

As Amended by House Committee

[As Amended by Senate Committee of the Whole]

As Amended by Senate Committee

Session of 2010

SENATE BILL No. 520

By Committee on Judiciary

2-3

14 AN ACT concerning **crimes, punishment and** criminal procedure; re-
15 lating to **sentencing; payment of fines;** employment of county and
16 city prisoners; amending K.S.A. 22-4603 and **K.S.A. 2009 Supp. 21-**
17 **4603d, as amended by section 1 of 2010 House Bill No. 2604,**
18 and repealing the existing section.

19

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

21 **Section 1. K.S.A. 2009 Supp. 21-4603d, as amended by section**
22 **1 of 2010 House Bill No. 2604, is hereby amended to read as fol-**
23 **lows: 21-4603d. (a) Whenever any person has been found guilty of**
24 **a crime, the court may adjudge any of the following:**

25 (1) **Commit the defendant to the custody of the secretary of**
26 **corrections if the current crime of conviction is a felony and the**
27 **sentence presumes imprisonment, or the sentence imposed is a**
28 **dispositional departure to imprisonment; or, if confinement is for**
29 **a misdemeanor, to jail for the term provided by law;**

30 (2) **impose the fine applicable to the offense and may impose the**
31 **provisions of subsection (p);**

32 (3) **release the defendant on probation if the current crime of**
33 **conviction and criminal history fall within a presumptive nonpri-**
34 **son category or through a departure for substantial and compel-**
35 **ling reasons subject to such conditions as the court may deem ap-**
36 **propriate. In felony cases except for violations of K.S.A. 8-1567,**
37 **and amendments thereto, the court may include confinement in a**
38 **county jail not to exceed 60 days, which need not be served con-**
39 **secutively, as a condition of an original probation sentence and up**
40 **to 60 days in a county jail upon each revocation of the probation**
41 **sentence, or community corrections placement;**

42 (4) **assign the defendant to a community correctional services**
43 **program as provided in K.S.A. 75-5291, and amendments thereto,**

- 1 or through a departure for substantial and compelling reasons sub-
2 ject to such conditions as the court may deem appropriate, includ-
3 ing orders requiring full or partial restitution;
- 4 (5) assign the defendant to a conservation camp for a period
5 not to exceed six months as a condition of probation followed by a
6 six-month period of follow-up through adult intensive supervision
7 by a community correctional services program, if the offender suc-
8 cessfully completes the conservation camp program;
- 9 (6) assign the defendant to a house arrest program pursuant
10 to K.S.A. 21-4603b and amendments thereto;
- 11 (7) order the defendant to attend and satisfactorily complete
12 an alcohol or drug education or training program as provided by
13 subsection (3) of K.S.A. 21-4502, and amendments thereto;
- 14 (8) order the defendant to repay the amount of any reward
15 paid by any crime stoppers chapter, individual, corporation or
16 public entity which materially aided in the apprehension or con-
17 viction of the defendant; repay the amount of any costs and ex-
18 penses incurred by any law enforcement agency in the apprehen-
19 sion of the defendant, if one of the current crimes of conviction of
20 the defendant includes escape, as defined in K.S.A. 21-3809, and
21 amendments thereto, or aggravated escape, as defined in K.S.A.
22 21-3810, and amendments thereto; repay expenses incurred by a
23 fire district, fire department or fire company responding to a fire
24 which has been determined to be arson under K.S.A. 21-3718 or
25 21-3719, and amendments thereto, if the defendant is convicted
26 of such crime; repay the amount of any public funds utilized by a
27 law enforcement agency to purchase controlled substances from
28 the defendant during the investigation which leads to the defend-
29 ant's conviction; or repay the amount of any medical costs and
30 expenses incurred by any law enforcement agency or county. Such
31 repayment of the amount of any such costs and expenses incurred
32 by a county, law enforcement agency, fire district, fire department
33 or fire company or any public funds utilized by a law enforcement
34 agency shall be deposited and credited to the same fund from
35 which the public funds were credited to prior to use by the county,
36 law enforcement agency, fire district, fire department or fire
37 company;
- 38 (9) order the defendant to pay the administrative fee author-
39 ized by K.S.A. 22-4529, and amendments thereto, unless waived
40 by the court;
- 41 (10) order the defendant to pay a domestic violence special
42 program fee authorized by K.S.A. 20-369, and amendments
43 thereto;

