

HOUSE BILL No. 2319

By Committee on Corrections and Juvenile Justice

2-11

1 AN ACT concerning crimes, criminal procedure and punishment; relating
2 to house arrest; amending sections 249 and 285 of chapter 136 of the
3 2010 Sessions Laws of Kansas and repealing the existing sections.
4

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

6 Section 1. Section 249 of chapter 136 of the 2010 Session Laws of
7 Kansas is hereby amended to read as follows: Sec. 249. (a) The
8 court or the secretary of corrections may implement a house
9 arrest program for defendants or inmates being sentenced by
10 the court or in the custody of the secretary of corrections,
11 except:

12 (1) No defendant shall be placed by the court under house arrest if
13 found guilty of:

14 (A) Any crime designated as a class A or B felony in article 34 or 35
15 of the Kansas Statutes Annotated, prior to their repeal;

16 (B) subsection (b) of section 81 of chapter 136 of the 2010 Session
17 Laws of Kansas, and amendments thereto; or

18 (C) section 79 of chapter 136 of the 2010 Session Laws of Kansas,
19 and amendments thereto;

20 (2) no inmate shall be placed under house arrest if such inmate's
21 security status is greater than minimum security; or

22 (3) no inmate shall be placed under house arrest who has been
23 denied parole by the parole board within the last 6 months. Any inmate
24 who, while participating in the house arrest program, is denied parole by
25 the parole board shall be allowed to remain under house arrest until the
26 completion of the sentence or until the inmate is otherwise removed from
27 the program.

28 (b) Prior to the placement of an inmate under house arrest, the court
29 or secretary shall provide written notification to the sheriff and district or
30 county attorney of the county in which any person under house arrest is to
31 be placed and to the chief law enforcement officer of any incorporated
32 city or town in which such person is to be placed of the placement of the
33 person under house arrest within the county or incorporated city or town.

34 (c) House arrest sanctions shall be administered by the court and the
35 secretary of corrections, respectively, through rules and regulations, and

1 may include, but are not limited to, rehabilitative restitution in money or
2 in kind, curfew, revocation or suspension of the driver's license,
3 community service, deprivation of nonessential activities or privileges, or
4 other appropriate restraints on the inmate's liberty.

5 *(d) The court shall inform the offender; and any other people*
6 *residing with such offender at the time the order of house arrest is*
7 *entered, of the nature and extent of such house arrest monitoring, and*
8 *shall obtain the written agreement of such offender to comply with all*
9 *requirements of the program.*

10 *(e) The offender shall remain within the property boundaries of the*
11 *offender's residence at all times during the term of house arrest, except as*
12 *provided under the house arrest agreement with such offender.*

13 *(f) The offender shall allow any law enforcement officer, community*
14 *corrections officer, court services officer or duly authorized agent of the*
15 *department of corrections, to enter such offender's residence at any time*
16 *to verify the offender's compliance with the conditions of the house*
17 *release.*

18 *(g) The offender shall consent to be monitored by:*

19 *(1) An electronic monitoring device on such offender's person;*

20 *(2) an electronic monitoring device in such offender's home;*

21 *(3) a remote blood alcohol monitoring device;*

22 *(4) a home telephone verification procedure;*

23 *(5) radio frequency devices; or*

24 *(6) any combination of monitoring methods as the court finds*
25 *necessary.*

26 *(h) The secretary may contract for independent monitoring services.*
27 *Such independent monitoring service shall be able to provide monitoring*
28 *24 hours a day, every day of the year; and any other services as*
29 *determined by the secretary.*

30 *(i) As used in this section:*

31 *(1) "Electronic monitoring device" means an active global*
32 *positioning system-enabled device capable of recording and transmitting*
33 *an offender's location at all times. Such monitoring device may record or*
34 *transmit sound, visual images or other information regarding such*
35 *offender's location, via wireless communication; and*

36 *(2) "remote alcohol monitoring device" means a device capable of*
37 *continuously monitoring an offender's blood alcohol content via micro*
38 *fuel cell or deep lung tissue sample. Such monitoring devices shall be of*
39 *comparable accuracy to roadside breath alcohol testing devices utilized*
40 *by law enforcement, and shall have wireless transmission capabilities.*
41 *Such device may be used in conjunction with an alcohol and drug sensing*
42 *bracelet to monitor such offender's compliance with the terms of house*
43 *arrest.*

1 Sec. 2. Section 285 of chapter 136 of the 2010 Session Laws of
2 Kansas is hereby amended to read as follows: Sec. 285. (a) The
3 provisions of this section shall be applicable to the sentencing guidelines
4 grid for nondrug crimes. The following sentencing guidelines grid shall
5 be applicable to nondrug felony crimes:

6 (b) Sentences expressed in the sentencing guidelines grid for
7 nondrug crimes represent months of imprisonment.

8 (c) The sentencing guidelines grid is a two-dimensional crime
9 severity and criminal history classification tool. The grid's vertical axis is
10 the crime severity scale which classifies current crimes of conviction. The
11 grid's horizontal axis is the criminal history scale which classifies
12 criminal histories.

13 (d) The sentencing guidelines grid for nondrug crimes as provided in
14 this section defines presumptive punishments for felony convictions,
15 subject to the sentencing court's discretion to enter a departure sentence.
16 The appropriate punishment for a felony conviction should depend on the
17 severity of the crime of conviction when compared to all other crimes and
18 the offender's criminal history.

