

HOUSE BILL No. 2260

By Committee on Judiciary

2-2

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to conditions of probation; revocation; amending K.S.A. 2016 Supp.
3 22-3716 and repealing the existing section.
4

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

6 Section 1. K.S.A. 2016 Supp. 22-3716 is hereby amended to read as
7 follows: 22-3716. (a) At any time during probation, assignment to a
8 community correctional services program, suspension of sentence or
9 pursuant to subsection (e) for defendants who committed a crime prior to
10 July 1, 1993, and at any time during which a defendant is serving a
11 nonprison sanction for a crime committed on or after July 1, 1993, or
12 pursuant to subsection (e), the court may issue a warrant for the arrest of a
13 defendant for violation of any of the conditions of release or assignment, a
14 notice to appear to answer to a charge of violation or a violation of the
15 defendant's nonprison sanction. The notice shall be personally served upon
16 the defendant. The warrant shall authorize all officers named in the
17 warrant to return the defendant to the custody of the court or to any
18 certified detention facility designated by the court. Any court services
19 officer or community correctional services officer may arrest the defendant
20 without a warrant or may deputize any other officer with power of arrest to
21 do so by giving the officer a written or verbal statement setting forth that
22 the defendant has, in the judgment of the court services officer or
23 community correctional services officer, violated the conditions of the
24 defendant's release or a nonprison sanction. A written statement delivered
25 to the official in charge of a county jail or other place of detention shall be
26 sufficient warrant for the detention of the defendant. After making an
27 arrest, the court services officer or community correctional services officer
28 shall present to the detaining authorities a similar statement of the
29 circumstances of violation. Provisions regarding release on bail of persons
30 charged with a crime shall be applicable to defendants arrested under these
31 provisions.

32 (b) (1) Upon arrest and detention pursuant to subsection (a), the court
33 services officer or community correctional services officer shall
34 immediately notify the court and shall submit in writing a report showing
35 in what manner the defendant has violated the conditions of release or
36 assignment or a nonprison sanction.

1 (2) Unless the defendant, after being apprised of the right to a hearing
2 by the supervising court services or community correctional services
3 officer, waives such hearing, the court shall cause the defendant to be
4 brought before it without unnecessary delay for a hearing on the violation
5 charged. The hearing shall be in open court and the state shall have the
6 burden of establishing the violation. The defendant shall have the right to
7 be represented by counsel and shall be informed by the judge that, if the
8 defendant is financially unable to obtain counsel, an attorney will be
9 appointed to represent the defendant. The defendant shall have the right to
10 present the testimony of witnesses and other evidence on the defendant's
11 behalf. Relevant written statements made under oath may be admitted and
12 considered by the court along with other evidence presented at the hearing.

13 (3) (A) Except as otherwise provided, if the original crime of
14 conviction was a felony, other than a felony specified in K.S.A. 2016
15 Supp. 21-6804(i), and amendments thereto, and a violation is established,
16 the court may impose the violation sanctions as provided in subsection (c)
17 (1).

18 (B) Except as otherwise provided, if the original crime of conviction
19 was a misdemeanor or a felony specified in K.S.A. 2016 Supp. 21-6804(i),
20 and amendments thereto, and a violation is established, the court may:

21 (i) Continue or modify the probation, assignment to a community
22 correctional services program, suspension of sentence or nonprison
23 sanction and impose confinement in a county jail not to exceed 60 days. If
24 an offender is serving multiple probation terms concurrently, any
25 confinement periods imposed shall be imposed concurrently;

26 (ii) impose an intermediate sanction of confinement in a county jail,
27 to be imposed as a two-day or three-day consecutive period. The total of
28 all such sanctions imposed pursuant to this subparagraph and subsections
29 (b)(4)(A) and (b)(4)(B) shall not exceed 18 total days during the term of
30 supervision; or

31 (iii) revoke the probation, assignment to a community correctional
32 services program, suspension of sentence or nonprison sanction and
33 require the defendant to serve the sentence imposed, or any lesser
34 sentence, and, if imposition of sentence was suspended, may impose any
35 sentence which might originally have been imposed.

36 (4) Except as otherwise provided, if the defendant waives the right to
37 a hearing and the sentencing court has not specifically withheld the
38 authority from court services or community correctional services to
39 impose sanctions, the following sanctions may be imposed without further
40 order of the court:

41 (A) If the defendant was on probation at the time of the violation, the
42 defendant's supervising court services officer, with the concurrence of the
43 chief court services officer, may impose an intermediate sanction of

1 confinement in a county jail, to be imposed as a two-day or three-day
2 consecutive period. The total of all such sanctions imposed pursuant to this
3 subparagraph and subsections (b)(4)(B) and (c)(1)(B) shall not exceed 18
4 total days during the term of supervision; and

5 (B) if the defendant was assigned to a community correctional
6 services program at the time of the violation, the defendant's community
7 corrections officer, with the concurrence of the community corrections
8 director, may impose an intermediate sanction of confinement in a county
9 jail, to be imposed as a two-day or three-day consecutive period. The total
10 of all such sanctions imposed pursuant to this subparagraph and
11 subsections (b)(4)(A) and (c)(1)(B) shall not exceed 18 total days during
12 the term of supervision.

