

As Amended by House Committee

Session of 2011

HOUSE BILL No. 2118

By Committee on Corrections and Juvenile Justice

1-27

1 AN ACT concerning crimes, criminal procedure and punishment;
2 relating to supervision fees for appearance bonds; amending K.S.A.
3 2010 Supp. **21-4603d** and 22-2802 and section 244 of chapter 136
4 of the 2010 Session Laws of Kansas and repealing the existing
5 sections.
6

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

8 **Section 1. K.S.A. 2010 Supp. 21-4603d is hereby amended to**
9 **read as follows: 21-4603d. (a) Whenever any person has been found**
10 **guilty of a crime, the court may adjudge any of the following:**

11 **(1) Commit the defendant to the custody of the secretary of**
12 **corrections if the current crime of conviction is a felony and the**
13 **sentence presumes imprisonment, or the sentence imposed is a**
14 **dispositional departure to imprisonment; or, if confinement is for a**
15 **misdemeanor, to jail for the term provided by law;**

16 **(2) impose the fine applicable to the offense;**

17 **(3) release the defendant on probation if the current crime of**
18 **conviction and criminal history fall within a presumptive**
19 **nonprison category or through a departure for substantial and**
20 **compelling reasons subject to such conditions as the court may**
21 **deem appropriate. In felony cases except for violations of K.S.A. 8-**
22 **1567, and amendments thereto, the court may include confinement**
23 **in a county jail not to exceed 60 days, which need not be served**
24 **consecutively, as a condition of an original probation sentence and**
25 **up to 60 days in a county jail upon each revocation of the probation**
26 **sentence, or community corrections placement;**

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

32 **(5) assign the defendant to a conservation camp for a period**
33 **not to exceed six months as a condition of probation followed by a**

- 1 six-month period of follow-up through adult intensive supervision
- 2 by a community correctional services program, if the offender
- 3 successfully completes the conservation camp program;
- 4 (6) assign the defendant to a house arrest program pursuant to
- 5 K.S.A. 21-4603b and amendments thereto;
- 6 (7) order the defendant to attend and satisfactorily complete
- 7 an alcohol or drug education or training program as provided by
- 8 subsection (3) of K.S.A. 21-4502, and amendments thereto;
- 9 (8) order the defendant to repay the amount of any reward
- 10 paid by any crime stoppers chapter, individual, corporation or
- 11 public entity which materially aided in the apprehension or
- 12 conviction of the defendant; repay the amount of any costs and
- 13 expenses incurred by any law enforcement agency in the
- 14 apprehension of the defendant, if one of the current crimes of
- 15 conviction of the defendant includes escape, as defined in K.S.A.
- 16 21-3809, and amendments thereto, or aggravated escape, as defined
- 17 in K.S.A. 21-3810, and amendments thereto; repay expenses
- 18 incurred by a fire district, fire department or fire company
- 19 responding to a fire which has been determined to be arson under
- 20 K.S.A. 21-3718 or 21-3719, and amendments thereto, if the
- 21 defendant is convicted of such crime; repay the amount of any
- 22 public funds utilized by a law enforcement agency to purchase
- 23 controlled substances from the defendant during the investigation
- 24 which leads to the defendant's conviction; or repay the amount of
- 25 any medical costs and expenses incurred by any law enforcement
- 26 agency or county. Such repayment of the amount of any such costs
- 27 and expenses incurred by a county, law enforcement agency, fire
- 28 district, fire department or fire company or any public funds
- 29 utilized by a law enforcement agency shall be deposited and
- 30 credited to the same fund from which the public funds were
- 31 credited to prior to use by the county, law enforcement agency, fire
- 32 district, fire department or fire company;
- 33 (9) order the defendant to pay the administrative fee
- 34 authorized by K.S.A. 22-4529, and amendments thereto, unless
- 35 waived by the court;
- 36 (10) order the defendant to pay a domestic violence special
- 37 program fee authorized by K.S.A. 20-369, and amendments
- 38 thereto;
- 39 (11) if the defendant is convicted of a misdemeanor or

1 ~~convicted of a felony provision of specified in subsection (i) of K.S.A.~~
2 **21-4704, and amendments thereto, assign the defendant to a work**
3 **release program, other than a program at a correctional institution**
4 **under the control of the secretary of corrections as defined in**
5 **K.S.A. 75-5202, and amendments thereto, provided such work**
6 **release program requires such defendant to return to confinement**
7 **at the end of each day in the work release program;**

