

SENATE BILL No. 37

By Committee on Judiciary

1-19

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to sentencing; payment of fines; employment of county and city
3 prisoners; amending K.S.A. 22-4603 and section 244 of chapter 136 of
4 the 2010 Session Laws of Kansas and repealing the existing sections;
5 also repealing K.S.A. 2009 Supp. 21-4603d, as amended by section 7
6 of chapter 101 of the 2010 Session Laws of Kansas, and K.S.A. 2010
7 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: 22-
11 4603. (1) Whenever any able-bodied prisoner is confined in the county
12 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 town
15 or city, under the direction of the county commissioners or the governing
16 body of the town or city, may ~~cause~~ *allow* such persons to work at
17 suitable public *or charitable* employment for not ~~to exceed~~ *more than*
18 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 on*
21 *any fine and costs imposed in an amount equal to \$5 for each full hour*
22 *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 hour*
26 *spent by the person in the specified work, or if there are no such fines and*
27 *costs, compensation at the rate of five dollars a day for such employment*
28 *in an amount agreed to by the person and the city or county, but not less*
29 *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 all
32 laws, rules and regulations relating to prisoners.

33 Sec. 2. Section 244 of chapter 136 of the 2010 Session Laws of
34 Kansas is hereby amended to read as follows: Sec. 244. (a) Whenever any
35 person has been found guilty of a crime, the court may adjudge any of the
36 following:

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

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

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

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

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

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

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

35 (8) order the defendant to repay the amount of any reward paid by
36 any crime stoppers chapter, individual, corporation or public entity which
37 materially aided in the apprehension or conviction of the defendant; repay
38 the amount of any costs and expenses incurred by any law enforcement
39 agency in the apprehension of the defendant, if one of the current crimes
40 of conviction of the defendant includes escape or aggravated escape, as
41 defined in section 136 *of chapter 136 of the 2010 Session Laws of*
42 *Kansas*, and amendments thereto; repay expenses incurred by a fire
43 district, fire department or fire company responding to a fire which has

1 been determined to be arson under section 98 *of chapter 136 of the 2010*
2 *Session Laws of Kansas*, and amendments thereto, if the defendant is
3 convicted of such crime; repay the amount of any public funds utilized by
4 a law enforcement agency to purchase controlled substances from the
5 defendant during the investigation which leads to the defendant's
6 conviction; or repay the amount of any medical costs and expenses
7 incurred by any law enforcement agency or county. Such repayment of
8 the amount of any such costs and expenses incurred by a county, law
9 enforcement agency, fire district, fire department or fire company or any
10 public funds utilized by a law enforcement agency shall be deposited and
11 credited to the same fund from which the public funds were credited to
12 prior to use by the county, law enforcement agency, fire district, fire
13 department or fire company;

14 (9) order the defendant to pay the administrative fee authorized by
15 K.S.A. 22-4529, and amendments thereto, unless waived by the court;

16 (10) order the defendant to pay a domestic violence special program
17 fee authorized by K.S.A. 20-369, and amendments thereto;

18 (11) *if the defendant is convicted of a misdemeanor or a felony*
19 *provision of subsection (i) of section 285 of chapter 136 of the 2010*
20 *Session Laws of Kansas, and amendments thereto, assign the defendant*
21 *to a work release program, other than a program at a correctional*
22 *institution under the control of the secretary of corrections as defined in*
23 *K.S.A. 75-5202, and amendments thereto, provided such work release*
24 *program requires such defendant to return to confinement at the end of*
25 *each day in the work release program;*

26 ~~(11)~~ (12) impose any appropriate combination of (1), (2), (3), (4),
27 (5), (6), (7), (8), (9) ~~and~~, (10) and (11); or

28 ~~(12)~~ (13) suspend imposition of sentence in misdemeanor cases.

