

## HOUSE BILL No. 2733

By Representatives Patton, Beamer, Bowers, Carlson, Dahl, Fund, Kelley, Kelsey, Kinzer, Mast, Judy Morrison, Olson, Rhoades, Siegfried, Vickrey and Watkins

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11 AN ACT concerning crimes, criminal procedure and punishment; relat-  
12 ing to sentencing; amending K.S.A. 21-4603d and K.S.A. 2007 Supp.  
13 75-5217 and repealing the existing sections.

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

16 Section 1. K.S.A. 21-4603d is hereby amended to read as follows: 21-  
17 4603d. (a) Whenever any person has been found guilty of a crime, the  
18 court may adjudge any of the following:

19 (1) Commit the defendant to the custody of the secretary of correc-  
20 tions if the current crime of conviction is a felony and the sentence pre-  
21 sumes imprisonment, or the sentence imposed is a dispositional departure  
22 to imprisonment; or, if confinement is for a misdemeanor, to jail for the  
23 term provided by law;

24 (2) impose the fine applicable to the offense;

25 (3) release the defendant on probation if the current crime of con-  
26 viction and criminal history fall within a presumptive nonprison category  
27 or through a departure for substantial and compelling reasons subject to  
28 such conditions as the court may deem appropriate. In felony cases except  
29 for violations of K.S.A. 8-1567, and amendments thereto, the court may  
30 include confinement in a county jail not to exceed 60 days, which need  
31 not be served consecutively, as a condition of an original probation sen-  
32 tence and up to 60 days in a county jail upon each revocation of the  
33 probation sentence, or community corrections placement;

34 (4) assign the defendant to a community correctional services pro-  
35 gram as provided in K.S.A. 75-5291, and amendments thereto, or through  
36 a departure for substantial and compelling reasons subject to such con-  
37 ditions as the court may deem appropriate, including orders requiring full  
38 or partial restitution;

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

- 1 (6) assign the defendant to a house arrest program pursuant to K.S.A.  
2 21-4603b and amendments thereto;
- 3 (7) order the defendant to attend and satisfactorily complete an al-  
4cohol or drug education or training program as provided by subsection  
5 (3) of K.S.A. 21-4502, and amendments thereto;
- 6 (8) order the defendant to repay the amount of any reward paid by  
7 any crime stoppers chapter, individual, corporation or public entity which  
8 materially aided in the apprehension or conviction of the defendant; repay  
9 the amount of any costs and expenses incurred by any law enforcement  
10 agency in the apprehension of the defendant, if one of the current crimes  
11 of conviction of the defendant includes escape, as defined in K.S.A. 21-  
12 3809, and amendments thereto, or aggravated escape, as defined in K.S.A.  
13 21-3810, and amendments thereto; repay expenses incurred by a fire dis-  
14 trict, fire department or fire company responding to a fire which has been  
15 determined to be arson under K.S.A. 21-3718 or 21-3719, and amend-  
16 ments thereto, if the defendant is convicted of such crime; repay the  
17 amount of any public funds utilized by a law enforcement agency to pur-  
18 chase controlled substances from the defendant during the investigation  
19 which leads to the defendant's conviction; or repay the amount of any  
20 medical costs and expenses incurred by any law enforcement agency or  
21 county. Such repayment of the amount of any such costs and expenses  
22 incurred by a county, law enforcement agency, fire district, fire depart-  
23 ment or fire company or any public funds utilized by a law enforcement  
24 agency shall be deposited and credited to the same fund from which the  
25 public funds were credited to prior to use by the county, law enforcement  
26 agency, fire district, fire department or fire company;
- 27 (9) order the defendant to pay the administrative fee authorized by  
28 K.S.A. 22-4529, and amendments thereto, unless waived by the court;
- 29 (10) order the defendant to pay a domestic violence special program  
30 fee authorized by K.S.A. 20-369, and amendments thereto;
- 31 (11) impose any appropriate combination of (1), (2), (3), (4), (5), (6),  
32 (7), (8), (9) and (10); or
- 33 (12) suspend imposition of sentence in misdemeanor cases.
- 34 (b) (1) In addition to or in lieu of any of the above, the court shall  
35 order the defendant to pay restitution, which shall include, but not be  
36 limited to, damage or loss caused by the defendant's crime, unless the  
37 court finds compelling circumstances which would render a plan of res-  
38 titution unworkable. In regard to a violation of K.S.A. 21-4018, and  
39 amendments thereto, such damage or loss shall include, but not be limited  
40 to, attorney fees and costs incurred to repair the credit history or rating  
41 of the person whose personal identification documents were obtained and  
42 used in violation of such section, and to satisfy a debt, lien or other ob-  
43 ligation incurred by the person whose personal identification documents