8 *(12) pay the full amount of unpaid costs associated with the*
9 *conditions of release of the appearance bond under K.S.A. 22-2802,*
10 *and amendments thereto;*

11 ~~(12)~~ **(13) impose any appropriate combination of (1), (2), (3),**
12 **(4), (5), (6), (7), (8), (9), (10), and (11) and (12); or**

13 ~~(13)~~ **(14) suspend imposition of sentence in misdemeanor cases.**

14 **(b) (1) In addition to or in lieu of any of the above, the court**
15 **shall order the defendant to pay restitution, which shall include,**
16 **but not be limited to, damage or loss caused by the defendant's**
17 **crime, unless the court finds compelling circumstances which**
18 **would render a plan of restitution unworkable. In regard to a**
19 **violation of K.S.A. 21-4018, and amendments thereto, such damage**
20 **or loss shall include, but not be limited to, attorney fees and costs**
21 **incurred to repair the credit history or rating of the person whose**
22 **personal identification documents were obtained and used in**
23 **violation of such section, and to satisfy a debt, lien or other**
24 **obligation incurred by the person whose personal identification**
25 **documents were obtained and used in violation of such section. If**
26 **the court finds a plan of restitution unworkable, the court shall**
27 **state on the record in detail the reasons therefor.**

28 **(2) If the court orders restitution, the restitution shall be a**
29 **judgment against the defendant which may be collected by the**
30 **court by garnishment or other execution as on judgments in civil**
31 **cases. If, after 60 days from the date restitution is ordered by the**
32 **court, a defendant is found to be in noncompliance with the plan**
33 **established by the court for payment of restitution, and the victim**
34 **to whom restitution is ordered paid has not initiated proceedings in**
35 **accordance with K.S.A. 60-4301 et seq., and amendments thereto,**
36 **the court shall assign an agent procured by the attorney general**
37 **pursuant to K.S.A. 75-719, and amendments thereto, to collect the**
38 **restitution on behalf of the victim. The administrative judge of each**
39 **judicial district may assign such cases to an appropriate division of**

1 the court for the conduct of civil collection proceedings.

2 (c) In addition to or in lieu of any of the above, the court shall
3 order the defendant to submit to and complete an alcohol and drug
4 evaluation, and pay a fee therefor, when required by subsection (4)
5 of K.S.A. 21-4502, and amendments thereto.

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

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

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

1 constitute a departure.

2 (2) When a new felony is committed while the offender is
3 incarcerated in a juvenile correctional facility pursuant to K.S.A.
4 38-1671, prior to its repeal, or K.S.A. 2010 Supp. 38-2373, and
5 amendments thereto, for an offense, which if committed by an
6 adult would constitute the commission of a felony, upon conviction,
7 the court shall sentence the offender to imprisonment for the new
8 conviction, even when the new crime of conviction otherwise
9 presumes a nonprison sentence. In this event, imposition of a
10 prison sentence for the new crime does not constitute a departure.
11 The conviction shall operate as a full and complete discharge from
12 any obligations, except for an order of restitution, imposed on the
13 offender arising from the offense for which the offender was
14 committed to a juvenile correctional facility.

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

26 (g) Prior to imposing a dispositional departure for a defendant
27 whose offense is classified in the presumptive nonprison grid block
28 of either sentencing guideline grid, prior to sentencing a defendant
29 to incarceration whose offense is classified in grid blocks 5-H, 5-I or
30 6-G of the sentencing guidelines grid for nondrug crimes or in grid
31 blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for
32 drug crimes, prior to sentencing a defendant to incarceration
33 whose offense is classified in grid blocks 4-E or 4-F of the
34 sentencing guideline grid for drug crimes and whose offense does
35 not meet the requirements of K.S.A. 21-4729, and amendments
36 thereto, prior to revocation of a nonprison sanction of a defendant
37 whose offense is classified in grid blocks 4-E or 4-F of the
38 sentencing guideline grid for drug crimes and whose offense does
39 not meet the requirements of K.S.A. 21-4729, and amendments

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

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

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

1 voucher for indigents' defense services or the amount prescribed by
2 the board of indigents' defense services reimbursement tables as
3 provided in K.S.A. 22-4522, and amendments thereto, whichever is
4 less.