29 (b) (1) In addition to or in lieu of any of the above, the court shall
30 order the defendant to pay restitution, which shall include, but not be
31 limited to, damage or loss caused by the defendant's crime, unless the
32 court finds compelling circumstances which would render a plan of
33 restitution unworkable. In regard to a violation of section 177 *of chapter*
34 *136 of the 2010 Session Laws of Kansas*, and amendments thereto, such
35 damage or loss shall include, but not be limited to, attorney fees and costs
36 incurred to repair the credit history or rating of the person whose personal
37 identification documents were obtained and used in violation of such
38 section, and to satisfy a debt, lien or other obligation incurred by the
39 person whose personal identification documents were obtained and used
40 in violation of such section. If the court finds a plan of restitution
41 unworkable, the court shall state on the record in detail the reasons
42 therefor.

43 (2) If the court orders restitution, the restitution shall be a judgment

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

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

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

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

40 (f) (1) When a new felony is committed while the offender is
41 incarcerated and serving a sentence for a felony, or while the offender is
42 on probation, assignment to a community correctional services program,
43 parole, conditional release or postrelease supervision for a felony, a new

1 sentence shall be imposed pursuant to the consecutive sentencing
2 requirements of section 246 of chapter 136 of the 2010 Session Laws of
3 Kansas, and amendments thereto, and the court may sentence the
4 offender to imprisonment for the new conviction, even when the new
5 crime of conviction otherwise presumes a nonprison sentence. In this
6 event, imposition of a prison sentence for the new crime does not
7 constitute a departure.

8 (2) When a new felony is committed while the offender is
9 incarcerated in a juvenile correctional facility pursuant to K.S.A. 38-
10 1671, prior to its repeal, or K.S.A. ~~2009~~ 2010 Supp. 38-2373, and
11 amendments thereto, for an offense, which if committed by an adult
12 would constitute the commission of a felony, upon conviction, the court
13 shall sentence the offender to imprisonment for the new conviction, even
14 when the new crime of conviction otherwise presumes a nonprison
15 sentence. In this event, imposition of a prison sentence for the new crime
16 does not constitute a departure. The conviction shall operate as a full and
17 complete discharge from any obligations, except for an order of
18 restitution, imposed on the offender arising from the offense for which
19 the offender was committed to a juvenile correctional facility.

20 (3) When a new felony is committed while the offender is on release
21 for a felony pursuant to the provisions of article 28 of chapter 22 of the
22 Kansas Statutes Annotated, and amendments thereto, or similar
23 provisions of the laws of another jurisdiction, a new sentence may be
24 imposed pursuant to the consecutive sentencing requirements of section
25 246 of chapter 136 of the 2010 Session Laws of Kansas, and amendments
26 thereto, and the court may sentence the offender to imprisonment for the
27 new conviction, even when the new crime of conviction otherwise
28 presumes a nonprison sentence. In this event, imposition of a prison
29 sentence for the new crime does not constitute a departure.

30 (g) Prior to imposing a dispositional departure for a defendant whose
31 offense is classified in the presumptive nonprison grid block of either
32 sentencing guideline grid, prior to sentencing a defendant to incarceration
33 whose offense is classified in grid blocks 5-H, 5-I or 6-G of the
34 sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F,
35 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes, prior to
36 sentencing a defendant to incarceration whose offense is classified in grid
37 blocks 4-E or 4-F of the sentencing guideline grid for drug crimes and
38 whose offense does not meet the requirements of section 305 of chapter
39 136 of the 2010 Session Laws of Kansas, and amendments thereto, prior
40 to revocation of a nonprison sanction of a defendant whose offense is
41 classified in grid blocks 4-E or 4-F of the sentencing guideline grid for
42 drug crimes and whose offense does not meet the requirements of section
43 305 of chapter 136 of the 2010 Session Laws of Kansas, and amendments

