

1 **As Amended by House Committee**

2 *Session of 2002*

3
4 **HOUSE BILL No. 3010**

5
6 By Committee on Federal and State Affairs

7
8 3-7

9
10 AN ACT concerning crimes, criminal procedure and punishment; relat-
11 ing to placement in court services or community corrections of felons;
12 amending K.S.A. 2001 Supp. 22-3716 and 75-5291 and repealing the
13 existing sections.

14
15 *Be it enacted by the Legislature of the State of Kansas:*

16 Section 1. K.S.A. 2001 Supp. 22-3716 is hereby amended to read as
17 follows: 22-3716. (a) At any time during probation, assignment to a com-
18 munity correctional services program, suspension of sentence or pursuant
19 to subsection (d) for defendants who committed a crime prior to July 1,
20 1993, and at any time during which a defendant is serving a nonprison
21 sanction for a crime committed on or after July 1, 1993, or pursuant to
22 subsection (d), the court may issue a warrant for the arrest of a defendant
23 for violation of any of the conditions of release or assignment, a notice to
24 appear to answer to a charge of violation or a violation of the defendant's
25 nonprison sanction. The notice shall be personally served upon the de-
26 fendant. The warrant shall authorize all officers named in the warrant to
27 return the defendant to the custody of the court or to any certified de-
28 tention facility designated by the court. Any court services officer or com-
29 munity correctional services officer may arrest the defendant without a
30 warrant or may deputize any other officer with power of arrest to do so
31 by giving the officer a written statement setting forth that the defendant
32 has, in the judgment of the court services officer or community correc-
33 tional services officer, violated the conditions of the defendant's release
34 or a nonprison sanction. The written statement delivered with the de-
35 fendant by the arresting officer to the official in charge of a county jail or
36 other place of detention shall be sufficient warrant for the detention of
37 the defendant. After making an arrest, the court services officer or com-
38 munity correctional services officer shall present to the detaining author-
39 ities a similar statement of the circumstances of violation. Provisions re-
40 garding release on bail of persons charged with a crime shall be applicable
41 to defendants arrested under these provisions.

42 (b) Upon arrest and detention pursuant to subsection (a), the court
43 services officer or community correctional services officer shall immedi-

1 ately notify the court and shall submit in writing a report showing in what
2 manner the defendant has violated the conditions of release or assignment
3 or a nonprison sanction. Thereupon, or upon an arrest by warrant as
4 provided in this section, the court shall cause the defendant to be brought
5 before it without unnecessary delay for a hearing on the violation charged.
6 The hearing shall be in open court and the state shall have the burden of
7 establishing the violation. The defendant shall have the right to be rep-
8 resented by counsel and shall be informed by the judge that, if the de-
9 fendant is financially unable to obtain counsel, an attorney will be ap-
10 pointed to represent the defendant. The defendant shall have the right
11 to present the testimony of witnesses and other evidence on the defend-
12 ant's behalf. Relevant written statements made under oath may be ad-
13 mitted and considered by the court along with other evidence presented
14 at the hearing. Except as otherwise provided, if the violation is estab-
15 lished, the court may continue or revoke the probation, assignment to a
16 community correctional services program, suspension of sentence or non-
17 prison sanction and may require the defendant to serve the sentence
18 imposed, or any lesser sentence, and, if imposition of sentence was sus-
19 pended, may impose any sentence which might originally have been im-
20 posed. Except as otherwise provided, no offender for whom a violation
21 of conditions of release or assignment or a nonprison sanction has been
22 established as provided in this section shall be required to serve any time
23 for the sentence imposed or which might originally have been imposed
24 in a state facility in the custody of the secretary of corrections for such
25 violation, unless such person has already at least one prior assignment to
26 a community correctional services program related to the crime for which
27 the original sentence was imposed, except these provisions shall not apply
28 to offenders who violate a condition of release or assignment or a non-
29 prison sanction by committing a new misdemeanor or felony offense. *The*
30 *provisions of this subsection shall not apply to adult felony offenders as*
31 *described in subsection (a)(3) of K.S.A. 75-5291, and amendments thereto.*
32 The court may require an offender for whom a violation of conditions of
33 release or assignment or a nonprison sanction has been established as
34 provided in this section to serve any time for the sentence imposed or
35 which might originally have been imposed in a state facility in the custody
36 of the secretary of corrections without a prior assignment to a community
37 correctional services program if the court finds and sets forth with par-
38 ticularity the reasons for finding that the safety of the members of the
39 public will be jeopardized or that the welfare of the inmate will not be
40 served by such assignment to a community correctional services program.
41 When a new felony is committed while the offender is on probation or
42 assignment to a community correctional services program, the new sen-
43 tence shall be imposed pursuant to the consecutive sentencing require-

1 ments of K.S.A. 21-4608 and amendments thereto, and the court may
2 sentence the offender to imprisonment for the new conviction, even when
3 the new crime of conviction otherwise presumes a nonprison sentence.
4 In this event, imposition of a prison sentence for the new crime does not
5 constitute a departure.