1 were obtained and used in violation of such section. If the court finds a  
2 plan of restitution unworkable, the court shall state on the record in detail  
3 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. 60-4301 et seq., and  
11 amendments thereto, the court shall assign an agent procured by the  
12 attorney general pursuant to K.S.A. 75-719, and amendments thereto, to  
13 collect the restitution on behalf of the victim. The administrative judge  
14 of each judicial district may assign such cases to an appropriate division  
15 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) (1) When a new felony is committed while the offender is incar-

1 cerated and serving a sentence for a felony, or while the offender is on  
2 probation, assignment to a community correctional services program, pa-  
3 role, conditional release, or postrelease supervision for a felony, a new  
4 sentence shall be imposed pursuant to the consecutive sentencing  
5 requirements of K.S.A. 21-4608, and amendments thereto, and the court  
6 ~~may~~ *shall* sentence the offender to imprisonment for the new conviction,  
7 even when the new crime of conviction otherwise presumes a nonprison  
8 sentence. In this event, imposition of a prison sentence for the new crime  
9 does not constitute a departure.

10 (2) When a new felony is committed while the offender is incarcer-  
11 ated in a juvenile correctional facility pursuant to K.S.A. 38-1671 prior to  
12 its repeal or K.S.A. 2007 Supp. 38-2373, and amendments thereto, for an  
13 offense, which if committed by an adult would constitute the commission  
14 of a felony, upon conviction, the court shall sentence the offender to  
15 imprisonment for the new conviction, even when the new crime of con-  
16 viction otherwise presumes a nonprison sentence. In this event, imposi-  
17 tion of a prison sentence for the new crime does not constitute a depart-  
18 ure. The conviction shall operate as a full and complete discharge from  
19 any obligations, except for an order of restitution, imposed on the of-  
20 fender arising from the offense for which the offender was committed to  
21 a juvenile correctional facility.

22 (3) When a new felony is committed while the offender is on release  
23 for a felony pursuant to the provisions of article 28 of chapter 22 of the  
24 Kansas Statutes Annotated, or similar provisions of the laws of another  
25 jurisdiction, a new sentence ~~may~~ *shall* be imposed pursuant to the con-  
26 secutive sentencing requirements of K.S.A. 21-4608, and amendments  
27 thereto, and the court ~~may~~ *shall* sentence the offender to imprisonment  
28 for the new conviction, even when the new crime of conviction otherwise  
29 presumes a nonprison sentence. In this event, imposition of a prison sen-  
30 tence for the new crime does not constitute a departure.

31 (g) Prior to imposing a dispositional departure for a defendant whose  
32 offense is classified in the presumptive nonprison grid block of either  
33 sentencing guideline grid, prior to sentencing a defendant to incarceration  
34 whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing  
35 guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H  
36 or 3-I of the sentencing guidelines grid for drug crimes, prior to sen-  
37 tencing a defendant to incarceration whose offense is classified in grid  
38 blocks 4-E or 4-F of the sentencing guideline grid for drug crimes and  
39 whose offense does not meet the requirements of K.S.A. 21-4729, and  
40 amendments thereto, prior to revocation of a nonprison sanction of a  
41 defendant whose offense is classified in grid blocks 4-E or 4-F of the  
42 sentencing guideline grid for drug crimes and whose offense does not  
43 meet the requirements of K.S.A. 21-4729, and amendments thereto, or

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

16 (h) The court in committing a defendant to the custody of the sec-  
17 retary 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 defendant  
22 to reimburse the state general fund for all or a part of the expenditures  
23 by the state board of indigents' defense services to provide counsel and  
24 other defense services to the defendant. In determining the amount and  
25 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. The amount of attorney fees to be in-  
35 cluded in the court order for reimbursement shall be the amount claimed  
36 by appointed counsel on the payment voucher for indigents' defense serv-  
37 ices or the amount prescribed by the board of indigents' defense services  
38 reimbursement tables as provided in K.S.A. 22-4522, and amendments  
39 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  
42 or 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 acqui-  
3 escence in the judgment for purpose of appeal, and any convicted person  
4 may appeal from such conviction, as provided by law, without regard to  
5 whether such person has applied for probation, suspended sentence or  
6 assignment to a community correctional services program.