- 1 (11) if the defendant is convicted of a misdemeanor or a felony
2 provision of subsection (i) of K.S.A. 21-4704, and amendments
3 thereto, assign the defendant to a work release program, other
4 than a program at a correctional institution under the control of
5 the secretary of corrections as defined in K.S.A. 75-5202, and
6 amendments thereto, provided such work release program re-
7 quires such defendant to return to confinement at the end of each
8 day in the work release program;
- 9 (12) impose any appropriate combination of (1), (2), (3), (4), (5),
10 (6), (7), (8), (9), (10) and (11); or
- 11 (13) suspend imposition of sentence in misdemeanor cases.
- 12 (b) (1) In addition to or in lieu of any of the above, the court
13 shall order the defendant to pay restitution, which shall include,
14 but not be limited to, damage or loss caused by the defendant's
15 crime, unless the court finds compelling circumstances which
16 would render a plan of restitution unworkable. In regard to a vi-
17 olation of K.S.A. 21-4018, and amendments thereto, such damage
18 or loss shall include, but not be limited to, attorney fees and costs
19 incurred to repair the credit history or rating of the person whose
20 personal identification documents were obtained and used in vi-
21 olation of such section, and to satisfy a debt, lien or other obliga-
22 tion incurred by the person whose personal identification docu-
23 ments were obtained and used in violation of such section. If the
24 court finds a plan of restitution unworkable, the court shall state
25 on the record in detail the reasons therefor.
- 26 (2) If the court orders restitution, the restitution shall be a
27 judgment against the defendant which may be collected by the
28 court by garnishment or other execution as on judgments in civil
29 cases. If, after 60 days from the date restitution is ordered by the
30 court, a defendant is found to be in noncompliance with the plan
31 established by the court for payment of restitution, and the victim
32 to whom restitution is ordered paid has not initiated proceedings
33 in accordance with K.S.A. 60-4301 et seq., and amendments
34 thereto, the court shall assign an agent procured by the attorney
35 general pursuant to K.S.A. 75-719, and amendments thereto, to
36 collect the restitution on behalf of the victim. The administrative
37 judge of each judicial district may assign such cases to an appro-
38 priate division of the court for the conduct of civil collection
39 proceedings.
- 40 (c) In addition to or in lieu of any of the above, the court shall
41 order the defendant to submit to and complete an alcohol and drug
42 evaluation, and pay a fee therefor, when required by subsection
43 (4) of K.S.A. 21-4502, and amendments thereto.

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

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

25 (f) (1) When a new felony is committed while the offender is
26 incarcerated and serving a sentence for a felony, or while the of-
27 fender is on probation, assignment to a community correctional
28 services program, parole, conditional release, or postrelease su-
29 pervision for a felony, a new sentence shall be imposed pursuant
30 to the consecutive sentencing requirements of K.S.A. 21-4608, and
31 amendments thereto, and the court may sentence the offender to
32 imprisonment for the new conviction, even when the new crime of
33 conviction otherwise presumes a nonprison sentence. In this event,
34 imposition of a prison sentence for the new crime does not con-
35 stitute a departure.

36 (2) When a new felony is committed while the offender is in-
37 carcerated in a juvenile correctional facility pursuant to K.S.A. 38-
38 1671 prior to its repeal or K.S.A. 2009 Supp. 38-2373, and amend-
39 ments thereto, for an offense, which if committed by an adult
40 would constitute the commission of a felony, upon conviction, the
41 court shall sentence the offender to imprisonment for the new con-
42 viction, even when the new crime of conviction otherwise pre-
43 sumes a nonprison sentence. In this event, imposition of a prison

1 sentence for the new crime does not constitute a departure. The
2 conviction shall operate as a full and complete discharge from any
3 obligations, except for an order of restitution, imposed on the of-
4 fender arising from the offense for which the offender was com-
5 mitted to a juvenile correctional facility.

