

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:36 A.M. on March 25, 2008, in Room 123-S of the Capitol.

All members were present except:

Donald Betts - absent

Derek Schmidt- excused

Committee staff present:

Bruce Kinzie, Office of Revisor of Statutes

Athena Andaya, Kansas Legislative Research Department

Karen Clowers, Committee Assistant

Others attending:

See attached list.

The Chairman called for final action on **HB 2617– Mandatory implied consent testing for serious injury and fatality accidents**. Senator Bruce reviewed the bill and distributed a proposed balloon amendment (Attachment 1).

Senator Bruce moved, Senator Goodwin seconded, to amend **HB 2617** as reflected in the balloon amendment. Motion carried.

Senator Journey moved, Senator Lynn seconded, to amend **HB 2617** by adding the portions of **Sub SB 409** dealing with DUI offenses. Motion carried. Senator Haley voted no and requested his vote recorded.

Senator Goodwin moved, Senator Bruce seconded, to recommend **HB 2617** as amended, favorably for passage. Motion carried.

The Chairman called for final action on **HB 2727– Sexual assault, evidence**. The Chairman reviewed the bill.

Senator Journey moved, Senator Lynn seconded, to amend **HB 2727** on page 2, line 21 by changing the word “may” to the word “shall.” Motion carried.

Senator Lynn moved, Senator Bruce seconded, to recommend **HB 2727** as amended, favorably for passage. Motion carried.

The Chairman called for final action on **HB 2780–Criminal procedure; new crime committed on probation or community correction, service of warrant for violation of original conviction**. The Chairman reviewed the bill and distributed a proposed balloon amendment from the Kansas Sentencing Commission (Attachment 2).

Senator Lynn moved, Senator Goodwin seconded, to amend **HB 2780** as reflected in the balloon amendment. Motion carried.

Senator Journey moved, Senator Lynn seconded, to amend **HB 2780** by adding the portions of **Sub SB 409** dealing with probation violation offenders. Motion carried. Senator Haley voted no and requested his vote recorded.

Senator Allen moved, Senator Lynn seconded, to recommend **HB 2780** as amended, favorably for passage. Motion carried.

The Chairman called for final action on **HB 2845–Increasing the penalties for theft and aiding escape when such crimes concern employees or volunteers of the department of corrections**.

Senator Goodwin moved, Senator Haley seconded, to recommend **HB 2845** favorably for passage. Following discussion, Senator Goodwin and Senator Haley withdrew the motion.

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:36 A.M. on March 25, 2008, in Room 123-S of the Capitol.

Senator Donovan moved, Senator Lynn seconded, to amend **HB 2845** by striking Section 1 and Section 2, and retaining only Section 3. Motion carried.

Senator Goodwin moved, Senator Haley seconded, to recommend **HB 2845** as amended, favorably for passage. Motion carried.

The meeting adjourned at 10:25 A.M. The next scheduled meeting is March 26, 2008.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: March 25, 2008

NAME	REPRESENTING
Emily Geier	HLF
DEBORAH STERN	KMA
Pete Bodyk	KDOT
Lynn Walsh	Jud. Branch 1
Richard Somowig	Kenny Bassel
ERIK SARTORIUS	City of Overland Park
Whitney Damm	Ks Bar Assn.
Erica Haas	Gov. office
Julene Meslin	Gov office
Bandy Barnett	KCSOV
Robert E. Blecha	KBI
Helin Pedigo	KSC
Brenda Harmon	KSC
Tim Madden	KDOC
Ed Klump	KPOA + KACP

HOUSE BILL No. 2617

By Special Committee on Judiciary

1-10

Proposed Amendment

Prepared by Revisor of Statutes Office
Bruce Kinzie

March 25, 2008

Senate Judiciary

S-25-08

Attachment 1

10 AN ACT concerning motor vehicles; relating to driving under the influ-
 11 ence of alcohol or drugs; amending K.S.A. 2007 Supp. 8-1001 and
 12 repealing the existing section.

