

As Amended by House Committee

Session of 2005

HOUSE BILL No. 2231

By Representative McCreary

1-31

10 AN ACT concerning crimes, punishment and criminal procedure; relat-
11 ing to the nonprison sanction of a certified drug abuse treatment pro-
12 gram; amending K.S.A. 2004 Supp. 21-4603d and 21-4729 and re-
13 pealing the existing sections.
14

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

16 New Section 1. (a) ~~Persons who were convicted of a felony violation~~
17 ~~of K.S.A. 65-4160 or 65-4162, on or after July 1, 1993, but sentenced~~
18 ~~prior to November 1, 2003, and who meet the requirements of K.S.A.~~
19 ~~2004 Supp. 21-4729, and amendments thereto, may have such person's~~
20 ~~sentences modified according to the provisions of this section. A person~~
21 **convicted of a felony violation of K.S.A. 65-4160 or 65-4162, on or**
22 **after July 1, 1993, and sentenced therefor prior to November 1,**
23 **2003, may have such person's sentences modified according to the**
24 **provisions of this section if:**

25 (1) **The person's sole crime of which convicted and for which**
26 **incarcerated is such violation of K.S.A. 65-4160 or 65-4162; and**

27 (2) **such person meets the requirements of K.S.A. 2004 Supp.**
28 **21-4729, and amendments thereto.**

29 (b) (1) The department of corrections shall conduct a review and
30 prepare a report on all persons who committed such crimes during such
31 dates. A copy of the report shall be transmitted to the inmate, the county
32 or district attorney for the county from which the inmate was sentenced
33 and the sentencing court.

34 (2) The department of corrections shall complete and submit to the
35 appropriate parties the report on all imprisoned inmates who were con-
36 victed of a felony violation of K.S.A. 65-4160 or 65-4162, on or after July
37 1, 1993 but sentenced prior to November 1, 2003, and who have greater
38 than 180 days to serve on such inmates' sentence prior to such inmates'
39 initial release date. The department of corrections shall review inmates
40 based on such inmate's custody or security classification in the following
41 order: Minimum, within 60 days of the effective date of this act; medium,
42 within 90 days of the effective date of this act; and maximum, within 120
43 days of the effective date of this act.

1 (c) The reports on those inmates who would be eligible for modifi-
2 cation of sentence as determined by the department of corrections shall
3 be deemed to be correct unless objection thereto is filed by either the
4 person or the prosecution officer within the 60-day period provided to
5 request a hearing. If an objection is filed, the sentencing court shall de-
6 termine if the person is eligible for a modification of sentence. The bur-
7 den of proof shall be on the prosecution officer to prove that the person
8 is not eligible for such modification of sentence.

9 (d) (1) Within 60 days of the issuance of such report, the inmate shall
10 have the right to request a hearing by filing a motion with the sentencing
11 court, regarding the modification of the sentence under this section to
12 be held in the jurisdiction where the original criminal case was filed. The
13 secretary of corrections shall be provided written notice of any request
14 for a hearing. If a request for a hearing is not filed within 60 days of the
15 issuance of the report, the person is not eligible for such modification of
16 sentence.

17 (2) In the event a hearing is requested, and the court deems the
18 hearing is necessary, the court shall schedule and hold the hearing within
19 60 days after it was requested and shall rule on the issues raised by the
20 parties within 30 days after the hearing.

21 (3) Such offender shall be represented by counsel pursuant to the
22 provisions of K.S.A. 22-4501 et seq., and amendments thereto.

23 (4) Nothing contained in this section shall be construed as requiring
24 the appearance in person of the offender or creating such a right of ap-
25 pearance in person of the offender at the hearing provided in this section
26 regarding the modification of a sentence under this section.

27 (5) In the event a hearing is requested and held, the court shall
28 determine whether the safety of the members of the public will be jeop-
29 ardized by such modification of sentence.

30 (6) If the court determines that the safety of the members of the
31 public will not be jeopardized by such modification of sentence, the court
32 shall enter an order regarding the person's modification of sentence and
33 forward that order to the secretary of corrections who shall administer
34 the modification of sentence. The court shall commit the person to treat-
35 ment in a drug abuse treatment program pursuant to K.S.A. 2004 Supp.
36 21-4729, and amendments thereto.