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

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

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

38 (m) When it is provided by law that a person shall be
39 sentenced pursuant to K.S.A. 1993 Supp. 21-4628, prior to its

1 repeal, the provisions of this section shall not apply.
2 (n) Except as provided by subsection (f) of K.S.A. 21-4705, and
3 amendments thereto, in addition to any of the above, for felony
4 violations of K.S.A. 2010 Supp. 21-36a06, and amendments thereto,
5 the court shall require the defendant who meets the requirements
6 established in K.S.A. 21-4729, and amendments thereto, to
7 participate in a certified drug abuse treatment program, as
8 provided in K.S.A. 2010 Supp. 75-52,144, and amendments thereto,
9 including but not limited to, an approved after-care plan. If the
10 defendant fails to participate in or has a pattern of intentional
11 conduct that demonstrates the offender's refusal to comply with or
12 participate in the treatment program, as established by judicial
13 finding, the defendant shall be subject to revocation of probation
14 and the defendant shall serve the underlying prison sentence as
15 established in K.S.A. 21-4705, and amendments thereto. For those
16 offenders who are convicted on or after the effective date of this
17 act, upon completion of the underlying prison sentence, the
18 defendant shall not be subject to a period of postrelease
19 supervision. The amount of time spent participating in such
20 program shall not be credited as service on the underlying prison
21 sentence.
22 (o) (1) Except as provided in paragraph (3), in addition to any
23 other penalty or disposition imposed by law, upon a conviction for
24 unlawful possession of a controlled substance or controlled
25 substance analog in violation of K.S.A. 2010 Supp. 21-36a06, and
26 amendments thereto, in which the trier of fact makes a finding that
27 the unlawful possession occurred while transporting the controlled
28 substance or controlled substance analog in any vehicle upon a
29 highway or street, the offender's driver's license or privilege to
30 operate a motor vehicle on the streets and highways of this state
31 shall be suspended for one year.
32 (2) Upon suspension of a license pursuant to this subsection,
33 the court shall require the person to surrender the license to the
34 court, which shall transmit the license to the division of motor
35 vehicles of the department of revenue, to be retained until the
36 period of suspension expires. At that time, the licensee may apply to
37 the division for return of the license. If the license has expired, the
38 person may apply for a new license, which shall be issued promptly
39 upon payment of the proper fee and satisfaction of other conditions

1 established by law for obtaining a license unless another suspension
2 or revocation of the person's privilege to operate a motor vehicle is
3 in effect.

4 (3) (A) In lieu of suspending the driver's license or privilege to
5 operate a motor vehicle on the highways of this state of any person
6 as provided in paragraph (1), the judge of the court in which such
7 person was convicted may enter an order which places conditions
8 on such person's privilege of operating a motor vehicle on the
9 highways of this state, a certified copy of which such person shall
10 be required to carry any time such person is operating a motor
11 vehicle on the highways of this state. Any such order shall prescribe
12 the duration of the conditions imposed, which in no event shall be
13 for a period of more than one year.

14 (B) Upon entering an order restricting a person's license
15 hereunder, the judge shall require such person to surrender such
16 person's driver's license to the judge who shall cause it to be
17 transmitted to the division of vehicles, together with a copy of the
18 order. Upon receipt thereof, the division of vehicles shall issue
19 without charge a driver's license which shall indicate on its face
20 that conditions have been imposed on such person's privilege of
21 operating a motor vehicle and that a certified copy of the order
22 imposing such conditions is required to be carried by the person
23 for whom the license was issued any time such person is operating
24 a motor vehicle on the highways of this state. If the person
25 convicted is a nonresident, the judge shall cause a copy of the order
26 to be transmitted to the division and the division shall forward a
27 copy of it to the motor vehicle administrator, of such person's state
28 of residence. Such judge shall furnish to any person whose driver's
29 license has had conditions imposed on it under this paragraph a
30 copy of the order, which shall be recognized as a valid Kansas
31 driver's license until such time as the division shall issue the
32 restricted license provided for in this paragraph.