K.S.A. 22-3437 and

sections

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

15 Section 1. K.S.A. 2007 Supp. 8-1001 is hereby amended to read as
 16 follows: 8-1001. (a) Any person who operates or attempts to operate a
 17 vehicle within this state is deemed to have given consent, subject to the
 18 provisions of this act, to submit to one or more tests of the person's blood,
 19 breath, urine or other bodily substance to determine the presence of
 20 alcohol or drugs. The testing deemed consented to herein shall include
 21 all quantitative and qualitative tests for alcohol and drugs. A person who
 22 is dead or unconscious shall be deemed not to have withdrawn the per-
 23 son's consent to such test or tests, which shall be administered in the
 24 manner provided by this section.

25 (b) A law enforcement officer shall request a person to submit to a
 26 test or tests deemed consented to under subsection (a): (1) If the officer
 27 has reasonable grounds to believe the person was operating or attempting
 28 to operate a vehicle while under the influence of alcohol or drugs, or
 29 both, or to believe that the person was driving a commercial motor ve-
 30 hicle, as defined in K.S.A. 8-2,128, and amendments thereto, while having
 31 alcohol or other drugs in such person's system, or was under the age of
 32 21 years while having alcohol or other drugs in such person's system; and
 33 one of the following conditions exists: ~~(1)~~ (A) The person has been ar-
 34 rested or otherwise taken into custody for any offense involving operation
 35 or attempted operation of a vehicle while under the influence of alcohol
 36 or drugs, or both, or for a violation of K.S.A. 8-1567a, and amendments
 37 thereto, or involving driving a commercial motor vehicle, as defined in
 38 K.S.A. 8-2,128, and amendments thereto, while having alcohol or other
 39 drugs in such person's system, in violation of a state statute or a city
 40 ordinance; or ~~(2)~~ (B) the person has been involved in a vehicle accident
 41 or collision resulting in property damage, or personal injury or death ~~other~~
 42 ~~than serious injury~~; or (2) if the person was ~~driving a vehicle~~ **operating**
 43 **or attempting to operate a vehicle and such vehicle has been in-**

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the immediate

of any person or if such accident or collision could result in the death of any person and the operator could be cited for any traffic offense, as defined in K.S.A. 8-2117, and amendments thereto. The traffic offense violation shall constitute probable cause for purposes of paragraph (2). The test or tests under paragraph (2) shall not be required if

meets the requirements of paragraph (2) of subsection (b)

1 *involved in an accident or collision resulting in ~~serious injury or~~ death to*
2 *another person ~~except when~~ a law enforcement officer has reason-*
3 *able grounds to believe the actions of the operator did not con-*
4 *tribute to the accident or collision. The law enforcement officer di-*
5 *recting administration of the test or tests may act on personal knowledge*
6 *or on the basis of the collective information available to law enforcement*
7 *officers involved in the accident investigation or arrest.*

8 (c) If a law enforcement officer requests a person to submit to a test
9 of blood under this section, the withdrawal of blood at the direction of
10 the officer may be performed only by: (1) A person licensed to practice
11 medicine and surgery, **licensed as a physician's assistant**, or a person
12 acting under the ~~supervision~~ **direction** of any such licensed person; (2)
13 a registered nurse or a licensed practical nurse; or (3) any qualified med-
14 ical technician, including, but not limited to, an emergency medical tech-
15 nician-intermediate or mobile intensive care technician, as those terms
16 are defined in K.S.A. 65-6112, and amendments thereto, or a phleboto-
17 mist. ~~When presented with a written statement by a law enforcement~~
18 ~~officer directing blood to be withdrawn from a person who has tentatively~~
19 ~~agreed to allow the withdrawal of blood under this section, the person~~
20 ~~authorized herein to withdraw blood and the medical care facility where~~
21 ~~blood is withdrawn may rely on such a statement as evidence that the~~
22 ~~person has consented to the medical procedure used and shall not require~~
23 ~~the person to sign any additional consent or waiver form.~~

24 (d) A law enforcement officer may direct a medical profes-
25 sional described in this section to draw a sample of blood from a
26 person:

27 (1) If the person has given consent and meets the requirements
28 of subsection (b);

29 (2) if medically unable to consent, if the person ~~has operated~~
30 ~~or attempted to operate a vehicle in such a manner as to have~~
31 ~~caused death or serious injury to another person;~~ or

