offender to
7 imprisonment for the new conviction, even when the new crime of
8 conviction otherwise presumes a nonprison sentence. In this event,
9 imposition of a prison sentence for the new crime does not constitute a
10 departure.

11 (g) Prior to imposing a dispositional departure for a defendant
12 whose offense is classified in the presumptive nonprison grid block of
13 either sentencing guideline grid, prior to sentencing a defendant to
14 incarceration whose offense is classified in grid blocks 5-H, 5-I or 6-G
15 of the sentencing guidelines grid for nondrug crimes or in grid blocks
16 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug
17 crimes, prior to sentencing a defendant to incarceration whose offense
18 is classified in grid blocks 4-E or 4-F of the sentencing guideline grid
19 for drug crimes and whose offense does not meet the requirements of
20 section 305 of chapter 136 of the 2010 Session Laws of Kansas, and
21 amendments thereto, prior to revocation of a nonprison sanction of a
22 defendant whose offense is classified in grid blocks 4-E or 4-F of the
23 sentencing guideline grid for drug crimes and whose offense does not
24 meet the requirements of section 305 of chapter 136 of the 2010
25 Session Laws of Kansas, and amendments thereto, or prior to
26 revocation of a nonprison sanction of a defendant whose offense is
27 classified in the presumptive nonprison grid block of either sentencing
28 guideline grid or grid blocks 5-H, 5-I or 6-G of the sentencing
29 guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H
30 or 3-I of the sentencing guidelines grid for drug crimes, the court shall
31 consider placement of the defendant in the Labette correctional
32 conservation camp, conservation camps established by the secretary of
33 corrections pursuant to K.S.A. 75-52,127, and amendment thereto, or a
34 community intermediate sanction center. Pursuant to this paragraph the
35 defendant shall not be sentenced to imprisonment if space is available
36 in a conservation camp or a community intermediate sanction center
37 and the defendant meets all of the conservation camp's or a community
38 intermediate sanction center's placement criteria unless the court states
39 on the record the reasons for not placing the defendant in a

1 conservation camp or a community intermediate sanction center.

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

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

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

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

36 (l) The secretary of corrections is authorized to make direct
37 placement to the Labette correctional conservation camp or a
38 conservation camp established by the secretary pursuant to K.S.A. 75-
39 52,127, and amendments thereto, of an inmate sentenced to the

1 secretary's custody if the inmate: (1) Has been sentenced to the
2 secretary for a probation revocation, as a departure from the
3 presumptive nonimprisonment grid block of either sentencing grid, for
4 an offense which is classified in grid blocks 5-H, 5-I, or 6-G of the
5 sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-
6 F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes, or
7 for an offense which is classified in grid blocks 4-E or 4-F of the
8 sentencing guidelines grid for drug crimes and such offense does not
9 meet the requirements of section 305 *of chapter 136 of the 2010*
10 *Session Laws of Kansas*, and amendments thereto, and (2) otherwise
11 meets admission criteria of the camp. If the inmate successfully
12 completes a conservation camp program, the secretary of corrections
13 shall report such completion to the sentencing court and the county or
14 district attorney. The inmate shall then be assigned by the court to six
15 months of follow-up supervision conducted by the appropriate
16 community corrections services program. The court may also order that
17 supervision continue thereafter for the length of time authorized by
18 section ~~305~~ **248 of chapter 136 of the 2010 Session Laws of Kansas**,
19 and amendments thereto.

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

23 (n) Except as provided by subsection (f) of section 286 *of chapter*
24 *136 of the 2010 Session Laws of Kansas*, and amendments thereto, in
25 addition to any of the above, for felony violations of K.S.A. ~~2009~~ **2010**
26 Supp. 21-36a06, and amendments thereto, the court shall require the
27 defendant who meets the requirements established in section 305 *of*
28 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments
29 thereto, to participate in a certified drug abuse treatment program, as
30 provided in K.S.A. ~~2009~~ **2010** Supp. 75-52,144, and amendments
31 thereto, including, but not limited to, an approved after-care plan. If the
32 defendant fails to participate in or has a pattern of intentional conduct
33 that demonstrates the offender's refusal to comply with or participate in
34 the treatment program, as established by judicial finding, the defendant
35 shall be subject to revocation of probation and the defendant shall serve
36 the underlying prison sentence as established in section ~~305~~ **286 of**
37 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments
38 thereto. For those offenders who are convicted on or ~~after the effective~~
39 ~~date of this act~~ **July 1, 2003**, upon completion of the underlying prison

1 sentence, the defendant shall not be subject to a period of postrelease
2 supervision. The amount of time spent participating in such program
3 shall not be credited as service on the underlying prison sentence.

4 (o) (1) Except as provided in paragraph (3), in addition to any
5 other penalty or disposition imposed by law, upon a conviction for
6 unlawful possession of a controlled substance or controlled substance
7 analog in violation of K.S.A. ~~2009~~ 2010 Supp. 21-36a06, and
8 amendments thereto, in which the trier of fact makes a finding that the
9 unlawful possession occurred while transporting the controlled
10 substance or controlled substance analog in any vehicle upon a
11 highway or street, the offender's driver's license or privilege to operate
12 a motor vehicle on the streets and highways of this state shall be
13 suspended for one year.