33 (C) Upon expiration of the period of time for which conditions
34 are imposed pursuant to this subsection, the licensee may apply to
35 the division for the return of the license previously surrendered by
36 such licensee. In the event such license has expired, such person
37 may apply to the division for a new license, which shall be issued
38 immediately by the division upon payment of the proper fee and
39 satisfaction of the other conditions established by law, unless such

1 **person's privilege to operate a motor vehicle on the highways of**
2 **this state has been suspended or revoked prior thereto. If any**
3 **person shall violate any of the conditions imposed under this**
4 **paragraph, such person's driver's license or privilege to operate a**
5 **motor vehicle on the highways of this state shall be revoked for a**
6 **period of not less than 60 days nor more than one year by the judge**
7 **of the court in which such person is convicted of violating such**
8 **conditions.**

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

12 ~~Section 1-~~ **Sec. 2.** K.S.A. 2010 Supp. 22-2802 is hereby amended
13 to read as follows: 22-2802. (1) Any person charged with a crime
14 shall, at the person's first appearance before a magistrate, be ordered
15 released pending preliminary examination or trial upon the execution of
16 an appearance bond in an amount specified by the magistrate and
17 sufficient to assure the appearance of such person before the magistrate
18 when ordered and to assure the public safety. If the person is being
19 bound over for a felony, the bond shall also be conditioned on the
20 person's appearance in the district court or by way of a two-way
21 electronic audio-video communication as provided in subsection (14) at
22 the time required by the court to answer the charge against such person
23 and at any time thereafter that the court requires. Unless the magistrate
24 makes a specific finding otherwise, if the person is being bonded out
25 for a person felony or a person misdemeanor, the bond shall be
26 conditioned on the person being prohibited from having any contact
27 with the alleged victim of such offense for a period of at least 72 hours.
28 The magistrate may impose such of the following additional conditions
29 of release as will reasonably assure the appearance of the person for
30 preliminary examination or trial:

31 (a) Place the person in the custody of a designated person or
32 organization agreeing to supervise such person;

33 (b) place restrictions on the travel, association or place of abode of
34 the person during the period of release;

35 (c) impose any other condition deemed reasonably necessary to
36 assure appearance as required, including a condition requiring that the
37 person return to custody during specified hours;

38 (d) place the person under a house arrest program pursuant to
39 K.S.A. 21-4603b, and amendments thereto; or

1 (e) place the person under the supervision of a court services
2 officer responsible for monitoring the person's compliance with any
3 conditions of release ordered by the magistrate.

4 (2) In addition to any conditions of release provided in subsection
5 (1), for any person charged with a felony, the magistrate may order
6 such person to submit to a drug *and alcohol* abuse examination and
7 evaluation in a public or private treatment facility or state institution
8 and, if determined by the head of such facility or institution that such
9 person is a drug *or alcohol* abuser or *is* incapacitated by drugs *or*
10 *alcohol*, to submit to treatment for such drug *or alcohol* abuse, as a
11 condition of release.

12 (3) The appearance bond shall be executed with sufficient solvent
13 sureties who are residents of the state of Kansas, unless the magistrate
14 determines, in the exercise of such magistrate's discretion, that
15 requiring sureties is not necessary to assure the appearance of the
16 person at the time ordered.

17 (4) A deposit of cash in the amount of the bond may be made in
18 lieu of the execution of the bond pursuant to paragraph (3). Except as
19 provided in paragraph (5), such deposit shall be in the full amount of
20 the bond and in no event shall a deposit of cash in less than the full
21 amount of bond be permitted. Any person charged with a crime who is
22 released on a cash bond shall be entitled to a refund of all moneys paid
23 for the cash bond, after deduction of any outstanding restitution, costs,
24 fines and fees, after the final disposition of the criminal case if the
25 person complies with all requirements to appear in court. The court
26 may not exclude the option of posting bond pursuant to paragraph (3).

27 (5) Except as provided further, the amount of the appearance bond
28 shall be the same whether executed as described in subsection (3) or
29 posted with a deposit of cash as described in subsection (4). When the
30 appearance bond has been set at \$2,500 or less and the most serious
31 charge against the person is a misdemeanor, a severity level 8, 9 or 10
32 nonperson felony, a drug severity level 4 felony or a violation of K.S.A.
33 8-1567, and amendments thereto, the magistrate may allow the person
34 to deposit cash with the clerk in the amount of 10% of the bond,
35 provided the person meets at least the following qualifications:

- 36 (A) Is a resident of the state of Kansas;
- 37 (B) has a criminal history score category of G, H or I;
- 38 (C) has no prior history of failure to appear for any court
39 appearances;