32 (3) if the person refuses to submit to and complete a test, if the
33 ~~certifying officer has probable cause to believe that the person,~~
34 ~~while under the influence of alcohol or drugs, or both, has oper-~~
35 ~~ated a vehicle in such a manner as to have caused the death of or~~
36 ~~serious injury to another person.~~

37 (e) When so directed by a law enforcement officer through a
38 written statement, the medical professional shall withdraw the
39 sample as soon as practical and shall deliver the sample to the law
40 enforcement officer or another law enforcement officer as di-
41 rected by the requesting law enforcement officer as soon as prac-
42 tical, provided the collection of the sample does not jeopardize the
43 person's life, cause serious injury to the person or seriously impede

1 the person's medical assessment, care or treatment. The medical
2 professional authorized herein to withdraw the blood and the medical
3 care facility where the blood is drawn may act on good faith
4 that the requirements have been met for directing the withdrawing
5 of blood once presented with the written statement provided
6 for under this subsection. The medical professional shall not require
7 the person to sign any additional consent or waiver form. In
8 such a case, the person authorized to withdraw blood and the medical
9 care facility shall not be liable in any action alleging lack of consent or
10 lack of informed consent. ~~No person authorized by this subsection to~~
11 ~~withdraw blood, nor any person assisting in the performance of a blood~~
12 ~~test nor any medical care facility where blood is withdrawn or tested that~~
13 ~~has been directed by any law enforcement officer to withdraw or test~~
14 ~~blood, shall be liable in any civil or criminal action when the act is per-~~
15 ~~formed in a reasonable manner according to generally accepted medical~~
16 ~~practices in the community where performed.~~

17 ~~(d) If there are reasonable grounds to believe that there is impair-~~
18 ~~ment by a drug which is not subject to detection by the blood or breath~~
19 ~~test used, a urine test may be required.~~

20 (f) Such sample or samples shall be an independent sample and
21 not be a portion of a sample collected for medical purposes. The
22 person collecting the blood sample shall complete the collection
23 portion of a document provided by law enforcement.

24 (g) If a person must be restrained to collect the sample pur-
25 suant to this section, law enforcement shall be responsible for ap-
26 plying any such restraint utilizing acceptable law enforcement re-
27 straint practices. The restraint shall be effective in controlling the
28 person in a manner not to jeopardize the person's safety or that of
29 the medical professional or attending medical or health care staff
30 during the drawing of the sample and without interfering with
31 medical treatment.

32 (h) A law enforcement officer may request a urine sample upon
33 meeting the requirements of subsection (b)(1) and shall request a
34 urine sample upon meeting the requirements of subsection (b)(2).

35 (i) If a law enforcement officer requests a person to submit to a test
36 of urine under this section, the collection of the urine sample shall be
37 supervised by persons of the same sex as the person being tested and
38 shall be conducted out of the view of any person other than the persons
39 supervising the collection of the sample and the person being tested,
40 unless the right to privacy is waived by the person being tested. **When**
41 **possible, the supervising person shall be a law enforcement officer.**
42 The results of qualitative testing for drug presence shall be admissible in
43 evidence and questions of accuracy or reliability shall go to the weight

1 rather than the admissibility of the evidence. **If the person is medically**
2 **unable to provide a urine sample in such manner due to the inju-**
3 **ries or treatment of the injuries, the same authorization and pro-**
4 **cedure as used for the collection of blood in subsections (d) and**
5 **(e) shall apply to the collection of a urine sample.**

6 (e) (j) No law enforcement officer who is acting in accordance with
7 this section shall be liable in any civil or criminal proceeding involving
8 the action.

