

SENATE BILL No. 159

By Senator Pletcher-Cook

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RS - JThompson - 02/15/11

Senate Judiciary

2-16-11
Attachment 1

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to parole and postrelease supervision for violent offenders and sex
3 offenders; conditions; amending K.S.A. 2010 Supp. 22-3717 and
4 repealing the existing section; also repealing K.S.A. 2010 Supp. 22-
5 3717c.
6

and section 247 of chapter 136 of
the 2010 Session Laws of Kansas
21-4603b and
sections

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

8 Section 1. K.S.A. 2010 Supp. 22-3717 is hereby amended to read as
9 follows: 22-3717. (a) Except as otherwise provided by this section;
10 K.S.A. 1993 Supp. 21-4628, prior to its repeal; K.S.A. 21-4635 through
11 21-4638, prior to their repeal; K.S.A. 21-4624, prior to its repeal; K.S.A.
12 21-4642, prior to its repeal; sections 260, 263, 264 and 265 of chapter
13 136 of the 2010 Session Laws of Kansas, and amendments thereto; K.S.A.
14 8-1567, and amendments thereto; ~~K.S.A. 21-4642 section 266 of chapter~~
15 ~~136 of the 2010 Session Laws of Kansas~~, and amendments thereto; and
16 ~~K.S.A. 21-4624 section 257 of chapter 136 of the 2010 Session Laws of~~
17 ~~Kansas~~, and amendments thereto, an inmate, including an inmate
18 sentenced pursuant to K.S.A. 21-4618, prior to its repeal, or section 276
19 of chapter 136 of the 2010 Session Laws of Kansas, and amendments
20 thereto, shall be eligible for parole after serving the entire minimum
21 sentence imposed by the court, less good time credits.

22 (b) (1) Except as provided by K.S.A. 21-4635 through 21-4638,
23 prior to their repeal, and sections 260, 263, 264 and 265 of chapter 136
24 of the 2010 Session Laws of Kansas, and amendments thereto, an inmate
25 sentenced to imprisonment for the crime of capital murder, or an inmate
26 sentenced for the crime of murder in the first degree based upon a finding
27 of premeditated murder, committed on or after July 1, 1994, shall be
28 eligible for parole after serving 25 years of confinement, without
29 deduction of any good time credits.

30 (2) Except as provided by subsection (b)(1) or (b)(4), K.S.A. 1993
31 Supp. 21-4628, prior to its repeal, and K.S.A. 21-4635 through 21-4638,
32 prior to their repeal, and sections 260, 263, 264 and 265 of chapter 136
33 of the 2010 Session Laws of Kansas, and amendments thereto, an inmate
34 sentenced to imprisonment for an off-grid offense committed on or after
35 July 1, 1993, but prior to July 1, 1999, shall be eligible for parole after
serving 15 years of confinement, without deduction of any good time

credits and an inmate sentenced to imprisonment for an off-grid offense committed on or after July 1, 1999, shall be eligible for parole after serving 20 years of confinement without deduction of any good time credits.

(3) Except as provided by K.S.A. 1993 Supp. 21-4628 prior to its repeal, an inmate sentenced for a class A felony committed before July 1, 1993, including an inmate sentenced pursuant to K.S.A. 21-4618, prior to its repeal, or section 276 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall be eligible for parole after serving 15 years of confinement, without deduction of any good time credits.

(4) An inmate sentenced to imprisonment for a violation of subsection (a) of K.S.A. 21-3402, prior to its repeal, or subsection (a) of section 38 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, committed on or after July 1, 1996, but prior to July 1, 1999, shall be eligible for parole after serving 10 years of confinement without deduction of any good time credits.

(5) An inmate sentenced to imprisonment pursuant to K.S.A. 21-4643, prior to its repeal, or section 267 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, committed on or after July 1, 2006, shall be eligible for parole after serving the mandatory term of imprisonment without deduction of any good time credits.

(c) (1) Except as provided in subsection (e), if an inmate is sentenced to imprisonment for more than one crime and the sentences run consecutively, the inmate shall be eligible for parole after serving the total of:

(A) The aggregate minimum sentences, as determined pursuant to K.S.A. 21-4608, prior to its repeal, or section 246 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, less good time credits for those crimes which are not class A felonies; and

(B) an additional 15 years, without deduction of good time credits, for each crime which is a class A felony.

(2) (A) If an inmate is sentenced to imprisonment pursuant to K.S.A. 21-4643, and ~~amendments thereto~~ prior to its repeal, for crimes committed on or after July 1, 2006, but prior to July 1, 2011, the inmate shall be eligible for parole after serving the mandatory term of imprisonment.

(B) If an inmate is sentenced to imprisonment pursuant to section 267 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, for crimes committed on or after July 1, 2011, the inmate shall be eligible for parole after serving the mandatory term of imprisonment.