13 (c) (1) Except as otherwise provided, if the original crime of
14 conviction was a felony, other than a felony specified in K.S.A. 2016
15 Supp. 21-6804(i), and amendments thereto, and a violation is established,
16 the court may impose the following sanctions:

17 (A) Continuation or modification of the release conditions of the
18 probation, assignment to a community correctional services program,
19 suspension of sentence or nonprison sanction;

20 (B) continuation or modification of the release conditions of the
21 probation, assignment to a community correctional services program,
22 suspension of sentence or nonprison sanction and an intermediate sanction
23 of confinement in a county jail to be imposed as a two-day or three-day
24 consecutive period. The total of all such sanctions imposed pursuant to this
25 subparagraph and subsections (b)(4)(A) and (b)(4)(B) shall not exceed 18
26 total days during the term of supervision;

27 (C) if the violator already had at least one intermediate sanction
28 imposed pursuant to subsection (b)(4)(A), (b)(4)(B) or (c)(1)(B) related to
29 the crime for which the original supervision was imposed, continuation or
30 modification of the release conditions of the probation, assignment to a
31 community correctional services program, suspension of sentence or
32 nonprison sanction and remanding the defendant to the custody of the
33 secretary of corrections for a period of 120 days, subject to a reduction of
34 up to 60 days in the discretion of the secretary. This sanction shall not be
35 imposed more than once during the term of supervision. The sanction
36 imposed pursuant to this subparagraph shall begin upon pronouncement by
37 the court and shall not be served by prior confinement credit, except as
38 provided in subsection (c)(7);

39 (D) if the violator already had a sanction imposed pursuant to
40 subsection (b)(4)(A), (b)(4)(B), (c)(1)(B) or (c)(1)(C) related to the crime
41 for which the original supervision was imposed, continuation or
42 modification of the release conditions of the probation, assignment to a
43 community correctional services program, suspension of sentence or

1 nonprison sanction and remanding the defendant to the custody of the
2 secretary of corrections for a period of 180 days, subject to a reduction of
3 up to 90 days in the discretion of the secretary. This sanction shall not be
4 imposed more than once during the term of supervision. The sanction
5 imposed pursuant to this subparagraph shall begin upon pronouncement by
6 the court and shall not be served by prior confinement credit, except as
7 provided in subsection (c)(7); or

8 (E) if the violator already had a sanction imposed pursuant to
9 subsection (c)(1)(C) or (c)(1)(D) related to the crime for which the original
10 supervision was imposed, revocation of the probation, assignment to a
11 community corrections services program, suspension of sentence or
12 nonprison sanction and requiring such violator to serve the sentence
13 imposed, or any lesser sentence and, if imposition of sentence was
14 suspended, imposition of any sentence which might originally have been
15 imposed.

16 (2) Except as otherwise provided in subsections (c)(3), (c)(8) and (c)
17 (9), no offender for whom a violation of conditions of release or
18 assignment or a nonprison sanction has been established as provided in
19 this section shall be required to serve any time for the sentence imposed or
20 which might originally have been imposed in a state facility in the custody
21 of the secretary of corrections for such violation, unless such person has
22 already had at least one prior assignment to a community correctional
23 services program related to the crime for which the original sentence was
24 imposed.

25 (3) The provisions of subsection (c)(2) shall not apply to adult felony
26 offenders as described in K.S.A. 75-5291(a)(3), and amendments thereto.

27 (4) The court may require an offender for whom a violation of
28 conditions of release or assignment or a nonprison sanction has been
29 established as provided in this section to serve any time for the sentence
30 imposed or which might originally have been imposed in a state facility in
31 the custody of the secretary of corrections without a prior assignment to a
32 community correctional services program if the court finds and sets forth
33 with particularity the reasons for finding that the safety of the members of
34 the public will be jeopardized or that the welfare of the inmate will not be
35 served by such assignment to a community correctional services program.

36 (5) When a new felony is committed while the offender is on
37 probation or assignment to a community correctional services program, the
38 new sentence shall be imposed consecutively pursuant to the provisions of
39 K.S.A. 2016 Supp. 21-6606, and amendments thereto, and the court may
40 sentence the offender to imprisonment for the new conviction, even when
41 the new crime of conviction otherwise presumes a nonprison sentence. In
42 this event, imposition of a prison sentence for the new crime does not
43 constitute a departure.

1 (6) Except as provided in subsection (f), upon completion of a
2 violation sanction imposed pursuant to subsection (c)(1)(C) or (c)(1)(D)
3 such offender shall return to community correctional services supervision.
4 The sheriff shall not be responsible for the return of the offender to the
5 county where the community correctional services supervision is assigned.

6 (7) A violation sanction imposed pursuant to subsection (c)(1)(B), (c)
7 (1)(C) or (c)(1)(D) shall not be longer than the amount of time remaining
8 on the offender's underlying prison sentence.