9 (f) (k) Before a test or tests are administered under this section, the
10 person shall be given oral and written notice that: (1) Kansas law requires
11 the person to submit to and complete one or more tests of breath, blood
12 or urine to determine if the person is under the influence of alcohol or
13 drugs, or both;

14 (2) the opportunity to consent to or refuse a test is not a constitutional
15 right;

16 (3) there is no constitutional right to consult with an attorney regard-
17 ing whether to submit to testing;

18 (4) if the person refuses to submit to and complete any test of breath,
19 blood or urine hereafter requested by a law enforcement officer, the
20 person's driving privileges will be suspended for one year for the first
21 occurrence, two years for the second occurrence, three years for the third
22 occurrence, 10 years for the fourth occurrence and permanently revoked
23 for a fifth or subsequent occurrence;

24 (5) if the person submits to and completes the test or tests and the
25 test results show for the first occurrence:

26 (A) An alcohol concentration of .08 or greater, the person's driving
27 privileges will be suspended for 30 days for the first occurrence; or

28 (B) an alcohol concentration of .15 or greater, the person's driving
29 privileges will be suspended for one year;

30 (6) if the person submits to and completes the test or tests and the
31 test results show an alcohol concentration of .08 or greater, the person's
32 driving privileges will be suspended for one year for the second, third or
33 fourth occurrence and permanently revoked for a fifth or subsequent
34 occurrence;

35 (7) if the person is less than 21 years of age at the time of the test
36 request and submits to and completes the tests and the test results show
37 an alcohol concentration of .08 or greater, the person's driving privileges
38 will be suspended for one year except the person's driving privileges will
39 be permanently revoked for a fifth or subsequent occurrence;

40 (8) refusal to submit to testing may be used against the person at any
41 trial on a charge arising out of the operation or attempted operation of a
42 vehicle while under the influence of alcohol or drugs, or both;

43 (9) the results of the testing may be used against the person at any

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5-1

1 commercial motor vehicle, as defined in K.S.A. 8-2,128, and amendments
2 thereto, and the test results show a blood or breath alcohol concentration
3 of .08 or greater, or the person refuses a test, the person's driving privi-
4 leges shall be subject to suspension, or suspension and restriction, pur-
5 suant to this section, in addition to being disqualified from driving a com-
6 mercial motor vehicle pursuant to K.S.A. 8-2,142, and amendments
7 thereto.

8 ~~(k)~~ (p) An officer shall have probable cause to believe that the person
9 operated a vehicle while under the influence of alcohol or drugs, or both,
10 if the vehicle was operated by such person in such a manner as to have
11 caused the death of or serious injury to a person. In such event, such test
12 or tests may be made pursuant to a search warrant issued under the
13 authority of K.S.A. 22-2502, and amendments thereto, or without a search
14 warrant under the authority of K.S.A. 22-2501, and amendments thereto.

15 ~~(h)~~ (q) Failure of a person to provide an adequate breath sample or
16 samples as directed shall constitute a refusal unless the person shows that
17 the failure was due to physical inability caused by a medical condition
18 unrelated to any ingested alcohol or drugs.

19 ~~(m)~~ (r) It shall not be a defense that the person did not understand
20 the written or oral notice required by this section.

21 ~~(n)~~ (s) No test results shall be suppressed because of technical irreg-
22 ularities in the consent or notice required pursuant to this act.

23 ~~(o)~~ (t) Nothing in this section shall be construed to limit the admis-
24 sibility at any trial of alcohol or drug concentration testing results obtained
25 pursuant to a search warrant.

26 ~~(p)~~ (u) Upon the request of any person submitting to testing under
27 this section, a report of the results of the testing shall be made available
28 to such person.

29 ~~(q)~~ (v) This act is remedial law and shall be liberally construed to
30 promote public health, safety and welfare.

31 ~~(w)~~ **As used in this section, "serious injury" means a physical**
32 **injury to a person, as determined by law enforcement, which has**
33 **the effect of, prior to the request for testing:**

34 ~~(1)~~ **Disabling a person from the physical capacity to remove**
35 **themselves from the scene;**

36 ~~(2)~~ **renders a person unconscious;**

37 ~~(3)~~ **the immediate loss of or absence of the normal use of at**
38 **least one limb;**

39 ~~(4)~~ **an injury determined by a physician to require surgery; or**

40 ~~(5)~~ **otherwise indicates the person may die or be permanently**
41 **disabled by the injury.**

42 New Sec. 2. (a) The testing and method of testing consented
43 to under K.S.A. 8-1001, and amendments thereto, shall not be con-