- 1 (D) has no detainer or hold from any other jurisdiction;
- 2 (E) has not been extradited from, and is not awaiting extradition
- 3 to, another state; and
- 4 (F) has not been detained for an alleged violation of probation.
- 5 (6) In the discretion of the court, a person charged with a crime
- 6 may be released upon the person's own recognizance by guaranteeing
- 7 payment of the amount of the bond for the person's failure to comply
- 8 with all requirements to appear in court. The release of a person
- 9 charged with a crime upon the person's own recognizance shall not
- 10 require the deposit of any cash by the person.
- 11 (7) The court shall not impose any administrative fee.
- 12 (8) In determining which conditions of release will reasonably
- 13 assure appearance and the public safety, the magistrate shall, on the
- 14 basis of available information, take into account the nature and
- 15 circumstances of the crime charged; the weight of the evidence against
- 16 the defendant; the defendant's family ties, employment, financial
- 17 resources, character, mental condition, length of residence in the
- 18 community, record of convictions, record of appearance or failure to
- 19 appear at court proceedings or of flight to avoid prosecution; the
- 20 likelihood or propensity of the defendant to commit crimes while on
- 21 release, including whether the defendant will be likely to threaten,
- 22 harass or cause injury to the victim of the crime or any witnesses
- 23 thereto; and whether the defendant is on probation or parole from a
- 24 previous offense at the time of the alleged commission of the
- 25 subsequent offense.
- 26 (9) The appearance bond shall set forth all of the conditions of
- 27 release.
- 28 (10) A person for whom conditions of release are imposed and
- 29 who continues to be detained as a result of the person's inability to meet
- 30 the conditions of release shall be entitled, upon application, to have the
- 31 conditions reviewed without unnecessary delay by the magistrate who
- 32 imposed them. If the magistrate who imposed conditions of release is
- 33 not available, any other magistrate in the county may review such
- 34 conditions.
- 35 (11) A magistrate ordering the release of a person on any
- 36 conditions specified in this section may at any time amend the order to
- 37 impose additional or different conditions of release. If the imposition of
- 38 additional or different conditions results in the detention of the person,
- 39 the provisions of subsection (10) shall apply.

1 (12) Statements or information offered in determining the
2 conditions of release need not conform to the rules of evidence. No
3 statement or admission of the defendant made at such a proceeding
4 shall be received as evidence in any subsequent proceeding against the
5 defendant.

6 (13) The appearance bond and any security required as a condition
7 of the defendant's release shall be deposited in the office of the
8 magistrate or the clerk of the court where the release is ordered. If the
9 defendant is bound to appear before a magistrate or court other than the
10 one ordering the release, the order of release, together with the bond
11 and security shall be transmitted to the magistrate or clerk of the court
12 before whom the defendant is bound to appear.

13 (14) Proceedings before a magistrate as provided in this section to
14 determine the release conditions of a person charged with a crime
15 including release upon execution of an appearance bond may be
16 conducted by two-way electronic audio-video communication between
17 the defendant and the judge in lieu of personal presence of the
18 defendant or defendant's counsel in the courtroom in the discretion of
19 the court. The defendant may be accompanied by the defendant's
20 counsel. The defendant shall be informed of the defendant's right to be
21 personally present in the courtroom during such proceeding if the
22 defendant so requests. Exercising the right to be present shall in no way
23 prejudice the defendant.

24 (15) The magistrate may order the person to pay for any costs
25 associated with the supervision of the conditions of release of the
26 appearance bond in an amount not to exceed \$15 per week of such
27 supervision. *As a condition of sentencing under section 244 of chapter*
28 *136 of the 2010 Session Laws of Kansas, and amendments thereto, the*
29 *court may impose the full amount of any such costs in ~~excess of~~*
30 **addition to the \$15 per week, including, but not limited to, costs for**
31 *treatment and evaluation under subsection (2).*

32 ~~Sec. 2.~~ **3. On and after July 1, 2011,** section 244 of chapter 136
33 of the 2010 Session Laws of Kansas is hereby amended to read as
34 follows: Sec. 244. (a) Whenever any person has been found guilty of a
35 crime, the court may adjudge any of the following:

36 (1) Commit the defendant to the custody of the secretary of
37 corrections if the current crime of conviction is a felony and the
38 sentence presumes imprisonment, or the sentence imposed is a
39 dispositional departure to imprisonment; or, if confinement is for a

