

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

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To: House Committee on Corrections and Juvenile Justice

From: Natalie Teemer-Washington, Research Analyst; and
Robert Allison-Gallimore, Principal Research Analyst

Re: Probation Length and Conditions

PROBATION LENGTH AND CONDITIONS IN KANSAS

Period of Probation

The period of probation, generally, is governed by KSA 2014 Supp. 21-6608, which limits probation in misdemeanor cases to two years, subject to renewal and extension for additional fixed periods of two years.

The statute recommends probation duration (for crimes committed on or after July 1, 1993) of 36 months for nondrug felonies ranked in severity levels 1 through 5 or drug crimes ranked in severity levels 1 and 2 (prior to July 1, 2012, when the 5-level drug grid went into effect) or severity levels 1 through 3 (on or after July 1, 2012). The statute recommends a probation duration of 24 months for nondrug felonies ranked in severity levels 6 and 7.

The statute requires the court to impose the following periods of probation when imposing a nonprison sanction in the following situations:

- Up to 18 months for nondrug felonies ranked in severity level 8, drug crimes ranked in severity level 3 (prior to July 1, 2012) or severity level 4 (on or after July 1, 2012), or felony cases sentenced pursuant to the 2003 SB 123 (KSA 21-6824) treatment program; and
- Up to 12 months for nondrug felonies ranked in severity levels 9 and 10, drug crimes ranked in severity level 4 (prior to July 1, 2012) or severity level 5 (on or after July 1, 2012).

The court may impose a longer period of probation in either of these situations if it finds public safety will be jeopardized or the welfare of the offender will not be served by the given probation lengths.

The total period of probation in all cases shall not exceed the longer of 60 months or the maximum period of the prison sentence that could be imposed, except where:

- The defendant is convicted of nonsupport of a child and the responsibility for support continues;
- The defendant has not satisfied a restitution order; or
- The court modifies or extends the supervision period pursuant to a modification hearing and a judicial finding of necessity. Such extensions may be made for a maximum period of the longer of five years or the maximum period of the prison sentence that could be imposed, inclusive of the original supervision term.

A defendant who has been assessed as a low risk and has complied with the terms of probation for 12 months is eligible for discharge by the court, and discharge shall be granted unless the court finds by clear and convincing evidence that denial of such discharge will serve community safety interests.

Probation Conditions

Other than a few statutorily required probation conditions, Kansas district courts have broad authority to set probation conditions. KSA 2014 Supp. 21-6607 establishes the framework for probation conditions in Kansas and states that, other than the mandated conditions, nothing in that section “shall be construed to limit the authority of the court to impose or modify any general or specific conditions of probation.”

Kansas appellate courts recognize that district courts have “broad discretion to impose any conditions of probation that the court deems ‘proper,’” but such conditions may not violate a probationer’s constitutional rights absent a compelling state interest. *State v. Bennett*, 288 Kan. 86, 91 (2009). While conditions of probation “may restrict constitutional rights or freedoms an ordinary citizen might enjoy,” the “restrictions must bear a reasonable relationship to the rehabilitative goals of probation, the protection of the public, and the nature of the offense.” *State v. Evans*, 14 Kan. App. 2d 591, 592 (1990).

Mandatory Probation Conditions

Under KSA 2014 Supp. 21-6607(c) a court must impose the following probation conditions requiring the defendant to:

- Obey the laws of the United States and of Kansas, and any other laws to which the defendant is subject;
- Provide reparation or restitution to the victim for the damage or loss the defendant’s crime caused unless the court finds compelling circumstances making restitution unworkable;

- Pay the district court a correctional supervision fee of \$60 (misdemeanor) or \$120 (felony), which the judge may reduce or waive;
- Reimburse the State General Fund for all or part of the expenditures of the State Board of Indigents' Defense Services to provide an attorney to the defendant;
- Be subject to searches if there is reasonable suspicion the defendant has violated the conditions of probation or committed criminal activity; and
- Be subject to random and reasonable drug and alcohol tests.