1 sidered to have been conducted for any medical care or treatment
 2 purpose. The results of such test, the person's name whose bodily
 3 substance is drawn or tested, the location of the test or procedure,
 4 the names of all health care providers and personnel who partic-
 5 ipated in the procedure or test, and the date and time of the test
 6 or procedure ~~shall not be considered any type of protected health~~
 7 ~~information and therefore it is not individually identifiable health~~
 8 ~~information as such term is used in the health insurance portability~~
 9 ~~and accountability act of 1996, privacy regulations, 45 C.F.R.~~
 10 ~~164.501 et seq., and amendments thereto.~~

are required by law to be provided to the requesting law enforcement officer or the law enforcement officer's designee after the requesting law enforcement officer has complied with K.S.A. 8-1001, and amendments thereto

11 (b) All costs of conducting any procedure or test authorized by
 12 K.S.A. 8-1001, and amendments thereto, including the costs of the
 13 evidence collection kits shall be charged to and paid by the county
 14 where the alleged offense was committed. Such county may charge
 15 the defendant for the costs paid herein as court costs assessed pur-
 16 suant to K.S.A. 28-172a or 28-172c, and amendments thereto.

17 (c) The cost assessed under K.S.A. 8-1001, and amendments
 18 thereto, shall be the then current medicaid rate for any such pro-
 19 cedure or test, or both.

20 (d) Notwithstanding any other law to the contrary, the collec-
 21 tion and delivery of the sample and required information to the
 22 law enforcement officer pursuant to K.S.A. 8-1001, and amend-
 23 ments thereto, shall not be subject to the physician-patient privi-
 24 lege or any other law that prohibits the transfer, release or disclo-
 25 sure of the sample or of the required information.

26 New Sec. 3. No medical care facility, clinical laboratory, med-
 27 ical clinic, other medical institution, person licensed to practice
 28 medicine or surgery, person acting under the direction of any such
 29 licensed person, licensed physician assistant, registered nurse, li-
 30 censed practical nurse, medical technician, emergency medical
 31 technician, phlebotomist, health care provider or person who par-
 32 ticipates in good faith in the obtaining, withdrawal, collection or
 33 testing of blood, breath, urine or other bodily substance at the
 34 direction of a law enforcement officer pursuant to K.S.A. 8-1001,
 35 and amendments thereto, shall incur any civil, administrative or
 36 criminal liability as a result of such participation, regardless of
 37 whether or not the patient resisted or objected to the administra-
 38 tion of the procedure or test.

Sec. 4. -- See Attachment #1 z2617t2
 Renumber sections accordingly;

39 Sec. 4. K.S.A. ~~2007 Supp. 8-1001 is~~ hereby repealed.
 40 Sec. 5. This act shall take effect and be in force from and after its
 41 publication in the statute book.

22-3437 and K.S.A. 2007 Supp.
 8-1001 are

Sec. 4. K.S.A. 22-3437 is hereby amended to read as follows: 22-3437. (1) In any hearing or trial, a report concerning forensic examinations and certificate of forensic examination executed pursuant to this section shall be admissible in evidence if the report and certificate are prepared and attested by a criminalist or other employee of the Kansas bureau of investigation, Kansas highway patrol or any laboratory of the federal bureau of investigation, federal postal inspection service, federal bureau of alcohol, tobacco and firearms or federal drug enforcement administration. If the examination involves a breath test for alcohol content, the report must also be admissible pursuant to ~~subsection (f)~~ of K.S.A. 8-1001, and amendments thereto, and be conducted by a law enforcement officer or other person who is certified by the department of health and environment as a breath test operator as provided by K.S.A. 65-1,107 et seq. and amendments thereto.

(2) Upon the request of any law enforcement agency, such person as provided in subsection (1) performing the analysis shall prepare a certificate. Such person shall sign the certificate under oath and shall include in the certificate an attestation as to the result of the analysis. The presentation of this certificate to a court by any party to a proceeding shall be evidence that all of the requirements and provisions of this section have been complied with. This certificate shall be supported by a written declaration pursuant to K.S.A. 53-601 and amendments thereto or shall be sworn to before a notary public or other person empowered by law to take oaths and shall contain a statement establishing the following: The type of analysis performed; the result achieved; any conclusions reached based upon that result; that the subscriber is the person who performed the analysis and made the conclusions; the subscriber's training or experience to perform the analysis; the nature and condition of the equipment used; and the certification and foundation requirements for admissibility of breath test results, when appropriate. When properly executed, the certificate shall, subject to the provisions of subsection (3) and notwithstanding any other provision of law, be admissible evidence of the results of the forensic examination of the samples or evidence submitted for analysis and the court shall take judicial notice of the signature of the person performing the analysis and of the fact that such person is that person who performed the analysis.