(d) (1) Persons sentenced for crimes, other than off-grid crimes, committed on or after July 1, 1993, or persons subject to subparagraph (G), will not be eligible for parole, but will be released to a mandatory

to 10 years but any such deferral shall require the board to state the basis for its findings.

(2) Inmates sentenced for a class A or class B felony who have not had a parole board hearing in the five years prior to July 1, 2010, shall have such inmates' cases reviewed by the parole board on or before July 1, 2012. Such review shall begin with the inmates with the oldest deferral date and progress to the most recent. Such review shall be done utilizing existing resources unless the parole board determines that such resources are insufficient. If the parole board determines that such resources are insufficient, then the provisions of this paragraph are subject to appropriations therefor.

(k) Parolees and persons on postrelease supervision shall be assigned, upon release, to the appropriate level of supervision pursuant to the criteria established by the secretary of corrections.

(l) The Kansas parole board shall adopt rules and regulations in accordance with K.S.A. 77-415 et seq., and amendments thereto, not inconsistent with the law and as it may deem proper or necessary, with respect to the conduct of parole hearings, postrelease supervision reviews, revocation hearings, orders of restitution, reimbursement of expenditures by the state board of indigent's defense services and other conditions to be imposed upon parolees or releasees. Whenever an order for parole or postrelease supervision is issued it shall recite the conditions thereof.

(m) Whenever the Kansas parole board orders the parole of an inmate or establishes conditions for an inmate placed on postrelease supervision, the board:

(1) Unless it finds compelling circumstances which would render a plan of payment unworkable, shall order as a condition of parole or postrelease supervision that the parolee or the person on postrelease supervision pay any transportation expenses resulting from returning the parolee or the person on postrelease supervision to this state to answer criminal charges or a warrant for a violation of a condition of probation, assignment to a community correctional services program, parole, conditional release or postrelease supervision;

(2) to the extent practicable, shall order as a condition of parole or postrelease supervision that the parolee or the person on postrelease supervision make progress towards or successfully complete the equivalent of a secondary education if the inmate has not previously completed such educational equivalent and is capable of doing so;

(3) may order that the parolee or person on postrelease supervision perform community or public service work for local governmental agencies, private corporations organized not-for-profit or charitable or social service organizations performing services for the community;

(4) may order the parolee or person on postrelease supervision to

Parolees and persons on postrelease supervision are, and shall agree in writing to be, subject to search or seizure by a parole officer, special enforcement officer or other law enforcement officer at any time of the day or night, with or without a search warrant and with or without cause.

pay the administrative fee imposed pursuant to K.S.A. 22-4529, and amendments thereto, unless the board finds compelling circumstances which would render payment unworkable; and

(5) unless it finds compelling circumstances which would render a plan of payment unworkable, shall order that the parolee or person on postrelease supervision reimburse the state for all or part of the expenditures by the state board of indigents' defense services to provide counsel and other defense services to the person. In determining the amount and method of payment of such sum, the parole board shall take account of the financial resources of the person and the nature of the burden that the payment of such sum will impose. Such amount shall not exceed the amount claimed by appointed counsel on the payment voucher for indigents' defense services or the amount prescribed by the board of indigents' defense services reimbursement tables as provided in K.S.A. 22-4522, and amendments thereto, whichever is less, minus any previous payments for such services.

(n) If the court which sentenced an inmate specified at the time of sentencing the amount and the recipient of any restitution ordered as a condition of parole or postrelease supervision, the Kansas parole board shall order as a condition of parole or postrelease supervision that the inmate pay restitution in the amount and manner provided in the journal entry unless the board finds compelling circumstances which would render a plan of restitution unworkable.

(o) Whenever the Kansas parole board grants the parole of an inmate, the board, within 14 days of the date of the decision to grant parole, shall give written notice of the decision to the county or district attorney of the county where the inmate was sentenced.

(p) When an inmate is to be released on postrelease supervision, the secretary, within 30 days prior to release, shall provide the county or district attorney of the county where the inmate was sentenced written notice of the release date.

(q) Inmates shall be released on postrelease supervision upon the termination of the prison portion of their sentence. Time served while on postrelease supervision will vest.

(r) An inmate who is allocated regular good time credits as provided in K.S.A. 22-3725, and amendments thereto, may receive meritorious good time credits in increments of not more than 90 days per meritorious act. These credits may be awarded by the secretary of corrections when an inmate has acted in a heroic or outstanding manner in coming to the assistance of another person in a life threatening situation, preventing injury or death to a person, preventing the destruction of property or taking actions which result in a financial savings to the state.

(s) The provisions of subsections (d)(1)(A), (d)(1)(B), (d)(1)(C) and

; and
(6) shall order that the parolee or person on postrelease supervision agree in writing to be subject to search or seizure by a parole officer, special enforcement officer or other law enforcement officer at any time of the day or night, with or without a search warrant and with or without cause.