14 (2) Upon suspension of a license pursuant to this subsection, the
15 court shall require the person to surrender the license to the court,
16 which shall transmit the license to the division of motor vehicles of the
17 department of revenue, to be retained until the period of suspension
18 expires. At that time, the licensee may apply to the division for return
19 of the license. If the license has expired, the person may apply for a
20 new license, which shall be issued promptly upon payment of the
21 proper fee and satisfaction of other conditions established by law for
22 obtaining a license unless another suspension or revocation of the
23 person's privilege to operate a motor vehicle is in effect.

24 (3) (A) In lieu of suspending the driver's license or privilege to
25 operate a motor vehicle on the highways of this state of any person as
26 provided in paragraph (1), the judge of the court in which such person
27 was convicted may enter an order which places conditions on such
28 person's privilege of operating a motor vehicle on the highways of this
29 state, a certified copy of which such person shall be required to carry
30 any time such person is operating a motor vehicle on the highways of
31 this state. Any such order shall prescribe the duration of the conditions
32 imposed, which in no event shall be for a period of more than one year.

33 (B) Upon entering an order restricting a person's license
34 hereunder, the judge shall require such person to surrender such
35 person's driver's license to the judge who shall cause it to be transmitted
36 to the division of vehicles, together with a copy of the order. Upon
37 receipt thereof, the division of vehicles shall issue without charge a
38 driver's license which shall indicate on its face that conditions have
39 been imposed on such person's privilege of operating a motor vehicle

1 and that a certified copy of the order imposing such conditions is
2 required to be carried by the person for whom the license was issued
3 any time such person is operating a motor vehicle on the highways of
4 this state. If the person convicted is a nonresident, the judge shall cause
5 a copy of the order to be transmitted to the division and the division
6 shall forward a copy of it to the motor vehicle administrator, of such
7 person's state of residence. Such judge shall furnish to any person
8 whose driver's license has had conditions imposed on it under this
9 paragraph a copy of the order, which shall be recognized as a valid
10 Kansas driver's license until such time as the division shall issue the
11 restricted license provided for in this paragraph.

12 (C) Upon expiration of the period of time for which conditions are
13 imposed pursuant to this subsection, the licensee may apply to the
14 division for the return of the license previously surrendered by such
15 licensee. In the event such license has expired, such person may apply
16 to the division for a new license, which shall be issued immediately by
17 the division upon payment of the proper fee and satisfaction of the
18 other conditions established by law, unless such person's privilege to
19 operate a motor vehicle on the highways of this state has been
20 suspended or revoked prior thereto. If any person shall violate any of
21 the conditions imposed under this paragraph, such person's driver's
22 license or privilege to operate a motor vehicle on the highways of this
23 state shall be revoked for a period of not less than 60 days nor more
24 than one year by the judge of the court in which such person is
25 convicted of violating such conditions.

26 (4) As used in this subsection, "highway" and "street" ~~have the~~
27 ~~meanings provided by~~ **means the same as in** K.S.A. 8-1424 and 8-
28 1473, and amendments thereto.

29 (p) *In addition to any of the above, for any criminal offense that*
30 *includes the domestic violence designation pursuant to section 1 of*
31 *chapter 101 of the 2010 Session Laws of Kansas, and amendments*
32 *thereto, the court shall require the defendant to undergo a domestic*
33 *violence offender assessment and follow all recommendations unless*
34 *otherwise ordered by the court or the department of corrections. The*
35 *court may order a domestic violence offender assessment and any other*
36 *evaluation prior to sentencing if the assessment or evaluation would*
37 *assist the court in determining an appropriate sentence. The entity*
38 *completing the assessment or evaluation shall provide the assessment*
39 *or evaluation and recommendations to the court and the court shall*

1 *provide the domestic violence assessment and any other evaluation to*
2 *any entity responsible for supervising such defendant. A defendant*
3 *ordered to undergo a domestic violence offender assessment shall be*
4 *required to pay for the assessment and, unless otherwise ordered by the*
5 *court or the department of corrections, for completion of all*
6 *recommendations.*

7 *(q) In imposing a fine, the court may authorize the payment*
8 *thereof in installments. In lieu of payment of any fine imposed, the*
9 *court may order that the person perform community service specified*
10 *by the court. The person shall receive a credit on the fine imposed in an*
11 *amount equal to \$5 for each full hour spent by the person in the*
12 *specified community service. The community service ordered by the*
13 *court shall be required to be performed by the later of one year after*
14 *the fine is imposed or one year after release from imprisonment or jail,*
15 *or by an earlier date specified by the court. If by the required date the*
16 *person performs an insufficient amount of community service to reduce*
17 *to zero the portion of the fine required to be paid by the person, the*
18 *remaining balance of the fine shall become due on that date. If*
19 *conditional reduction of any fine is rescinded by the court for any*
20 *reason, then pursuant to the court's order the person may be ordered to*
21 *perform community service by one year after the date of such*
22 *rescission or by an earlier date specified by the court. If by the*
23 *required date the person performs an insufficient amount of community*
24 *service to reduce to zero the portion of the fine required to be paid by*
25 *the person, the remaining balance of the fine shall become due on that*
26 *date. All credits for community service shall be subject to review and*
27 *approval by the court.*

28 *Sec. 3. K.S.A. 22-4603 and K.S.A. 2009 Supp. 21-4603d, as*
29 *amended by section 7 of chapter 101 of the 2010 Session Laws of*
30 *Kansas, and K.S.A. 2010 Supp. 21-4603d and section 244 of chapter*
31 *136 of the 2010 Session Laws of Kansas are hereby repealed.*

32 *Sec. 4. This act shall take effect and be in force from and after its*
33 *publication in the statute book.*