37 (7) If the court determines that the safety of the members of the
38 public will be jeopardized by such modification of sentence, the court
39 shall enter an order denying the person's modification of sentence and
40 the person shall remain in the custody of the department of corrections.

41 (f) All sentence modifications that result in an offender being re-
42 leased from a state correctional facility shall require that the offender be
43 placed under the supervision of community corrections.

- 1 (g) An offender shall not be credited for service on the modified
2 sentence for the amount of time spent in prison on the original prison
3 sentence.
- 4 Sec. 2. K.S.A. 2004 Supp. 21-4603d is hereby amended to read as
5 follows: 21-4603d. (a) Whenever any person has been found guilty of a
6 crime, the court may adjudge any of the following:
- 7 (1) Commit the defendant to the custody of the secretary of correc-
8 tions if the current crime of conviction is a felony and the sentence pre-
9 sumes imprisonment, or the sentence imposed is a dispositional departure
10 to imprisonment; or, if confinement is for a misdemeanor, to jail for the
11 term provided by law;
- 12 (2) impose the fine applicable to the offense;
- 13 (3) release the defendant on probation if the current crime of con-
14 viction and criminal history fall within a presumptive nonprison category
15 or through a departure for substantial and compelling reasons subject to
16 such conditions as the court may deem appropriate. In felony cases except
17 for violations of K.S.A. 8-1567 and amendments thereto, the court may
18 include confinement in a county jail not to exceed 60 days, which need
19 not be served consecutively, as a condition of an original probation sen-
20 tence and up to 60 days in a county jail upon each revocation of the
21 probation sentence, or community corrections placement;
- 22 (4) assign the defendant to a community correctional services pro-
23 gram as provided in K.S.A. 75-5291, and amendments thereto, or through
24 a departure for substantial and compelling reasons subject to such con-
25 ditions as the court may deem appropriate, including orders requiring full
26 or partial restitution;
- 27 (5) assign the defendant to a conservation camp for a period not to
28 exceed six months as a condition of probation followed by a six-month
29 period of follow-up through adult intensive supervision by a community
30 correctional services program, if the offender successfully completes the
31 conservation camp program;
- 32 (6) assign the defendant to a house arrest program pursuant to K.S.A.
33 21-4603b and amendments thereto;
- 34 (7) order the defendant to attend and satisfactorily complete an al-
35 cohol or drug education or training program as provided by subsection
36 (3) of K.S.A. 21-4502 and amendments thereto;
- 37 (8) order the defendant to repay the amount of any reward paid by
38 any crime stoppers chapter, individual, corporation or public entity which
39 materially aided in the apprehension or conviction of the defendant; repay
40 the amount of any costs and expenses incurred by any law enforcement
41 agency in the apprehension of the defendant, if one of the current crimes
42 of conviction of the defendant includes escape, as defined in K.S.A. 21-
43 3809 and amendments thereto or aggravated escape, as defined in K.S.A.