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

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

30 (n) Except as provided by subsection (f) of K.S.A. 21-4705, and  
31 amendments thereto, in addition to any of the above, for felony violations  
32 of K.S.A. 65-4160 or 65-4162, and amendments thereto, the court shall  
33 require the defendant who meets the requirements established in K.S.A.  
34 21-4729, and amendments thereto, to participate in a certified drug abuse  
35 treatment program, as provided in K.S.A. 2007 Supp. 75-52,144, and  
36 amendments thereto, including but not limited to, an approved after-care  
37 plan. If the defendant fails to participate in or has a pattern of intentional  
38 conduct that demonstrates the offender's refusal to comply with or par-  
39 ticipate in the treatment program, as established by judicial finding, the  
40 defendant shall be subject to revocation of probation and the defendant  
41 shall serve the underlying prison sentence as established in K.S.A. 21-  
42 4705, and amendments thereto. For those offenders who are convicted  
43 on or after the effective date of this act, upon completion of the under-

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

5 Sec. 2. K.S.A. 2007 Supp. 75-5217 is hereby amended to read as  
6 follows: 75-5217. (a) At any time during release on parole, conditional  
7 release or postrelease supervision, the secretary of corrections may issue  
8 a warrant for the arrest of a released inmate for violation of any of the  
9 conditions of release, or a notice to appear to answer to a charge of vio-  
10 lation. Such notice shall be served personally upon the released inmate.  
11 The warrant shall authorize any law enforcement officer to arrest and  
12 deliver the released inmate to a place as provided by subsection (g). Any  
13 parole officer may arrest such released inmate without a warrant, or may  
14 deputize any other officer with power of arrest to do so by giving such  
15 officer a written arrest and detain order setting forth that the released  
16 inmate, in the judgment of the parole officer, has violated the conditions  
17 of the inmate's release. The written arrest and detain order delivered  
18 with the released inmate by the arresting officer to the official in charge  
19 of the institution or place to which the released inmate is brought for  
20 detention shall be sufficient warrant for detaining the inmate. After mak-  
21 ing an arrest the parole officer shall present to the detaining authorities  
22 a similar arrest and detain order and statement of the circumstances of  
23 violation. Pending a hearing, as provided in this section, upon any charge  
24 of violation the released inmate shall remain incarcerated in the institu-  
25 tion or place to which the inmate is taken for detention.

26 (b) Upon such arrest and detention, the parole officer shall notify the  
27 secretary of corrections, or the secretary's designee, within five days and  
28 shall submit in writing a report showing in what manner the released  
29 inmate had violated the conditions of release. After such notification is  
30 given to the secretary of corrections, or upon an arrest by warrant as  
31 herein provided, and the finding of probable cause pursuant to proce-  
32 dures established by the secretary of a violation of the released inmate's  
33 conditions of release, the secretary or the secretary's designee may cause  
34 the released inmate to be brought before the Kansas parole board, its  
35 designee or designees, for a hearing on the violation charged, under such  
36 rules and regulations as the board may adopt, or may dismiss the charges  
37 that the released inmate has violated the conditions of release and order  
38 the released inmate to remain on parole, conditional release or post re-  
39 lease supervision. It is within the discretion of the Kansas parole board  
40 whether such hearing requires the released inmate to appear personally  
41 before the board when such inmate's violation results from a conviction  
42 for a new felony or misdemeanor. An offender under determinat sen-  
43 tencing whose violation does not result from a conviction of a new felony

1 or misdemeanor may waive the right to a final revocation hearing before  
2 the Kansas parole board under such conditions and terms as may be  
3 prescribed by rules and regulations promulgated by the Kansas parole  
4 board. Relevant written statements made under oath shall be admitted  
5 and considered by the Kansas parole board, its designee or designees,  
6 along with other evidence presented at the hearing. If the violation is  
7 established to the satisfaction of the Kansas parole board, the board may  
8 continue or revoke the parole or conditional release, or enter such other  
9 order as the board may see fit. The revocation of release of inmates who  
10 are on a specified period of postrelease supervision shall be for a six-  
11 month period of confinement from the date of the revocation hearing  
12 before the board or the effective date of waiver of such hearing by the  
13 offender pursuant to rules and regulations promulgated by the Kansas  
14 parole board, if the violation does not result from a conviction for a new  
15 felony or misdemeanor. Such period of confinement may be reduced by  
16 not more than three months based on the inmate's conduct, work and  
17 program participation during the incarceration period. The reduction in  
18 the incarceration period shall be on an earned basis pursuant to rules and  
19 regulations adopted by the secretary of corrections.