- 1 misdemeanor, to jail for the term provided by law;
- 2 (2) impose the fine applicable to the offense;
- 3 (3) release the defendant on probation if the current crime of
4 conviction and criminal history fall within a presumptive nonprison
5 category or through a departure for substantial and compelling reasons
6 subject to such conditions as the court may deem appropriate. In felony
7 cases except for violations of K.S.A. 8-1567, and amendments thereto,
8 the court may include confinement in a county jail not to exceed 60
9 days, which need not be served consecutively, as a condition of an
10 original probation sentence and up to 60 days in a county jail upon each
11 revocation of the probation sentence, or community corrections
12 placement;
- 13 (4) assign the defendant to a community correctional services
14 program as provided in K.S.A. 75-5291, and amendments thereto, or
15 through a departure for substantial and compelling reasons subject to
16 such conditions as the court may deem appropriate, including orders
17 requiring full or partial restitution;
- 18 (5) assign the defendant to a conservation camp for a period not to
19 exceed six months as a condition of probation followed by a six-month
20 period of follow-up through adult intensive supervision by a
21 community correctional services program, if the offender successfully
22 completes the conservation camp program;
- 23 (6) assign the defendant to a house arrest program pursuant to
24 section 249 of *chapter 136 of the 2010 Session Laws of Kansas*, and
25 amendments thereto;
- 26 (7) order the defendant to attend and satisfactorily complete an
27 alcohol or drug education or training program as provided by
28 subsection (c) of section 242 of *chapter 136 of the 2010 Session Laws*
29 *of Kansas*, and amendments thereto;
- 30 (8) order the defendant to repay the amount of any reward paid by
31 any crime stoppers chapter, individual, corporation or public entity
32 which materially aided in the apprehension or conviction of the
33 defendant; repay the amount of any costs and expenses incurred by any
34 law enforcement agency in the apprehension of the defendant, if one of
35 the current crimes of conviction of the defendant includes escape or
36 aggravated escape, as defined in section 136 of *chapter 136 of the 2010*
37 *Session Laws of Kansas*, and amendments thereto; repay expenses
38 incurred by a fire district, fire department or fire company responding
39 to a fire which has been determined to be arson under section 98 of

1 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments
2 thereto, if the defendant is convicted of such crime; repay the amount
3 of any public funds utilized by a law enforcement agency to purchase
4 controlled substances from the defendant during the investigation
5 which leads to the defendant's conviction; or repay the amount of any
6 medical costs and expenses incurred by any law enforcement agency or
7 county. Such repayment of the amount of any such costs and expenses
8 incurred by a county, law enforcement agency, fire district, fire
9 department or fire company or any public funds utilized by a law
10 enforcement agency shall be deposited and credited to the same fund
11 from which the public funds were credited to prior to use by the county,
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. 22-4529, and amendments thereto, unless waived by the court;

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

17 (11) *pay the full amount of unpaid costs associated with the*
18 *conditions of release of the appearance bond under K.S.A. 22-2802,*
19 *and amendments thereto;*

20 ~~(11)~~(12) impose any appropriate combination of (1), (2), (3), (4),
21 (5), (6), (7), (8), (9), ~~and~~ (10) *and* (11); or

22 ~~(12)~~(13) suspend imposition of sentence in misdemeanor cases.

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

37 (2) If the court orders restitution, the restitution shall be a
38 judgment against the defendant which may be collected by the court by
39 garnishment or other execution as on judgments in civil cases. If, after

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

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

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

1 (f) (1) When a new felony is committed while the offender is
2 incarcerated and serving a sentence for a felony, or while the offender
3 is on probation, assignment to a community correctional services
4 program, parole, conditional release or postrelease supervision for a
5 felony, a new sentence shall be imposed pursuant to the consecutive
6 sentencing requirements of section 246 of chapter 136 of the 2010
7 Session Laws of Kansas, and amendments thereto, and the court may
8 sentence the offender to imprisonment for the new conviction, even
9 when the new crime of conviction otherwise presumes a nonprison
10 sentence. In this event, imposition of a prison sentence for the new
11 crime does not constitute a departure.

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

25 (3) When a new felony is committed while the offender is on
26 release for a felony pursuant to the provisions of article 28 of chapter
27 22 of the Kansas Statutes Annotated, and amendments thereto, or
28 similar provisions of the laws of another jurisdiction, a new sentence
29 may be imposed pursuant to the consecutive sentencing requirements of
30 section 246 of chapter 136 of the 2010 Session Laws of Kansas, 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 constitute a
35 departure.