6 (3) When a new felony is committed while the offender is on
7 release for a felony pursuant to the provisions of article 28 of chap-
8 ter 22 of the Kansas Statutes Annotated, or similar provisions of
9 the laws of another jurisdiction, a new sentence may be imposed
10 pursuant to the consecutive sentencing requirements of K.S.A. 21-
11 4608, and amendments thereto, and the court may sentence the
12 offender to imprisonment for the new conviction, even when the
13 new crime of conviction otherwise presumes a nonprison sentence.
14 In this event, imposition of a prison sentence for the new crime
15 does not constitute a departure.

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

1 less the court states on the record the reasons for not placing the
2 defendant in a conservation camp or a community intermediate
3 sanction center.

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

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

30 (j) This section shall not deprive the court of any authority con-
31 ferred by any other Kansas statute to decree a forfeiture of prop-
32 erty, suspend or cancel a license, remove a person from office, or
33 impose any other civil penalty as a result of conviction of crime.

34 (k) An application for or acceptance of probation or assign-
35 ment to a community correctional services program shall not con-
36 stitute an acquiescence in the judgment for purpose of appeal, and
37 any convicted person may appeal from such conviction, as pro-
38 vided by law, without regard to whether such person has applied
39 for probation, suspended sentence or assignment to a community
40 correctional services program.

41 (l) The secretary of corrections is authorized to make direct
42 placement to the Labette correctional conservation camp or a con-
43 servation camp established by the secretary pursuant to K.S.A. 75-

1 52,127, and amendments thereto, of an inmate sentenced to the
2 secretary's custody if the inmate: (1) Has been sentenced to the
3 secretary for a probation revocation, as a departure from the pre-
4 sumptive nonimprisonment grid block of either sentencing grid,
5 for an offense which is classified in grid blocks 5-H, 5-I, or 6-G of
6 the sentencing guidelines grid for nondrug crimes or in grid blocks
7 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug
8 crimes, or for an offense which is classified in gridblocks 4-E or 4-
9 F of the sentencing guidelines grid for drug crimes and such of-
10 fense does not meet the requirements of K.S.A. 21-4729, and
11 amendments thereto, and (2) otherwise meets admission criteria
12 of the camp. If the inmate successfully completes a conservation
13 camp program, the secretary of corrections shall report such com-
14 pletion to the sentencing court and the county or district attorney.
15 The inmate shall then be assigned by the court to six months of
16 follow-up supervision conducted by the appropriate community
17 corrections services program. The court may also order that su-
18 pervision continue thereafter for the length of time authorized by
19 K.S.A. 21-4611 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 pro-
22 visions of this section shall not apply.

23 (n) Except as provided by subsection (f) of K.S.A. 21-4705, and
24 amendments thereto, in addition to any of the above, for felony
25 violations of K.S.A. 2009 Supp. 21-36a06, and amendments
26 thereto, the court shall require the defendant who meets the
27 requirements established in K.S.A. 21-4729, and amendments
28 thereto, to participate in a certified drug abuse treatment pro-
29 gram, as provided in K.S.A. 2009 Supp. 75-52,144, and amend-
30 ments thereto, including but not limited to, an approved after-care
31 plan. If the defendant fails to participate in or has a pattern of
32 intentional conduct that demonstrates the offender's refusal to
33 comply with or participate in the treatment program, as estab-
34 lished by judicial finding, the defendant shall be subject to revo-
35 cation of probation and the defendant shall serve the underlying
36 prison sentence as established in K.S.A. 21-4705, and amendments
37 thereto. For those offenders who are convicted on or after the
38 effective date of this act, upon completion of the underlying prison
39 sentence, the defendant shall not be subject to a period of post-
40 release supervision. The amount of time spent participating in
41 such program shall not be credited as service on the underlying
42 prison sentence.