Discretionary Probation Conditions

In addition to the mandatory probation requirements, a district court judge may impose any probation conditions the judge finds appropriate. Under KSA 2014 Supp. 21-6607(b), a court may impose any conditions that it deems proper including, but not limited to, those requiring the defendant to:

- Avoid harmful habits;
- Avoid certain persons or places;
- Report to a court services or community correctional services officer;
- Permit home visits by the supervising officer;
- Work at suitable employment;
- Remain in the state;
- Pay a fine or costs applicable to the offense;
- Support the defendant's dependents;
- Live in a community residential facility and participate in correctional or rehabilitative programs;
- Perform public service work;
- Participate in a day fine system;
- Participate in house arrest;
- Pay an administrative fee; or
- Be confined in a county jail for up to 60 days.

Offense-Specific Probation Conditions or Restrictions

Certain offenses contain probation restrictions or conditions required for offenders convicted of that particular offense. Examples include these:

- Persons convicted of certain offenses involving firearms may not be granted probation (KSA 2014 Supp. 21-6707); and
- Persons convicted of certain offenses are required to serve a minimum term of imprisonment before probation may be granted or as a condition of probation, including:

- For a second driving under the influence (DUI) conviction, 5 days (KSA 2014 Supp. 8-1567);
- For a third or subsequent DUI conviction, 90 days (KSA 2014 Supp. 8-1567);
- For a second forgery conviction, 30 days (KSA 2014 Supp. 21-5823);
- For a third forgery conviction, 45 days (KSA 2014 Supp. 21-5823); and
- For a criminal deprivation of property that is a motor vehicle conviction, 30 days (first offense) or 60 days (second offense) (KSA 2014 Supp. 21-5803).

District Courts' Probation Conditions

As the conditions of probation, in large part, are left to the discretion of the district court, the courts in Kansas vary in how they establish probation conditions. Based on a sample of three counties' probation conditions, it appears each county differs in how probation conditions are established.

In Shawnee County, the district court requires all probationers to comply with the same probation conditions. The district court in Shawnee County uses a standard Order of Probation form that lists all of the probation conditions each time a defendant is sentenced to probation. (See the attached Order of Probation for Shawnee County.)

In Sedgwick County, the district court sets probation conditions on a case-by-case basis. The mandatory probation conditions are required in every case, but the discretionary probation conditions depend on the circumstances surrounding the case and the judge's opinion of which conditions are appropriate based on those circumstances. There is no standard Order of Probation in Sedgwick County.

The Wyandotte County district court models its probation conditions after the Sentencing Commission's guidelines for probation. The mandatory conditions are standard, and the special conditions vary for different types of offenders. Wyandotte County is in the process of revising its Orders of Probation. The older version was a standard list of probation conditions for every defendant with an additional page for special conditions. The new Order of Probation combines the older version and the special conditions page and allows the judge to check off which probation conditions apply to each case. This allows for probation conditions that are tailored to each individual defendant. (See the attached Orders of Probation for Wyandotte County.)

NW/rc

Enclosures

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION Division Number

STATE OF KANSAS

PLAINTIFF

VS.

NO.: Case Number

Defendant

DEFENDANT

ORDER OF PROBATION

In accordance with the authority conferred by the laws of the State of Kansas, you have been placed on probation this date, , for a period of months by the Honorable , District Judge.