20 (c) If the violation results from a conviction for a new felony, upon  
21 revocation, the inmate shall serve the entire remaining balance of the  
22 period of postrelease supervision ~~even if the new conviction did not result~~  
23 ~~in the imposition of a new term of imprisonment.~~

24 (d) If the violation results from a conviction for a new misdemeanor,  
25 upon revocation, the inmate shall serve a period of confinement, to be  
26 determined by the Kansas parole board, which shall not exceed the re-  
27 maining balance of the period of postrelease supervision.

28 (e) In the event the released inmate reaches conditional release date  
29 as provided by K.S.A. 22-3718 and amendments thereto after a finding  
30 of probable cause, pursuant to procedures established by the secretary of  
31 corrections of a violation of the released inmate's conditions of release,  
32 but prior to a hearing before the Kansas parole board, the secretary of  
33 corrections shall be authorized to detain the inmate until the hearing by  
34 the Kansas parole board. The secretary shall then enforce the order issued  
35 by the Kansas parole board.

36 (f) If the secretary of corrections issues a warrant for the arrest of a  
37 released inmate for violation of any of the conditions of release and the  
38 released inmate is subsequently arrested in the state of Kansas, either  
39 pursuant to the warrant issued by the secretary of corrections or for any  
40 other reason, the released inmate's sentence shall not be credited with  
41 the period of time from the date of the issuance of the secretary's warrant  
42 to the date of the released inmate's arrest.

43 If a released inmate for whom a warrant has been issued by the sec-

1   retary of corrections for violation of the conditions of release is subse-  
2   quently arrested in another state, and the released inmate has been au-  
3   thorized as a condition of such inmate's release to reside in or travel to  
4   the state in which the released inmate was arrested, and the released  
5   inmate has not absconded from supervision, the released inmate's sen-  
6   tence shall not be credited with the period of time from the date of the  
7   issuance of the warrant to the date of the released inmate's arrest. If the  
8   released inmate for whom a warrant has been issued by the secretary of  
9   corrections for violation of the conditions of release is subsequently ar-  
10  rested in another state for reasons other than the secretary's warrant and  
11  the released inmate does not have authorization to be in the other state  
12  or if authorized to be in the other state has been charged by the secretary  
13  with having absconded from supervision, the released inmate's sentence  
14  shall not be credited with the period of time from the date of the issuance  
15  of the warrant by the secretary to the date the released inmate is first  
16  available to be returned to the state of Kansas. If the released inmate for  
17  whom a warrant has been issued by the secretary of corrections for vio-  
18  lation of a condition of release is subsequently arrested in another state  
19  pursuant only to the secretary's warrant, the released inmate's sentence  
20  shall not be credited with the period of time from the date of the issuance  
21  of the secretary's warrant to the date of the released inmate's arrest,  
22  regardless of whether the released inmate's presence in the other state  
23  was authorized or the released inmate had absconded from supervision.

24   The secretary may issue a warrant for the arrest of a released inmate  
25  for violation of any of the conditions of release and may direct that all  
26  reasonable means to serve the warrant and detain such released inmate  
27  be employed including but not limited to notifying the federal bureau of  
28  investigation of such violation and issuance of warrant and requesting  
29  from the federal bureau of investigation any pertinent information it may  
30  possess concerning the whereabouts of the released inmate.

31   (g) Law enforcement officers shall execute warrants issued by the  
32  secretary of corrections, and shall deliver the inmate named in the warrant  
33  to the jail used by the county where the inmate is arrested unless some  
34  other place is designated by the secretary, in the same manner as for the  
35  execution of any arrest warrant.

36   (h) For the purposes of this section, an inmate or released inmate is  
37  an individual under the supervision of the secretary of corrections, in-  
38  cluding, but not limited to, an individual on parole, conditional release,  
39  postrelease supervision, probation granted by another state or an individ-  
40  ual supervised under any interstate compact in accordance with the pro-  
41  visions of the uniform act for out-of-state parolee supervision, K.S.A. 22-  
42  4101 et seq. and amendments thereto.

43   Sec. 3. K.S.A. 21-4603d and K.S.A. 2007 Supp. 75-5217 are hereby

1 repealed.

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