(d)(1)(E) shall be applied retroactively as provided in subsection (t).

(t) For offenders sentenced prior to the effective date of this act who are eligible for modification of their postrelease supervision obligation, the department of corrections shall modify the period of postrelease supervision as provided for by this section for offenders convicted of severity level 9 and 10 crimes on the sentencing guidelines grid for nondrug crimes and severity level 4 crimes on the sentencing guidelines grid for drug crimes on or before September 1, 2000; for offenders convicted of severity level 7 and 8 crimes on the sentencing guidelines grid for nondrug crimes on or before November 1, 2000; and for offenders convicted of severity level 5 and 6 crimes on the sentencing guidelines grid for nondrug crimes and severity level 3 crimes on the sentencing guidelines grid for drug crimes on or before January 1, 2001.

(u) An inmate sentenced to imprisonment pursuant to K.S.A. 21-4643, prior to its repeal, or section 267 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, for crimes committed on or after July 1, 2006, shall be placed on parole for life and shall not be discharged from supervision by the Kansas parole board. When the board orders the parole of an inmate pursuant to this subsection, the board shall order as a condition of parole that the inmate be electronically monitored for the duration of the inmate's natural life.

(v) Whenever the Kansas parole board or the court orders a person to be electronically monitored, the board or court shall order the person to reimburse the state for all or part of the cost of such monitoring. In determining the amount and method of payment of such sum, the board or court shall take account of the financial resources of the person and the nature of the burden that the payment of such sum will impose.

~~(w) (1) On and after July 1, 2011, for any inmate who is a violent offender or sex offender as defined in K.S.A. 22-4902, and amendments thereto, whenever the Kansas parole board orders the parole of such inmate or establishes conditions for such inmate placed on postrelease supervision, such inmate shall agree in writing to be subject to search or seizure by a parole officer, community correctional services officer or other law enforcement officer at any time of the day or night with or without a search warrant and with or without cause. Nothing in this subsection shall be construed to authorize parole officers, community correctional services officers or other law enforcement officers to conduct arbitrary or capricious searches or searches for the sole purpose of harassment.~~

~~(2) The provisions of this subsection shall be applied retroactively to every violent offender or sex offender as defined in K.S.A. 22-4902, and amendments thereto, who is on parole or postrelease supervision on July 1, 2011. The parole board shall obtain the written~~

← strike

~~agreement required by this subsection from such offenders as soon as practicable.~~

(W)

~~(1) On and after July 1, 2011, for any inmate who is a sex offender, as defined in K.S.A. 22-4902, and amendments thereto, whenever the Kansas parole board orders the parole of such inmate or establishes conditions for such inmate placed on postrelease supervision, such inmate shall agree in writing to not possess pornographic materials.~~

Sec. 2. Amend section 247 of chapter 136 of the 2010 Session Laws of Kansas (attached)

Renumber sections accordingly

~~As used in this subsection, "pornographic materials" means:~~

(A) Any obscene material or performance depicting sexual conduct, sexual contact or a sexual performance; and

(B) any visual depiction, including any photograph, film, video, picture or computer or computer-generated image or picture, whether made or produced by electronic, mechanical or other means, of sexually explicit conduct.

~~(2) The provisions of this subsection shall be applied retroactively to every sex offender, as defined in K.S.A. 22-4902, and amendments thereto, who is on parole or postrelease supervision on July 1, 2011. The parole board shall obtain the written agreement required by this subsection from such offenders as soon as practicable.~~

21-4603b,

and section 247 of chapter 136 of the 2010 Session Laws of Kansas

~~Sec. 2. K.S.A. 2010 Supp. 22-3717 and 22-3717c are hereby repealed.~~

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

Sec. 2. Section 247 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 247. (a) Except as required by subsection (c), nothing in this section shall be construed to limit the authority of the court to impose or modify any general or specific conditions of probation, suspension of sentence or assignment to a community correctional services program. The court services officer or community correctional services officer may recommend, and the court may order, the imposition of any conditions of probation, suspension of sentence or assignment to a community correctional services program. For crimes committed on or after July 1, 1993, in presumptive nonprison cases, the court services officer or community correctional services officer may recommend, and the court may order, the imposition of any conditions of probation or assignment to a community correctional services program. The court may at any time order the modification of such conditions, after notice to the court services officer or community correctional services officer and an opportunity for such officer to be heard thereon. The court shall cause a copy of any such order to be delivered to the court services officer and the probationer or to the community correctional services officer and the community corrections participant, as the case may be. The provisions of K.S.A. 75-5291, and amendments thereto, shall be applicable to any assignment to a community correctional services program pursuant to this section.