(3) Whenever a party intends to proffer in a criminal or civil proceeding, a certificate executed pursuant to this section, notice of an intent to proffer that certificate and the reports relating to the analysis in question, including a copy of the certificate, shall be conveyed to the opposing party or parties at least 20 days before the beginning of a hearing where the proffer will be used. An opposing party who intends to object to the admission into evidence of a certificate shall give notice of objection and the grounds for the objection within 10 days upon receiving the adversary's notice of intent to proffer the certificate. Whenever a notice of objection is filed, admissibility of the certificate shall be determined not later

than two days before the beginning of the trial. A proffer certificate shall be admitted in evidence unless it appears from the notice of objection and grounds for that objection that the conclusions of the certificate, including the composition, quality or quantity of the substance submitted to the laboratory for analysis or the alcohol content of a blood or breath sample will be contested at trial. A failure to comply with the time limitations regarding the notice of objection required by this section shall constitute a waiver of any objections to the admission of the certificate. The time limitations set forth in this section may be extended upon a showing of good cause.

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 2008

HOUSE BILL No. 2780

By Committee on Judiciary

2-6

12 AN ACT concerning **crimes, punishment and** criminal procedure; re-
13 ~~lating to conditional release~~; amending K.S.A. **21-3412a, 21-4310,**
14 **21-4619 and 22-3716** [and K.S.A. 2007 Supp. 28-176] and repeal-
15 ing the existing ~~section~~ **sections**.

16

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

18 Section 1. **K.S.A. 21-3412a** is hereby amended to read as fol-
19 lows: **21-3412a. (a) Domestic battery is:**

20 (1) **Intentionally or recklessly causing bodily harm by a family**
21 **or household member against a family or household member; or**

22 (2) **intentionally causing physical contact with a family or**
23 **household member by a family or household member when done**
24 **in a rude, insulting or angry manner.**

25 (b) (1) **Upon a first conviction of a violation of domestic bat-**
26 **tery, a person shall be guilty of a class B person misdemeanor and**
27 **sentenced to not less than 48 consecutive hours nor more than six**
28 **months' imprisonment and fined not less than \$200, nor more than**
29 **\$500 or in the court's discretion the court may enter an order**
30 **which requires the person enroll in and successfully complete a**
31 **domestic violence prevention program.**

32 (2) **If, within five years immediately preceding commission of**
33 **the crime, a person is convicted of a violation of domestic battery**
34 **a second time, such person shall be guilty of a class A person mis-**
35 **demeanor and sentenced to not less than 90 days nor more than**
36 **one year's imprisonment and fined not less than \$500 nor more**
37 **than \$1,000. The five days' imprisonment mandated by this sub-**
38 **section may be served in a work release program only after such**
39 **person has served 48 consecutive hours' imprisonment, provided**
40 **such work release program requires such person to return to con-**
41 **finement at the end of each day in the work release program. The**
42 **person convicted must serve at least five consecutive days' impris-**
43 **onment before the person is granted probation, suspension or re-**