9 (8) (A) If the offender commits a new felony or misdemeanor while
10 the offender is on probation, assignment to a community correctional
11 services program, suspension of sentence or nonprison sanction, the court
12 may revoke the probation, assignment to a community correctional
13 services program, suspension of sentence or nonprison sanction of an
14 offender pursuant to subsection (c)(1)(E) without having previously
15 imposed a sanction pursuant to subsection (c)(1)(B), (c)(1)(C) or (c)(1)(D).

16 (B) If the offender absconds from supervision while the offender is on
17 probation, assignment to a community correctional services program,
18 suspension of sentence or nonprison sanction, the court may:

19 (i) Revoke the probation, assignment to a community correctional
20 services program, suspension of sentence or nonprison sanction of an
21 offender pursuant to subsection (c)(1)(E) without having previously
22 imposed a sanction pursuant to subsection (c)(1)(B), (c)(1)(C) or (c)(1)
23 (D); or

24 (ii) sanction the offender under subsection (c)(1)(A), (c)(1)(C) or (c)
25 (1)(D) without imposing a sanction under (c)(1)(B).

26 (9) The court may revoke the probation, assignment to a community
27 correctional services program, suspension of sentence or nonprison
28 sanction of an offender pursuant to subsection (c)(1)(E) without having
29 previously imposed a sanction pursuant to subsection (c)(1)(B), (c)(1)(C)
30 or (c)(1)(D) if:

31 (A) The court finds and sets forth with particularity the reasons for
32 finding that the safety of members of the public will be jeopardized or that
33 the welfare of the offender will not be served by such sanction; or

34 (B) *the probation, assignment to a community correctional services*
35 *program, suspension of sentence or nonprison sanction was originally*
36 *granted as the result of a dispositional departure granted by the*
37 *sentencing court pursuant to K.S.A. 2016 Supp. 21-6815, and amendments*
38 *thereto.*

39 (10) If an offender is serving multiple probation terms concurrently,
40 any violation sanctions imposed pursuant to subsection (c)(1)(B), (c)(1)(C)
41 or (c)(1)(D), or any sanction imposed pursuant to subsection (c)(11), shall
42 be imposed concurrently.

43 (11) If the original crime of conviction was a felony, except for

1 violations of K.S.A. 8-1567, 8-2,144 and K.S.A. 2016 Supp. 8-1025, and
2 amendments thereto, and the court makes a finding that the offender has
3 committed one or more violations of the release conditions of the
4 probation, assignment to a community correctional services program,
5 suspension of sentence or nonprison sanction, the court may impose
6 confinement in a county jail not to exceed 60 days upon each such finding.
7 Such confinement is separate and distinct from the violation sanctions
8 provided in subsection (c)(1)(B), (c)(1)(C), (c)(1)(D) and (c)(1)(E) and
9 shall not be imposed at the same time as any such violation sanction.

10 (12) The violation sanctions provided in this subsection shall apply to
11 any violation of conditions of release or assignment or a nonprison
12 sanction occurring on and after July 1, 2013, regardless of when the
13 offender was sentenced for the original crime or committed the original
14 crime for which sentenced.

15 (d) A defendant who is on probation, assigned to a community
16 correctional services program, under suspension of sentence or serving a
17 nonprison sanction and for whose return a warrant has been issued by the
18 court shall be considered a fugitive from justice if it is found that the
19 warrant cannot be served. If it appears that the defendant has violated the
20 provisions of the defendant's release or assignment or a nonprison
21 sanction, the court shall determine whether the time from the issuing of the
22 warrant to the date of the defendant's arrest, or any part of it, shall be
23 counted as time served on probation, assignment to a community
24 correctional services program, suspended sentence or pursuant to a
25 nonprison sanction.

26 (e) The court shall have 30 days following the date probation,
27 assignment to a community correctional service program, suspension of
28 sentence or a nonprison sanction was to end to issue a warrant for the
29 arrest or notice to appear for the defendant to answer a charge of a
30 violation of the conditions of probation, assignment to a community
31 correctional service program, suspension of sentence or a nonprison
32 sanction.

33 (f) For crimes committed on and after July 1, 2013, a felony offender
34 whose nonprison sanction is revoked pursuant to subsection (c) or whose
35 underlying prison term expires while serving a sanction pursuant to
36 subsection (c)(1)(C) or (c)(1)(D) shall serve a period of postrelease
37 supervision upon the completion of the prison portion of the underlying
38 sentence.

39 (g) Offenders who have been sentenced pursuant to K.S.A. 2016
40 Supp. 21-6824, and amendments thereto, and who subsequently violate a
41 condition of the drug and alcohol abuse treatment program shall be subject
42 to an additional nonprison sanction for any such subsequent violation.
43 Such nonprison sanctions shall include, but not be limited to, up to 60 days

1 in a county jail, fines, community service, intensified treatment, house
2 arrest and electronic monitoring.

3 Sec. 2. K.S.A. 2016 Supp. 22-3716 is hereby repealed.

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