IT IS THE ORDER OF THE COURT THAT YOU WILL COMPLY WITH THE FOLLOWING STANDARD CONDITIONS OF PROBATION (DCR 3.308):

1. You will not violate any law (federal, state or local).
2. You will notify your probation officer, the next working day, if questioned or arrested by a law enforcement officer. You will not act as an informant for any law enforcement agency without first discussing the situation with your probation officer.
3. You will not have contact with victims, witnesses, or co-defendant(s), in this or any other cases.
4. You will seek and maintain a lawful full-time job and provide proof of such to your probation officer. You will advise your employer of your probation, and you will maintain reasonable hours in your personal life, consistent with your work schedule.
5. You will notify your probation officer the next working day if you change or lose your job and report your progress in seeking a new job.
6. You will keep your probation officer informed, and provide proof, of your current address and notify your probation officer before making any changes in your address.
7. You will make regular monthly payments consistent with your income on all court-ordered obligations (including restitution, costs, fines, fees, child support, civil, traffic, or the like). You will support your legal dependents, to the best of your ability. The Court Collection Service may be used to collect debts owed to Victims and the Court.
8. You will not own, possess, transport, or receive any firearms and/or ammunition during the term of your probation.
9. You will not leave Shawnee County, Kansas, without permission of your probation officer.
10. You will provide your probation officer with full and truthful information at all times.
11. You will report as directed, follow the probation officer's instructions, and permit visits at reasonable times.
12. You will not consume alcohol, cereal malt beverages, or illegal drugs and you will not associate with persons or places where alcohol, cereal malt beverages, or illegal drugs are sold, distributed, or consumed.
13. You will submit to a breath, blood, or urine test upon the request of a probation officer, or any other law enforcement officer, at any time during the term of your probation and pay the costs of the test.
14. You will participate in, cooperate with, and successfully complete all evaluations, treatment, counseling, education, Work Release, Community Service Work, or other programs required by your supervising probation officer.
15. You will be subject to and shall cooperate with the following requirements and restrictions (including the frequency thereof), and associated costs as administered by your probation officer: reporting, chemical testing, field contacts, travel restrictions, curfews, up to 200 hours of community service work, evaluations/treatments, ISP screenings, work release, review board, and electronic monitoring.

IT IS THE FURTHER ORDER OF THE COURT THAT YOU WILL PAY THE FOLLOWING SPECIALLY ASSESSED CHARGES AS DIRECTED BY YOUR PROBATION OFFICER:

Docket Fees	Attorney Fees
Probation Service Fee	KBI Analysis Fee
Fine	Administrative Fee
Restitution	Surcharge

IT IS THE FURTHER ORDER OF THE COURT THAT YOU WILL COMPLY WITH THE FOLLOWING SPECIAL CONDITIONS:

- 1)
- 2)

I understand that the Court can change these conditions of probation, reduce the period of probation, or extend the period of probation if conditions are not met.

I also understand that at any time during my probation I may be arrested by a probation officer or any law enforcement officer for any violation of my probation, which could result in my probation being revoked and my sentence being imposed.

I have (read / had this order read to me), received a copy of, and understand this order. I further understand that I have a responsibility to comply with this order.

IT IS SO ORDERED.

DISTRICT JUDGE

Probationer

Date

Probation Officer I

Date

Address: _____

R/N: _____

Phone: _____

Defendant

S.S. No.:

DOB:

Case No.: Case Number

Division Division Number

/ /

Employer: _____

Offense:

Special Conditions:

Docket Fees

Attorney Fees

Probation Service Fee

KBI Analysis Fee

Fine

Administrative Fee

Restitution

Surcharge

Total

\$0.00

Probation Order/Brochure Given and Explained to Client

(date)

Monthly Income Worksheet Completed

(date)

Estimated Amount of Payment Agreed Upon

Frequency of Payment (weekly, bi-weekly, monthly)

Yes No

Treatment Required

Date Entered Treatment

Date Completed

Volunteer Work Began

Hours Completed

(date)

New Charges Filed

Convicted/Dismissed (date)

New Charges Filed

Convicted/Dismissed

(date)

Revocation Requested:

(date)

Early Discharge Requested **Approved** **Disapproved**

(date)

Discharged **OJA 50 Completed**

IN THE DISTRICT COURT OF WYANDOTTE COUNTY, KANSAS

State of Kansas

vs.