6 (c) A defendant who is on probation, assigned to a community cor-
7 rectional services program, under suspension of sentence or serving a
8 nonprison sanction and for whose return a warrant has been issued by
9 the court shall be considered a fugitive from justice if it is found that the
10 warrant cannot be served. If it appears that the defendant has violated
11 the provisions of the defendant's release or assignment or a nonprison
12 sanction, the court shall determine whether the time from the issuing of
13 the warrant to the date of the defendant's arrest, or any part of it, shall
14 be counted as time served on probation, assignment to a community cor-
15 rectional services program, suspended sentence or pursuant to a nonpri-
16 son sanction.

17 (d) The court shall have 30 days following the date probation, assign-
18 ment to a community correctional service program, suspension of sen-
19 tence or a nonprison sanction was to end to issue a warrant for the arrest
20 or notice to appear for the defendant to answer a charge of a violation of
21 the conditions of probation, assignment to a community correctional serv-
22 ice program, suspension of sentence or a nonprison sanction.

23 (e) Notwithstanding the provisions of any other law to the contrary,
24 an offender whose nonprison sanction is revoked and a term of impris-
25 onment imposed pursuant to either the sentencing guidelines grid for
26 nondrug or drug crimes shall not serve a period of postrelease supervision
27 upon the completion of the prison portion of that sentence. The provi-
28 sions of this subsection shall not apply to offenders sentenced to a non-
29 prison sanction pursuant to a dispositional departure, whose offense falls
30 within a border box of either the sentencing guidelines grid for nondrug
31 or drug crimes, offenders sentenced for a "sexually violent crime" as de-
32 fined by K.S.A. 22-3717, and amendments thereto, or whose nonprison
33 sanction was revoked as a result of a conviction for a new misdemeanor
34 or felony offense. The provisions of this subsection shall not apply to
35 offenders who are serving or are to begin serving a sentence for any other
36 felony offense that is not excluded from postrelease supervision by this
37 subsection on the effective date of this subsection. The provisions of this
38 subsection shall be applied retroactively. The department of corrections
39 shall conduct a review of all persons who are in the custody of the de-
40 partment as a result of only a revocation of a nonprison sanction. On or
41 before September 1, 2000, the department shall have discharged from
42 postrelease supervision those offenders as required by this subsection.

43 Sec. 2. K.S.A. 2001 Supp. 75-5291 is hereby amended to read as

1 follows: 75-5291. (a) (1) The secretary of corrections may make grants to
2 counties for the development, implementation, operation and improve-
3 ment of community correctional services including, but not limited to,
4 restitution programs, victim services programs, preventive or diversionary
5 correctional programs, community corrections centers and facilities for
6 the detention or confinement, care or treatment of offenders as provided
7 in this section except that no community corrections funds shall be ex-
8 pended by the secretary for the purpose of establishing or operating a
9 conservation camp as provided by K.S.A. 75-52,127 and amendments
10 thereto.

11 (2) *Except as otherwise provided*, placement of offenders in com-
12 munity correctional services programs by the court shall be limited to
13 placement of adult offenders, convicted of a felony offense:

14 (A) Whose offense is classified in grid blocks 5-H, 5-I or 6-G of the
15 sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F,
16 3-G, 3-H, 3-I, 4-E or 4-F of the sentencing guidelines grid for drug
17 crimes. In addition, the court may place in a community correctional
18 services program adult offenders, convicted of a felony offense, whose
19 offense is classified in grid blocks 6-H, 6-I, 7-C, 7-D, 7-E, 7-F, 7-G, 7-H
20 or 7-I of the sentencing guidelines grid for nondrug crimes;

21 (B) whose severity level and criminal history score designate a pre-
22 sumptive prison sentence on either sentencing guidelines grid but receive
23 a nonprison sentence as a result of departure;