36 (g) Prior to imposing a dispositional departure for a defendant
37 whose offense is classified in the presumptive nonprison grid block of
38 either sentencing guideline grid, prior to sentencing a defendant to
39 incarceration whose offense is classified in grid blocks 5-H, 5-I or 6-G

1 of the sentencing guidelines grid for nondrug crimes or in grid blocks
2 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug
3 crimes, prior to sentencing a defendant to incarceration whose offense
4 is classified in grid blocks 4-E or 4-F of the sentencing guideline grid
5 for drug crimes and whose offense does not meet the requirements of
6 section 305 of chapter 136 of the 2010 Session Laws of Kansas, and
7 amendments thereto, prior to revocation of a nonprison sanction of a
8 defendant whose offense is classified in grid blocks 4-E or 4-F of the
9 sentencing guideline grid for drug crimes and whose offense does not
10 meet the requirements of section 305 of chapter 136 of the 2010
11 Session Laws of Kansas, and amendments thereto, or prior to
12 revocation of a nonprison sanction of a defendant whose offense is
13 classified in the presumptive nonprison grid block of either sentencing
14 guideline grid or 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
16 or 3-I of the sentencing guidelines grid for drug crimes, the court shall
17 consider placement of the defendant in the Labette correctional
18 conservation camp, conservation camps established by the secretary of
19 corrections pursuant to K.S.A. 75-52,127, and amendment thereto, or a
20 community intermediate sanction center. Pursuant to this paragraph the
21 defendant shall not be sentenced to imprisonment if space is available
22 in a conservation camp or a community intermediate sanction center
23 and the defendant meets all of the conservation camp's or a community
24 intermediate sanction center's placement criteria unless the court states
25 on the record the reasons for not placing the defendant in a
26 conservation camp or a community intermediate sanction center.

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

32 (i) In addition to any of the above, the court shall order the
33 defendant to reimburse the state general fund for all or a part of the
34 expenditures by the state board of indigents' defense services to provide
35 counsel and other defense services to the defendant. In determining the
36 amount and method of payment of such sum, the court shall take
37 account of the financial resources of the defendant and the nature of the
38 burden that payment of such sum will impose. A defendant who has
39 been required to pay such sum and who is not willfully in default in the

1 payment thereof may at any time petition the court which sentenced the
2 defendant to waive payment of such sum or any unpaid portion thereof.
3 If it appears to the satisfaction of the court that payment of the amount
4 due will impose manifest hardship on the defendant or the defendant's
5 immediate family, the court may waive payment of all or part of the
6 amount due or modify the method of payment. The amount of attorney
7 fees to be included in the court order for reimbursement shall be the
8 amount claimed by appointed counsel on the payment voucher for
9 indigents' defense services or the amount prescribed by the board of
10 indigents' defense services reimbursement tables as provided in K.S.A.
11 22-4522, and amendments thereto, whichever is less.

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

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

22 (l) The secretary of corrections is authorized to make direct
23 placement to the Labette correctional conservation camp or a
24 conservation camp established by the secretary pursuant to K.S.A. 75-
25 52,127, and amendments thereto, of an inmate sentenced to the
26 secretary's custody if the inmate: (1) Has been sentenced to the
27 secretary for a probation revocation, as a departure from the
28 presumptive nonimprisonment grid block of either sentencing grid, for
29 an offense which is classified in grid blocks 5-H, 5-I, or 6-G of the
30 sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-
31 F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes, or
32 for an offense which is classified in grid blocks 4-E or 4-F of the
33 sentencing guidelines grid for drug crimes and such offense does not
34 meet the requirements of section 305 of *chapter 136 of the 2010*
35 *Session Laws of Kansas*, and amendments thereto, and (2) otherwise
36 meets admission criteria of the camp. If the inmate successfully
37 completes a conservation camp program, the secretary of corrections
38 shall report such completion to the sentencing court and the county or
39 district attorney. The inmate shall then be assigned by the court to six

1 months of follow-up supervision conducted by the appropriate
2 community corrections services program. The court may also order that
3 supervision continue thereafter for the length of time authorized by
4 section 305 of chapter 136 of the 2010 Session Laws of Kansas, and
5 amendments thereto.