FILED

2012 MAR -6 PM 3:24

Case No. [REDACTED]

CLERK DISTRICT COURT
WYANDOTTE COUNTY KANSAS
ORDER OF PROBATION

BY

Be it known that on this 10 day of February, 2012 in accordance with KSA 21-4603 and 21-4610 and the court having heard and considered the defendant's application for probation doth grant probation to the said defendant for a term not to exceed the statutory limitations set forth in KSA 21-4611.

1. Refrain from violation of any local, state, or federal laws.
2. Avoid such injurious or vicious habits as directed by the court services officer/community corrections officer.
3. Avoid such persons or places of disreputable or harmful character.
4. Permit the court services officer/community corrections officer and any accompanying law enforcement officers to visit you at home or elsewhere. This visit may include a complete tour of your home and a check for any violations of probation.
5. Pay all court costs within 120 days and any additional costs resulting from the prosecution of your case including fees for court appointed counsel. All payments must be made in the Office of the Clerk of the District Court, 710 N 7, Kansas City, KS 66101 in the form of cash, check, or money order. Mailed payments must be in the form of check or money order only, never mail cash. No payment will be accepted in the Probation Office.
6. Report to the court services officer/community corrections officer as instructed.
7. Notify your court services officer/community corrections officer before changing your address or phone number.
8. You shall not travel beyond a 100 mile radius of your home without the permission of your officer. You are not to reenter the United States if deported or, in lieu of deportation, voluntarily leave this country.
9. You shall obtain and maintain employment during your probation.
10. Submit to breathalysis and/or urinalysis at the request of the court services officer/community corrections officer and you shall pay for the costs of the test.
11. You shall support all your dependents.
12. You shall not carry any type of weapon and may be required to empty all pockets while in the Probation Office or while in the presence of a court services officer/community corrections officer. You will be required to submit to a search by a law enforcement officer when requested by a CSO/ISO. If convicted of a felony, addicted to a controlled substance, or convicted within the last 10 years of a crime listed in the KS firearm regulation, you shall not possess a firearm as per Chapter 21 Article 42 Kansas Statutes Annotated.
13. You shall not use any drugs except those prescribed by a physician and taken as directed.
14. Answer any and all outstanding warrants within 2 months.
15. You are required to perform 40 hours of community service.
16. Cooperate fully with the supervising agency and officer.
17. You shall not act as a confidential informant for any law enforcement agency.

No.: 2010-CK-00

In addition to the aforementioned conditions, you shall also comply with the following special conditions set out by the court and the court services officer/community corrections officer.

- 18. No possession or consumption of alcohol or illegal drugs.
- 19. Complete counseling in anger management and provide proof.
- 20. Pay full restitution of \$~~100~~ at the rate of \$ ___ per month.
- 21. Have no contact with the victim, ___.
- 22. Have no contact with the co-defendant, ___.
- 23. I shall seek and maintain ___ full-time / ___ part-time employment and provide my probation officer with proof of such.

You are hereby advised that the Courts retain the right to:

- (1) Revoke your probation for violation of any of these conditions.
- (2) Modify the conditions of probation.
- (3) Reduce or extend the period of probation.

You are also advised that a warrant may be issued for your arrest at any time during your probation term and you would be held without a bond until a hearing is held before the District Court Judge.

The District Court has placed you on probation believing that you will obey the law and conduct yourself so that you will be of benefit to the community and yourself. You shall keep this paper in your possession at all times during the probation term.

Dated this 10 day of February, 20__

[Signature]
Division - Courtroom Mezzanine

I have read the foregoing Order of Probation and reviewed them in the presence of the court services officer. I agree to abide by all conditions of this order and understand the consequences of violation of these conditions.