Senate Judiciary

3-25-08

Attachment 2

1 established as provided in this section shall be required to serve any time
 2 for the sentence imposed or which might originally have been imposed
 3 in a state facility in the custody of the secretary of corrections for such
 4 violation, unless such person has already at least one prior assignment to
 5 a community correctional services program related to the crime for which
 6 the original sentence was imposed, except these provisions shall not apply
 7 to offenders who violate a condition of release or assignment or a non-
 8 prison sanction by committing a new misdemeanor or felony offense. The
 9 provisions of this subsection shall not apply to adult felony offenders as
 10 described in subsection (a)(3) of K.S.A. 75-5291, and amendments
 11 thereto. The court may require an offender for whom a violation of con-
 12 ditions of release or assignment or a nonprison sanction has been estab-
 13 lished as provided in this section to serve any time for the sentence im-
 14 posed or which might originally have been imposed in a state facility in
 15 the custody of the secretary of corrections without a prior assignment to
 16 a community correctional services program if the court finds and sets
 17 forth with particularity the reasons for finding that the safety of the mem-
 18 bers of the public will be jeopardized or that the welfare of the inmate
 19 will not be served by such assignment to a community correctional serv-
 20 ices program. When a new felony is committed while the offender is on
 21 probation or assignment to a community correctional services program,
 22 the new sentence shall be imposed pursuant to the consecutive sentenc-
 23 ing requirements of K.S.A. 21-4608 and amendments thereto, and the
 24 court may sentence the offender to imprisonment for the new conviction,
 25 even when the new crime of conviction otherwise presumes a nonprison
 26 sentence. In this event, imposition of a prison sentence for the new crime
 27 does not constitute a departure. *If the court sentences the offender to*
 28 *imprisonment for the new conviction, the prosecutor for the new convic-*
 29 *tion shall notify, in writing within 30 days of the imposition of the im-*
 30 *prisonment sentence, the prosecutor in the county where the inmate was*
 31 *convicted and placed on such probation or assigned to a community cor-*
 32 *rectional services program. The notified prosecutor, or the prosecutor*
 33 **if the new conviction is in the same county, shall have 90 days from**
 34 *the date of the imposition of the imprisonment sentence for the new crime*
 35 *to personally serve **obtain personal service** on the offender of any war-*
 36 *rant issued by the court pursuant to subsection (a) for violation of the*
 37 *offender's nonprison sanction, which warrant shall authorize all officers*
 38 *named in the warrant to return the offender to the custody of such court.*
 39 *If the 90 day period has passed and: (1) If the warrant ~~has~~ been issued*
 40 *but not personally served pursuant to this subsection, the warrant shall*
 41 *become null and void and service no longer permitted; or (2) if the warrant*
 42 *~~has~~ not been issued, the request for the warrant shall be denied and no*
 43 *warrant issued.*

and notice to appear

and notice to appear have

A hearing shall be held
 within 120 days of
 receipt of notice given
 by the notifying
 prosecutor.

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

12 (d) *Except as provided in subsection (b)*, the court shall have 30 days
13 following the date probation, assignment to a community correctional
14 service program, suspension of sentence or a nonprison sanction was to
15 end to issue a warrant for the arrest or notice to appear for the defendant
16 to answer a charge of a violation of the conditions of probation, assign-
17 ment to a community correctional service program, suspension of sen-
18 tence or a nonprison sanction.

19 (e) Notwithstanding the provisions of any other law to the contrary,
20 an offender whose nonprison sanction is revoked and a term of impris-
21 onment imposed pursuant to either the sentencing guidelines grid for
22 nondrug or drug crimes shall not serve a period of postrelease supervision
23 upon the completion of the prison portion of that sentence. The provi-
24 sions of this subsection shall not apply to offenders sentenced to a non-
25 prison sanction pursuant to a dispositional departure, whose offense falls
26 within a border box of either the sentencing guidelines grid for nondrug
27 or drug crimes, offenders sentenced for a "sexually violent crime" or a
28 "**sexually motivated crime**" as defined by K.S.A. 22-3717, and amend-
29 ments thereto, ~~or offenders sentenced pursuant to K.S.A. 21-4704,~~
30 **and amendments thereto, wherein the sentence is presumptive im-**
31 **prisonment but a nonprison sanction may be imposed without a**
32 **departure or offenders** whose nonprison sanction was revoked as a
33 result of a conviction for a new misdemeanor or felony offense. The pro-
34 visions of this subsection shall not apply to offenders who are serving or
35 are to begin serving a sentence for any other felony offense that is not
36 excluded from postrelease supervision by this subsection on the effective
37 date of this subsection. The provisions of this subsection shall be applied
38 retroactively. The department of corrections shall conduct a review of all
39 persons who are in the custody of the department as a result of only a
40 revocation of a nonprison sanction. On or before September 1, 2000, the
41 department shall have discharged from postrelease supervision those of-
42 fenders as required by this subsection.

43 (f) Offenders who have been sentenced pursuant to K.S.A. 21-4729,