- 1 21-3810 and amendments thereto; repay expenses incurred by a fire dis-
2 trict, fire department or fire company responding to a fire which has been
3 determined to be arson under K.S.A. 21-3718 or 21-3719, and amend-
4 ments thereto, if the defendant is convicted of such crime; or repay the
5 amount of any public funds utilized by a law enforcement agency to pur-
6 chase controlled substances from the defendant during the investigation
7 which leads to the defendant's conviction. Such repayment of the amount
8 of any such costs and expenses incurred by a law enforcement agency,
9 fire district, fire department or fire company or any public funds utilized
10 by a law enforcement agency shall be deposited and credited to the same
11 fund from which the public funds were credited to prior to use by the
12 law enforcement agency, fire district, fire department or fire company;
- 13 (9) order the defendant to pay the administrative fee authorized by
14 K.S.A. 2004 Supp. 22-4529 and amendments thereto, unless waived by
15 the court;
- 16 (10) order the defendant to pay a domestic violence special program
17 fee authorized by K.S.A. 2004 Supp. 20-369, and amendments thereto;
- 18 (11) impose any appropriate combination of (1), (2), (3), (4), (5), (6),
19 (7), (8), (9) and (10); or
- 20 (12) suspend imposition of sentence in misdemeanor cases.
- 21 (b) (1) In addition to or in lieu of any of the above, the court shall
22 order the defendant to pay restitution, which shall include, but not be
23 limited to, damage or loss caused by the defendant's crime, unless the
24 court finds compelling circumstances which would render a plan of res-
25 titution unworkable. If the court finds a plan of restitution unworkable,
26 the court shall state on the record in detail the reasons therefor.
- 27 (2) If the court orders restitution, the restitution shall be a judgment
28 against the defendant which may be collected by the court by garnishment
29 or other execution as on judgments in civil cases. If, after 60 days from
30 the date restitution is ordered by the court, a defendant is found to be in
31 noncompliance with the plan established by the court for payment of
32 restitution, and the victim to whom restitution is ordered paid has not
33 initiated proceedings in accordance with K.S.A. 2004 Supp. 60-4301 *et*
34 *seq.* and amendments thereto, the court shall assign an agent procured
35 by the attorney general pursuant to K.S.A. 75-719 and amendments
36 thereto to collect the restitution on behalf of the victim. The administra-
37 tive judge of each judicial district may assign such cases to an appropriate
38 division of the court for the conduct of civil collection proceedings.
- 39 (c) In addition to or in lieu of any of the above, the court shall order
40 the defendant to submit to and complete an alcohol and drug evaluation,
41 and pay a fee therefor, when required by subsection (4) of K.S.A. 21-
42 4502 and amendments thereto.
- 43 (d) In addition to any of the above, the court shall order the defend-

1 ant to reimburse the county general fund for all or a part of the expend-
2 itures by the county to provide counsel and other defense services to the
3 defendant. Any such reimbursement to the county shall be paid only after
4 any order for restitution has been paid in full. In determining the amount
5 and method of payment of such sum, the court shall take account of the
6 financial resources of the defendant and the nature of the burden that
7 payment of such sum will impose. A defendant who has been required
8 to pay such sum and who is not willfully in default in the payment thereof
9 may at any time petition the court which sentenced the defendant to
10 waive payment of such sum or any unpaid portion thereof. If it appears
11 to the satisfaction of the court that payment of the amount due will im-
12 pose manifest hardship on the defendant or the defendant's immediate
13 family, the court may waive payment of all or part of the amount due or
14 modify the method of payment.

15 (e) In imposing a fine the court may authorize the payment thereof
16 in installments. In releasing a defendant on probation, the court shall
17 direct that the defendant be under the supervision of a court services
18 officer. If the court commits the defendant to the custody of the secretary
19 of corrections or to jail, the court may specify in its order the amount of
20 restitution to be paid and the person to whom it shall be paid if restitution
21 is later ordered as a condition of parole, conditional release or postrelease
22 supervision.

23 (f) When a new felony is committed while the offender is incarcer-
24 ated and serving a sentence for a felony or while the offender is on pro-
25 bation, assignment to a community correctional services program, parole,
26 conditional release, or postrelease supervision for a felony, a new sentence
27 shall be imposed pursuant to the consecutive sentencing requirements of
28 K.S.A. 21-4608, and amendments thereto, and the court may sentence
29 the offender to imprisonment for the new conviction, even when the new
30 crime of conviction otherwise presumes a nonprison sentence. In this
31 event, imposition of a prison sentence for the new crime does not con-
32 stitute a departure. When a new felony is committed while the offender
33 is on release for a felony pursuant to the provisions of article 28 of chapter
34 22 of the Kansas Statutes Annotated, a new sentence may be imposed
35 pursuant to the consecutive sentencing requirements of K.S.A. 21-4608
36 and amendments thereto, and the court may sentence the offender to
37 imprisonment for the new conviction, even when the new crime of con-
38 viction otherwise presumes a nonprison sentence. In this event, imposi-
39 tion of a prison sentence for the new crime does not constitute a
40 departure.