[Signature]
Defendant
[Signature]
Court Services Officer

CASE NO.

page 5

6. **PLACEMENT OPTIONS:** This is a list of placement options and the presentence Investigator's professional assessment of possible conditions should the court place the offender on probation or order some form of community sanction.

COMMUNITY CORRECTIONS [Indicate the criteria from K.S.A. 2013 Supp. 75-5291(a)(2) or Special Rule that qualifies the defendant for placement in Community Corrections.]

- (a)(2)(A) Border box on either grid or levels 6H or 6I or 7C through 7I on nondrug grid
- (a)(2)(B) Downward dispositional departure from presumptive prison sentence
- (a)(2)(C) Convicted of offense severity level 7 or higher which requires registration
- (a)(2)(G) Drug Treatment for up to 18 months (K.S.A. 2013 Supp. 21-6824 "SB 123")
- (a)(2)(E) Scored "high risk or needs, or both"
- ** (a)(2)(F) Follows successful completion of a conservation camp program
- Special Rule Applies

COURT SERVICES

DEPARTMENT OF CORRECTIONS

7. **OFFICER'S ASSESSMENT OF CONDITIONS OF PROBATION:** K.S.A. 2013 Supp. 21-6607 [Check All That Apply.]

Alcohol evaluation Drug evaluation Mental Health evaluation ADSAP Evaluation Domestic Violence Offender Assessment (K.S.A. 2013 Supp. 21-6604(p))

In Patient Out Patient

Alcohol treatment Drug treatment Mental Health treatment (Follow recommendations of counselor)

No possession or consumption of alcohol or illegal drugs

At C.S.O. request and at defendant's own expense, submit to random: Breath test Blood test Urinalysis test

Community Service Work: _____ Hours

Gain employment Maintain employment

Notify the C.S.O. of changes in employment, residence and phone number

No contact with: Victim Co-defendant

Educational program: G.E.D. Vocational Higher Education

Register as an offender pursuant to the Kansas Offender Registration Act, K.S.A. 2013 Supp. 22-4901 et. seq. (NO registration is required for K.S.A. 2013 Supp. 21-5705(a)(2)-(a)(6) and ALL subsections (formerly K.S.A 21-36a05(a)(2) and ALL subsections of (a)(2))

Attend a presentation by the Victim Impact Panel

Submit to KBI DNA testing and be responsible for the cost of the test

Curfew Restriction: _____

Travel Restriction: _____

Other: _____

From Sentencing Guidelines Manual

8. **COSTS PROPOSED:**

Total Restitution (Please complete pg. 4 item #4)	\$ _____	Correctional Supv. Fee (Felony \$120/ Misd. \$60)	\$ _____
Court Costs (including surcharge)	\$ _____	BIDS Attorney Fee	\$ _____
*Total Fines	\$ _____	BIDS Application Fee	\$ _____
DNA Database Fee (K.S.A. 21-2511 & 75-724)	\$ _____	Court-Appointed Attorney Fee	\$ _____
Extradition Costs	\$ _____	Community Corrections Fee (offenses after 1/4/07)	\$ _____
Domestic Violence Special Program Fee	\$ _____	Booking/fingerprint Fee	\$ _____
Apprehension Fee (Escape/Agg. Escape)	\$ _____	Reward Reimbursement	\$ _____
Alcohol &/or Drug Eval. Fee (offenses before 7/1/11)	\$ _____	Children's Advocacy Center Assessment Fee	\$ _____
Witness Fee	\$ _____	Medical Costs/Expenses Reimbursement	\$ _____
KBI Lab Fee	\$ _____	SB 123 Assessment Fee (\$200)	\$ _____
Other Lab Fee	\$ _____	SB 123 Offender Reimbursement (at least \$100)	\$ _____
Domestic Violence Assessment/Recommendations	\$ _____	Other: _____	\$ _____
		TOTAL COSTS	\$ _____

- * On and after 7/1/11 for DUI or Test Refusal fine of \$250 shall be sent to Community Corrections Supervision Fund.
- * On and after 7/1/13 for Promoting the Sale of Sexual Relations (K.S.A. 2013 Supp. 21-6420), Buying Sexual Relations (K.S.A. 2013 Supp. 21-6421), or Commercial Sexual Exploitation of a Child (K.S.A. 2013 Supp. 21-6422), fine of \$2500-5000 shall be sent to Human Trafficking Victim Assistance Fund.