24 (C) all offenders convicted of an offense which satisfies the definition
25 of offender pursuant to K.S.A. 22-4902, and amendments thereto, and
26 which is classified as a severity level 7 or higher offense and who receive
27 a nonprison sentence, regardless of the manner in which the sentence is
28 imposed;

29 (D) any offender for whom a violation of conditions of release or
30 assignment or a nonprison sanction has been established as provided in
31 K.S.A. 22-3716, and amendments thereto, prior to revocation resulting
32 in the offender being required to serve any time for the sentence imposed
33 or which might originally have been imposed in a state facility in the
34 custody of the secretary of corrections;

35 (E) any offender who is determined to be “high risk or needs, or
36 both” by the use of a statewide, mandatory, standardized risk assessment
37 tool or instrument validated for community correctional placements; or

38 (F) placed in community correctional services programs as a condi-
39 tion of supervision following the successful completion of a conservation
40 camp program.

41 (3) *Notwithstanding any law to the contrary and subject to the*
42 **availability of funding therefor**, *adult offenders sentenced to commu-*
43 *nity supervision in Johnson county for felony crimes that occurred on or*

1 *after July 1, 2002, but before July 1, 2004, shall be placed under court*
2 *services or community corrections supervision based upon court rules*
3 *issued by the chief judge of the 10th judicial district. The provisions con-*
4 *tained in this subsection shall not apply to offenders transferred by the*
5 *assigned agency to an agency located outside of Johnson county. The pro-*
6 *visions of this section shall expire on July 1, 2004.*

7 (4) Nothing in this act shall prohibit a community correctional serv-
8 ices program from providing services to juvenile offenders upon approval
9 by the local community corrections advisory board. Grants from com-
10 munity corrections funds administered by the secretary of corrections
11 shall not be expended for such services.

12 ~~(4)~~ (5) The court may require an offender for whom a violation of
13 conditions of release or assignment or a nonprison sanction has been
14 established, as provided in K.S.A. 22-3716, and amendments thereto, to
15 serve any time for the sentence imposed or which might originally have
16 been imposed in a state facility in the custody of the secretary of correc-
17 tions without a prior assignment to a community correctional services
18 program if the court finds and sets forth with particularity the reasons for
19 finding that the safety of the members of the public will be jeopardized
20 or that the welfare of the inmate will not be served by such assignment
21 to a community correctional services program.

22 (b) (1) In order to establish a mechanism for community correctional
23 services to participate in the department of corrections annual budget
24 planning process, the secretary of corrections shall establish a community
25 corrections advisory committee to identify new or enhanced correctional
26 or treatment interventions designed to divert offenders from prison.

27 (2) The secretary shall appoint one member from the southeast com-
28 munity corrections association region, one member from the northeast
29 community corrections association region, one member from the central
30 community corrections association region and one member from the
31 western community corrections association region. The deputy secretary
32 of community corrections and field services shall designate two members
33 from the state at large. The secretary shall have final appointment ap-
34 proval of the members designated by the deputy secretary. The commit-
35 tee shall reflect the diversity of community correctional services with re-
36 spect to geographical location and average daily population of offenders
37 under supervision.

38 (3) Each member shall be appointed for a term of three years, except
39 of the initial appointments, such terms shall be staggered as determined
40 by the secretary. Members shall be eligible for reappointment.

41 (4) The committee, in collaboration with the deputy secretary of com-
42 munity corrections and field services or the deputy secretary's designee,
43 shall routinely examine and report to the secretary on the following issues:

- 1 (A) Efficiencies in the delivery of field supervision services;
- 2 (B) effectiveness and enhancement of existing interventions; and
- 3 (C) identification of new interventions.
- 4 (5) The committee's report concerning enhanced or new interven-
- 5 tions shall address:

- 6 (A) measurable goals and objectives;
- 7 (B) projected costs;
- 8 (C) the impact on public safety; and
- 9 (D) the evaluation process.
- 10 (6) The committee shall submit its report to the secretary annually
- 11 on or before July 15 in order for the enhanced or new interventions to
- 12 be considered for inclusion within the department of corrections budget
- 13 request for community correctional services or in the department's en-
- 14 hanced services budget request for the subsequent fiscal year.

15 Sec. 3. K.S.A. 2001 Supp. 22-3716 and 75-5291 are hereby repealed.

16 Sec. 4. This act shall take effect and be in force from and after its

17 publication in the statute book.

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