41 (g) Prior to imposing a dispositional departure for a defendant whose
42 offense is classified in the presumptive nonprison grid block of either
43 sentencing guideline grid, prior to sentencing a defendant to incarceration

1 whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing
2 guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H
3 or 3-I of the sentencing guidelines grid for drug crimes, prior to sen-
4 tencing a defendant to incarceration whose offense is classified in grid
5 blocks 4-E or 4-F of the sentencing guideline grid for drug crimes and
6 whose offense does not meet the requirements of K.S.A. 2004 Supp. 21-
7 4729, and amendments thereto, prior to revocation of a nonprison sanc-
8 tion of a defendant whose offense is classified in grid blocks 4-E or 4-F
9 of the sentencing guideline grid for drug crimes and whose offense does
10 not meet the requirements of K.S.A. 2004 Supp. 21-4729, and amend-
11 ments thereto, or prior to revocation of a nonprison sanction of a de-
12 fendant whose offense is classified in the presumptive nonprison grid
13 block of either sentencing guideline grid or grid blocks 5-H, 5-I or 6-G
14 of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-
15 E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes,
16 the court shall consider placement of the defendant in the Labette cor-
17 rectional conservation camp, conservation camps established by the sec-
18 retary of corrections pursuant to K.S.A. 75-52,127, and amendment
19 thereto or a community intermediate sanction center. Pursuant to this
20 paragraph the defendant shall not be sentenced to imprisonment if space
21 is available in a conservation camp or a community intermediate sanction
22 center and the defendant meets all of the conservation camp's or a com-
23 munity intermediate sanction center's placement criteria unless the court
24 states on the record the reasons for not placing the defendant in a con-
25 servation camp or a community intermediate sanction center.

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

31 (i) In addition to any of the above, the court shall order the defendant
32 to reimburse the state general fund for all or a part of the expenditures
33 by the state board of indigents' defense services to provide counsel and
34 other defense services to the defendant. In determining the amount and
35 method of payment of such sum, the court shall take account of the
36 financial resources of the defendant and the nature of the burden that
37 payment of such sum will impose. A defendant who has been required
38 to pay such sum and who is not willfully in default in the payment thereof
39 may at any time petition the court which sentenced the defendant to
40 waive payment of such sum or any unpaid portion thereof. If it appears
41 to the satisfaction of the court that payment of the amount due will im-
42 pose manifest hardship on the defendant or the defendant's immediate
43 family, the court may waive payment of all or part of the amount due or

1 modify the method of payment. The amount of attorney fees to be in-
2 cluded in the court order for reimbursement shall be the amount claimed
3 by appointed counsel on the payment voucher for indigents' defense serv-
4 ices or the amount prescribed by the board of indigents' defense services
5 reimbursement tables as provided in K.S.A. 22-4522, and amendments
6 thereto, whichever is less.

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

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

17 (l) The secretary of corrections is authorized to make direct place-
18 ment to the Labette correctional conservation camp or a conservation
19 camp established by the secretary pursuant to K.S.A. 75-52,127, and
20 amendments thereto, of an inmate sentenced to the secretary's custody
21 if the inmate: (1) Has been sentenced to the secretary for a probation
22 revocation, as a departure from the presumptive nonimprisonment grid
23 block of either sentencing grid, for an offense which is classified in grid
24 blocks 5-H, 5-I, or 6-G of the sentencing guidelines grid for nondrug
25 crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing
26 guidelines grid for drug crimes, or for an offense which is classified in
27 gridblocks 4-E or 4-F of the sentencing guidelines grid for drug crimes
28 and such offense does not meet the requirements of K.S.A. 2004 Supp.
29 21-4729, and amendments thereto, and (2) otherwise meets admission
30 criteria of the camp. If the inmate successfully completes a conservation
31 camp program, the secretary of corrections shall report such completion
32 to the sentencing court and the county or district attorney. The inmate
33 shall then be assigned by the court to six months of follow-up supervision
34 conducted by the appropriate community corrections services program.
35 The court may also order that supervision continue thereafter for the
36 length of time authorized by K.S.A. 21-4611 and amendments thereto.