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

9 (n) Except as provided by subsection (f) of section 286 of chapter
10 136 of the 2010 Session Laws of Kansas, and amendments thereto, in
11 addition to any of the above, for felony violations of K.S.A. ~~2009~~2010
12 Supp. 21-36a06, and amendments thereto, the court shall require the
13 defendant who meets the requirements established in section 305 of
14 chapter 136 of the 2010 Session Laws of Kansas, and amendments
15 thereto, to participate in a certified drug abuse treatment program, as
16 provided in K.S.A. ~~2009~~2010 Supp. 75-52,144, and amendments
17 thereto, including, but not limited to, an approved after-care plan. If the
18 defendant fails to participate in or has a pattern of intentional conduct
19 that demonstrates the offender's refusal to comply with or participate in
20 the treatment program, as established by judicial finding, the defendant
21 shall be subject to revocation of probation and the defendant shall serve
22 the underlying prison sentence as established in section 305 of chapter
23 136 of the 2010 Session Laws of Kansas, and amendments thereto. For
24 those offenders who are convicted on or after the effective date of this
25 act, upon completion of the underlying prison sentence, the defendant
26 shall not be subject to a period of postrelease supervision. The amount
27 of time spent participating in such program shall not be credited as
28 service on the underlying prison sentence.

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

39 (2) Upon suspension of a license pursuant to this subsection, the

1 court shall require the person to surrender the license to the court,
2 which shall transmit the license to the division of motor vehicles of the
3 department of revenue, to be retained until the period of suspension
4 expires. At that time, the licensee may apply to the division for return
5 of the license. If the license has expired, the person may apply for a
6 new license, which shall be issued promptly upon payment of the
7 proper fee and satisfaction of other conditions established by law for
8 obtaining a license unless another suspension or revocation of the
9 person's privilege to operate a motor vehicle is in effect.

10 (3) (A) In lieu of suspending the driver's license or privilege to
11 operate a motor vehicle on the highways of this state of any person as
12 provided in paragraph (1), the judge of the court in which such person
13 was convicted may enter an order which places conditions on such
14 person's privilege of operating a motor vehicle on the highways of this
15 state, a certified copy of which such person shall be required to carry
16 any time such person is operating a motor vehicle on the highways of
17 this state. Any such order shall prescribe the duration of the conditions
18 imposed, which in no event shall be for a period of more than one year.

19 (B) Upon entering an order restricting a person's license hereunder,
20 the judge shall require such person to surrender such person's driver's
21 license to the judge who shall cause it to be transmitted to the division
22 of vehicles, together with a copy of the order. Upon receipt thereof, the
23 division of vehicles shall issue without charge a driver's license which
24 shall indicate on its face that conditions have been imposed on such
25 person's privilege of operating a motor vehicle and that a certified copy
26 of the order imposing such conditions is required to be carried by the
27 person for whom the license was issued any time such person is
28 operating a motor vehicle on the highways of this state. If the person
29 convicted is a nonresident, the judge shall cause a copy of the order to
30 be transmitted to the division and the division shall forward a copy of it
31 to the motor vehicle administrator, of such person's state of residence.
32 Such judge shall furnish to any person whose driver's license has had
33 conditions imposed on it under this paragraph a copy of the order,
34 which shall be recognized as a valid Kansas driver's license until such
35 time as the division shall issue the restricted license provided for in this
36 paragraph.

37 (C) Upon expiration of the period of time for which conditions are
38 imposed pursuant to this subsection, the licensee may apply to the
39 division for the return of the license previously surrendered by such

1 licensee. In the event such license has expired, such person may apply
2 to the division for a new license, which shall be issued immediately by
3 the division upon payment of the proper fee and satisfaction of the
4 other conditions established by law, unless such person's privilege to
5 operate a motor vehicle on the highways of this state has been
6 suspended or revoked prior thereto. If any person shall violate any of
7 the conditions imposed under this paragraph, such person's driver's
8 license or privilege to operate a motor vehicle on the highways of this
9 state shall be revoked for a period of not less than 60 days nor more
10 than one year by the judge of the court in which such person is
11 convicted of violating such conditions.

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

15 ~~Sec. 3-4.~~ K.S.A. 2010 Supp. **21-4603d** and 22-2802 ~~and section~~
16 ~~244 of chapter 136 of the 2010 Session Laws of Kansas~~ are hereby
17 repealed.

18 **Sec. 5. On and after July 1, 2011, section 244 of chapter 136 of**
19 **the 2010 Session Laws of Kansas is hereby repealed.**

20 ~~Sec. 4-6.~~ This act shall take effect and be in force from and after
21 its publication in the ~~statute book~~ **Kansas Register**.