** This option is included, but is unavailable

IN THE DISTRICT COURT OF WYANDOTTE COUNTY, KANSAS

State of Kansas,

vs.

Case No.:

ORDER OF PROBATION

On this _____ day _____, 20____, pursuant to KSA 21-6607 and 21-6608 the defendant is granted probation for a term of _____ months to be supervised by: Adult Court Services Community Corrections.

GENERAL CONDITIONS OF PROBATION:

- 1. You shall not violate any local, state or federal laws.
2. You shall report to your supervising officer as instructed.
3. You shall not carry any type of weapon when reporting and may be required to empty all pockets when reporting to or in the presence of your supervising officer.
4. You shall immediately notify your supervising officer of any change in address, phone number or employment.
5. You shall permit any Court Services Officer or Community Corrections Officer and any accompanying Law Enforcement Officers to visit you at your home or elsewhere.
6. You shall not if convicted of a felony, possess a firearm or knife. Knife means a dagger, dirk, switchblade, stiletto, straight-edged razor or any other dangerous or deadly cutting instrument of like character.
7. You shall not use drugs illegally.
8. You shall be subject to immediate or random testing if any supervising officer has reason to believe you are using drugs illegally.
9. You shall not travel more than 250 miles outside of the State of Kansas without notifying your supervising officer of the destination, purpose and duration of your trip.
10. You shall answer any outstanding warrants within 30 days.
11. You shall not drive any vehicle unless properly licensed and insured.
12. You shall cooperate fully with your supervising agency and officer.

SPECIAL CONDITIONS OF PROBATION:

- Obtain within 60 days and follow recommendations of:
Substance Abuse Evaluation Mental Health Evaluation Domestic Violence Assessment
If evaluation has been done fully participate in:
In patient Treatment Outpatient Treatment Mental Health Treatment
Other: _____
Complete a sex offender evaluation at an approved facility and follow all recommendations.
Complete Batterer's Intervention Program

- At supervising officer's request and at your own expense, submit to random:
 - Urinalysis Test Breath Test Blood Test
- Gain Employment Maintain Employment No Consumption of Alcohol
- Perform _____ hours of Community Service Work.
- Have no contact with _____
- Have no unsupervised contact with minor children.
- Ignition interlock device required for _____ months.
- Register as an offender as required by the Kansas Offender Registration Act.
- Serve _____ days in the County Jail.
- Other: _____

FINANCIAL CONDITIONS OF PROBATION:

- Court Costs Supervision Fees KBI DNA Fee SB123 Fees and Costs
- Children's Advocacy Fund Assessment BIDS fee
- Attorney Fees of \$ _____.
- Pay restitution in the amount of \$ _____.
- Pay fine of \$ _____.
- Other: _____

During the term of your probation, you remain subject to the jurisdiction of the Court. The Court may:

1. Impose sanctions for violations of any of these conditions.
2. Revoke your probation if you are convicted of a new crime or abscond from probation.
3. Extend or reduce the term of your probation.

If you violate any terms of your probation, you are subject to immediate detention upon request of your supervising officer and may be held in custody until a hearing is set before the court.

If you abscond or violate the terms of your probation, a warrant may be issued for your arrest and you may be held without bond until a hearing is set before the Court.

District Court Judge Div. _____

I have read this Order of Probation in the presence of a Supervising Officer. I agree to follow all conditions of this order and understand the consequences of violations of these conditions.

Dated this _____ day of _____, 20____.

Probationer

Supervising Officer