(b) The court may impose any conditions of probation, suspension of sentence or assignment to a community correctional services program that the court deems proper, including, but not limited to, requiring that the defendant:

(1) Avoid such injurious or vicious habits, as directed by the court, court services officer or community correctional services officer;

(2) avoid such persons or places of disreputable or harmful character, as directed by the court, court services officer or community correctional services officer;

(3) report to the court services officer or community correctional services officer as directed;

(4) permit the court services officer or community correctional services officer to visit the defendant at home or elsewhere;

(5) work faithfully at suitable employment insofar as possible;

(6) remain within the state unless the court grants permission to leave;

(7) pay a fine or costs, applicable to the offense, in one or several sums and in the manner as directed by the court;

(8) support the defendant's dependents;

(9) reside in a residential facility located in the community and participate in educational, counseling, work and other correctional or rehabilitative programs;

(10) perform community or public service work for local governmental agencies, private corporations organized not for profit, or charitable or social service organizations performing services for the community;

(11) perform services under a system of day fines whereby the defendant is required to satisfy fines, costs or reparation or restitution obligations by performing services for a period of days, determined by the court on the basis of ability to pay, standard of living, support obligations and other factors;

(12) participate in a house arrest program pursuant to section 249 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(13) order the defendant to pay the administrative fee authorized by K.S.A. 22-4529, and amendments thereto, unless waived by the court; or

(14) in felony cases, except for violations of K.S.A. 8-1567, and amendments thereto, be confined in a county jail not to exceed 60 days, which need not be served consecutively.

(c) In addition to any other conditions of probation, suspension of sentence or assignment to a community correctional services program, the court shall order the defendant to comply with each of

the following conditions:

(1) The defendant shall obey all laws of the United States, the state of Kansas and any other jurisdiction to the laws of which the defendant may be subject;

(2) make reparation or restitution to the aggrieved party for the damage or loss caused by the defendant's crime, in an amount and manner determined by the court and to the person specified by the court, unless the court finds compelling circumstances which would render a plan of restitution unworkable. If the court finds a plan of restitution unworkable, the court shall state on the record in detail the reasons therefore;

(3) (A) pay a ~~probation or community correctional services~~correctional supervision fee of ~~\$25~~\$60 if the person was convicted of a misdemeanor or a fee of ~~\$50~~\$120 if the person was convicted of a felony. In any case the amount of the ~~probation or community correctional services~~correctional supervision fee specified by this paragraph may be reduced or waived by the judge if the person is unable to pay that amount;

(B) the ~~probation or community correctional services~~correctional supervision fee imposed by this paragraph shall be charged and collected by the district court. The clerk of the district court shall remit all revenues received under this paragraph from ~~probation or community correctional services~~correctional supervision fees to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund, a sum equal to 41.67% of such remittance, and to the correctional supervision fund, a sum equal to 58.33% of such remittance;

(C) this paragraph shall apply to persons placed on felony or misdemeanor probation or released on misdemeanor parole to reside in Kansas and supervised by Kansas court services officers under the interstate compact for offender supervision; and

~~(C)~~(D) this paragraph shall not apply to persons placed on probation or released on parole to reside in Kansas under the uniform act for out-of-state parolee supervision; ~~and~~

(4) reimburse the state general fund for all or a part of the expenditures by the state board of indigents' defense services to provide counsel and other defense services to the defendant. In determining the amount and method of payment of such sum, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of such sum will impose. A defendant who has been required to pay such sum and who is not willfully in default in the payment thereof may at any time petition the court which sentenced the defendant to waive payment of such sum or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may waive payment of all or part of the amount due or modify the method of payment. The amount of attorney fees to be included in the court order for reimbursement shall be the amount claimed by appointed counsel on the payment voucher for indigents' defense services or the amount prescribed by the board of indigents' defense services reimbursement tables as provided in K.S.A. 22-4522, and amendments thereto, whichever is less;

(4) be subject to searches of the defendant's person, effects, vehicle, residence and property by court service officers, community correctional services officers and other law enforcement officers based on reasonable suspicion of the defendant violating conditions of probation or criminal activity;
and

(5) be subject to random, but reasonable, tests for drug and alcohol consumption as ordered by a court services officer or community correctional services officer.

(d) There is hereby established in the state treasury the correctional supervision fund. All moneys credited to the correctional supervision fund shall be used for the implementation of and training for use of a statewide, mandatory, standardized risk assessment tool or instrument as specified

by the Kansas sentencing commission, pursuant to K.S.A. 75-5291, and amendments thereto, and for evidence-based offender supervision programs by judicial branch personnel. If all expenditures for the program have been paid and moneys remain in the correctional supervision fund for a fiscal year, remaining moneys may be expended from the correctional supervision fund to support offender supervision by court services officers. All expenditures from the correctional supervision fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chief justice of the Kansas supreme court or by a person or persons designated by the chief justice.