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

40 (n) (1) Except as provided by subsection (f) of K.S.A. 21-4705, and
41 amendments thereto, in addition to any of the above, for felony violations
42 of K.S.A. 65-4160 or 65-4162, and amendments thereto, the court shall
43 require the defendant who meets the requirements established in K.S.A.

1 2004 Supp. 21-4729, and amendments thereto, to participate in a certified
2 drug abuse treatment program, as provided in K.S.A. 2004 Supp. 75-
3 52,144, and amendments thereto, including but not limited to, an ap-
4 proved after-care plan. If the defendant fails to participate in or has a
5 pattern of intentional conduct that demonstrates the offender's refusal to
6 comply with or participate in the treatment program, as established by
7 judicial finding, the defendant shall be subject to revocation of probation
8 and the defendant shall serve the underlying prison sentence as estab-
9 lished in K.S.A. 21-4705, and amendments thereto. ~~For those offenders~~
10 ~~who are convicted on or after the effective date of this act,~~ Upon com-
11 pletion of the underlying prison sentence, the defendant shall not be
12 subject to a period of postrelease supervision. The amount of time spent
13 participating in such program shall not be credited as service on the un-
14 derlying prison sentence.

15 *(2) If a defendant's sentence is modified pursuant to section 1, and*
16 *amendments thereto, and such 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 prior to the modification. Upon completion of the underlying prison*
22 *sentence, the defendant shall not be subject to a period of postrelease*
23 *supervision. The amount of time spent participating in such program shall*
24 *not be credited as service on the underlying prison sentence.*

25 Sec. 3. K.S.A. 2004 Supp. 21-4729 is hereby amended to read as
26 follows: 21-4729. ~~On and after November 1, 2003:~~ (a) There is hereby
27 established a nonprison sanction of certified drug abuse treatment pro-
28 grams for certain offenders ~~who are sentenced on or after November 1,~~
29 ~~2003.~~ Placement of offenders in certified drug abuse treatment programs
30 by the court shall be limited to placement of adult offenders, convicted
31 of a felony violation of K.S.A. 65-4160 or 65-4162, and amendments
32 thereto:

33 (1) Whose offense is classified in grid blocks 4-E, 4-F, 4-G, 4-H or
34 4-I of the sentencing guidelines grid for drug crimes and such offender
35 has no felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163
36 or 65-4164, and amendments thereto or any substantially similar offense
37 from another jurisdiction; or

38 (2) whose offense is classified in grid blocks 4-A, 4-B, 4-C or 4-D of
39 the sentencing guidelines grid for drug crimes and such offender has no
40 felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-
41 4164, and amendments thereto, or any substantially similar offense from
42 another jurisdiction, if such person felonies committed by the offender
43 were severity level 8, 9 or 10 or nongrid offenses of the sentencing guide-

1 lines grid for nondrug crimes and the court finds and sets forth with
2 particularity the reasons for finding that the safety of the members of the
3 public will not be jeopardized by such placement in a drug abuse treat-
4 ment program.

5 (b) (1) As a part of the presentence investigation pursuant to K.S.A.
6 21-4714, and amendments thereto, offenders who meet the requirements
7 of subsection (a) shall be subject to a drug abuse assessment.

8 (2) The drug abuse assessment shall include a statewide, mandatory,
9 standardized risk assessment tool and an instrument validated for drug
10 abuse treatment program placements and shall include a clinical interview
11 with a mental health professional. Such assessment shall assign a high or
12 low risk status to the offender and include a recommendation concerning
13 drug abuse treatment for the offender.

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

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

18 (e) Placement of offenders under subsection (a)(2) shall be subject
19 to the departure sentencing statutes of the Kansas sentencing guidelines
20 act.

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

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

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

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

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

37 Sec. 4. K.S.A. 2004 Supp. 21-4603d and 21-4729 are hereby
38 repealed.

39 Sec. 5. This act shall take effect and be in force from and after its
40 publication in the Kansas register.