1 thereto, or prior to revocation of a nonprison sanction of a defendant
2 whose offense is classified in the presumptive nonprison grid block of
3 either sentencing guideline grid or grid blocks 5-H, 5-I or 6-G of the
4 sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F,
5 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes, the
6 court shall consider placement of the defendant in the Labette
7 correctional conservation camp, conservation camps established by the
8 secretary of corrections pursuant to K.S.A. 75-52,127, and amendment
9 thereto, or a community intermediate sanction center. Pursuant to this
10 paragraph the defendant shall not be sentenced to imprisonment if space
11 is available in a conservation camp or a community intermediate sanction
12 center and the defendant meets all of the conservation camp's or a
13 community intermediate sanction center's placement criteria unless the
14 court states on the record the reasons for not placing the defendant in a
15 conservation camp or a community intermediate sanction center.

16 (h) The court in committing a defendant to the custody of the
17 secretary of corrections shall fix a term of confinement within the limits
18 provided by law. In those cases where the law does not fix a term of
19 confinement for the crime for which the defendant was convicted, the
20 court shall fix the term of such confinement.

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

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

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

7 (l) The secretary of corrections is authorized to make direct
8 placement to the Labette correctional conservation camp or a
9 conservation camp established by the secretary pursuant to K.S.A. 75-
10 52,127, and amendments thereto, of an inmate sentenced to the secretary's
11 custody if the inmate: (1) Has been sentenced to the secretary for a
12 probation revocation, as a departure from the presumptive
13 nonimprisonment grid block of either sentencing grid, for an offense
14 which is classified in grid blocks 5-H, 5-I, or 6-G of the sentencing
15 guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or
16 3-I of the sentencing guidelines grid for drug crimes, or for an offense
17 which is classified in grid blocks 4-E or 4-F of the sentencing guidelines
18 grid for drug crimes and such offense does not meet the requirements of
19 section 305 of chapter 136 of the 2010 Session Laws of Kansas, and
20 amendments thereto, and (2) otherwise meets admission criteria of the
21 camp. If the inmate successfully completes a conservation camp program,
22 the secretary of corrections shall report such completion to the sentencing
23 court and the county or district attorney. The inmate shall then be
24 assigned by the court to six months of follow-up supervision conducted
25 by the appropriate community corrections services program. The court
26 may also order that supervision continue thereafter for the length of time
27 authorized by section 305, and amendments thereto.

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

31 (n) Except as provided by subsection (f) of section 286 of chapter
32 136 of the 2010 Session Laws of Kansas, and amendments thereto, in
33 addition to any of the above, for felony violations of K.S.A. ~~2009~~ 2010
34 Supp. 21-36a06, and amendments thereto, the court shall require the
35 defendant who meets the requirements established in section 305 of
36 chapter 136 of the 2010 Session Laws of Kansas, and amendments
37 thereto, to participate in a certified drug abuse treatment program, as
38 provided in K.S.A. ~~2009~~ 2010 Supp. 75-52,144, and amendments thereto,
39 including, but not limited to, an approved after-care plan. If the defendant
40 fails to participate in or has a pattern of intentional conduct that
41 demonstrates the offender's refusal to comply with or participate in the
42 treatment program, as established by judicial finding, the defendant shall
43 be subject to revocation of probation and the defendant shall serve the

1 underlying prison sentence as established in section 305 of *chapter 136 of*
2 *the 2010 Session Laws of Kansas*, and amendments thereto. For those
3 offenders who are convicted on or after the effective date of this act, upon
4 completion of the underlying prison sentence, the defendant shall not be
5 subject to a period of postrelease supervision. The amount of time spent
6 participating in such program shall not be credited as service on the
7 underlying prison sentence.

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

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

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

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

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

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

24 (4) As used in this subsection, "highway" and "street" have the
25 meanings provided by K.S.A. 8-1424 and 8-1473, and amendments
26 thereto.

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

43 *(q) In imposing a fine, the court may authorize the payment thereof*

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

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

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