43 (o) (1) Except as provided in paragraph (3), in addition to any

1 other penalty or disposition imposed by law, upon a conviction for
2 unlawful possession of a controlled substance or controlled sub-
3 stance analog in violation of K.S.A. 2009 Supp. 21-36a06, and
4 amendments thereto, in which the trier of fact makes a finding
5 that the unlawful possession occurred while transporting the con-
6 trolled substance or controlled substance analog in any vehicle
7 upon a highway or street, the offender's driver's license or privi-
8 lege to operate a motor vehicle on the streets and highways of this
9 state shall be suspended for one year.

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

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

31 (B) Upon entering an order restricting a person's license here-
32 under, the judge shall require such person to surrender such per-
33 son's driver's license to the judge who shall cause it to be trans-
34 mitted to the division of vehicles, together with a copy of the order.
35 Upon receipt thereof, the division of vehicles shall issue without
36 charge a driver's license which shall indicate on its face that con-
37 ditions have been imposed on such person's privilege of operating
38 a motor vehicle and that a certified copy of the order imposing
39 such conditions is required to be carried by the person for whom
40 the license was issued any time such person is operating a motor
41 vehicle on the highways of this state. If the person convicted is a
42 nonresident, the judge shall cause a copy of the order to be trans-
43 mitted to the division and the division shall forward a copy of it to

1 the motor vehicle administrator, of such person's state of resi-
2 dence. Such judge shall furnish to any person whose driver's li-
3 cense has had conditions imposed on it under this paragraph a
4 copy of the order, which shall be recognized as a valid Kansas
5 driver's license until such time as the division shall issue the re-
6 stricted license provided for in this paragraph.

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

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

25 (p) *In imposing a fine, the court may authorize the payment thereof*
26 *in installments. In lieu of payment of any fine imposed, the court may*
27 *order that the person perform community service specified by the court.*
28 *The person shall receive a credit on the fine imposed in an amount equal*
29 *to \$5 for each full hour spent by the person in the specified community*
30 *service. The community service ordered by the court shall be required to*
31 *be performed by the later of one year after the fine is imposed or one year*
32 *after release from imprisonment or jail, or by an earlier date specified by*
33 *the court. If by the required date the person performs an insufficient*
34 *amount of community service to reduce to zero the portion of the fine*
35 *required to be paid by the person, the remaining balance of the fine shall*
36 *become due on that date. If conditional reduction of any fine is rescinded*
37 *by the court for any reason, then pursuant to the court's order the person*
38 *may be ordered to perform community service by one year after the date*
39 *of such rescission or by an earlier date specified by the court. If by the*
40 *required date the person performs an insufficient amount of community*
41 *service to reduce to zero the portion of the fine required to be paid by the*
42 *person, the remaining balance of the fine shall become due on that date.*
43 *All credits for community service shall be subject to review and approval*

1 *by the court.*

2 Section ~~1~~ **2**. K.S.A. 22-4603 is hereby amended to read as follows:
3 22-4603. (1) Whenever any able-bodied prisoner is confined in the county
4 jail or the jail of any town or city, having been convicted of a misdemeanor
5 or of a violation of an ordinance of such town or city, the sheriff of such
6 county, or the marshal or the chief of police of such town or city, under
7 the direction of the county commissioners or the governing body of the
8 town or city, may ~~cause~~ **allow** such persons to work at suitable public ~~or~~
9 **nonprofit charitable** employment for not to exceed ~~more than~~ **eight**
10 hours on each working day.

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

15 (3) Persons held in jail and awaiting trial or held on civil process, may,
16 with their consent, be likewise so employed and shall receive **a credit on**
17 **any fines and costs in an amount equal to \$5 for each full hour spent**
18 **by the person in the specified work, or if there are no such fines and**
19 **costs, compensation at the rate of five dollars \$5 a day for ~~for each full~~**
20 **hour spent by the person in [for] such employment [in an amount**
21 **agreed to by the person and the city or county, but not less than \$5**
22 **a day], to be paid by the city or the county.**

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

26 Sec. ~~2~~ **3**. K.S.A. 22-4603 ~~is~~ **and K.S.A. 2009 Supp. 21-4603d, as**
27 **amended by section 1 of 2010 House Bill No. 2604, are** hereby
28 repealed.

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