19 (e) (1) The sentencing court has discretion to sentence at any place
20 within the sentencing range. In the usual case it is recommended that the
21 sentencing judge select the center of the range and reserve the upper and
22 lower limits for aggravating and mitigating factors insufficient to warrant
23 a departure.

24 (2) In presumptive imprisonment cases, the sentencing court shall
25 pronounce the complete sentence which shall include the:

26 (A) Prison sentence;

27 (B) maximum potential reduction to such sentence as a result of
28 good time; and

29 (C) period of postrelease supervision at the sentencing hearing.
30 Failure to pronounce the period of postrelease supervision shall not
31 negate the existence of such period of postrelease supervision.

32 (3) In presumptive nonprison cases, the sentencing court shall
33 pronounce the:

34 (A) Prison sentence; and

35 (B) duration of the nonprison sanction at the sentencing hearing.

36 (f) Each grid block states the presumptive sentencing range for an
37 offender whose crime of conviction and criminal history place such
38 offender in that grid block. If an offense is classified in a grid block
39 below the dispositional line, the presumptive disposition shall be
40 nonimprisonment. If an offense is classified in a grid block above the
41 dispositional line, the presumptive disposition shall be imprisonment. If
42 an offense is classified in grid blocks 5-H, 5-I or 6-G, the court may
43 impose an optional nonprison sentence as provided in subsection (q).

1 (g) The sentence for a violation of ~~section 48, and amendments~~
2 ~~thereto~~, K.S.A. 21-3415, prior to its repeal, aggravated battery against a
3 law enforcement officer committed prior to July 1, 2006, or a violation of
4 *subsection (d) of section 47 of chapter 136 of the 2010 Session Laws of*
5 *Kansas*, and amendments thereto, aggravated assault against a law
6 enforcement officer, which places the defendant's sentence in grid block
7 6-H or 6-I shall be presumed imprisonment. The court may impose an
8 optional nonprison sentence as provided in subsection (q).

9 (h) When a firearm is used to commit any person felony, the
10 offender's sentence shall be presumed imprisonment. The court may
11 impose an optional nonprison sentence as provided in subsection (q).

12 (i) (l) The sentence for the violation of the felony provision of
13 K.S.A. 8-1567, subsection (b)(3) of section 49 *of chapter 136 of the 2010*
14 *Session Laws of Kansas*, subsections (b)(3) and (b)(4) of section 109 *of*
15 *chapter 136 of the 2010 Session Laws of Kansas*, section 223 *of chapter*
16 *136 of the 2010 Session Laws of Kansas* and section 227 *of chapter 136*
17 *of the 2010 Session Laws of Kansas*, and amendments thereto, shall be as
18 provided by the specific mandatory sentencing requirements of that
19 section and shall not be subject to the provisions of this section or section
20 288 *of chapter 136 of the 2010 Session Laws of Kansas*, and amendments
21 thereto.

22 (2) If because of the offender's criminal history classification the
23 offender is subject to presumptive imprisonment or if the judge departs
24 from a presumptive probation sentence and the offender is subject to
25 imprisonment, the provisions of this section and section 288 *of chapter*
26 *136 of the 2010 Session Laws of Kansas*, and amendments thereto, shall
27 apply and the offender shall not be subject to the mandatory sentence as
28 provided in section 109 *of chapter 136 of the 2010 Session Laws of*
29 *Kansas*, and amendments thereto.

30 (3) Notwithstanding the provisions of any other section, the term of
31 imprisonment imposed for the violation of the felony provision of K.S.A.
32 8-1567, subsection (b)(3) of section 49 *of chapter 136 of the 2010*
33 *Session Laws of Kansas*, subsections (b)(3) and (b)(4) of section 109 *of*
34 *chapter 136 of the 2010 Session Laws of Kansas*, section 223 and section
35 227 *of chapter 136 of the 2010 Session Laws of Kansas*, and amendments
36 thereto, shall not be served in a state facility in the custody of the
37 secretary of corrections, except that the term of imprisonment for felony
38 violations of K.S.A. 8-1567, and amendments thereto, may be served in a
39 state correctional facility designated by the secretary of corrections if the
40 secretary determines that substance abuse treatment resources and facility
41 capacity is available. The secretary's determination regarding the
42 availability of treatment resources and facility capacity shall not be
43 subject to review. *Prior to imposing any sentence pursuant to this*

1 subsection, the court shall consider assigning the defendant to a house
2 arrest program pursuant to section 249 of the 2010 Session Laws of
3 Kansas, and amendments thereto.

4 (j) (1) The sentence for any persistent sex offender whose current
5 convicted crime carries a presumptive term of imprisonment shall be
6 double the maximum duration of the presumptive imprisonment term.
7 The sentence for any persistent sex offender whose current conviction
8 carries a presumptive nonprison term shall be presumed imprisonment
9 and shall be double the maximum duration of the presumptive
10 imprisonment term.

11 (2) Except as otherwise provided in this subsection, as used in this
12 subsection, "persistent sex offender" means a person who:

13 (A) (i) Has been convicted in this state of a sexually violent crime,
14 as defined in K.S.A. 22-3717, and amendments thereto; and

15 (ii) at the time of the conviction under ~~paragraph~~ subsection (j)(2)
16 (A)(i) has at least one conviction for a sexually violent crime, as defined
17 in K.S.A. 22-3717, and amendments thereto, in this state or comparable
18 felony under the laws of another state, the federal government or a
19 foreign government; or

20 (B) (i) has been convicted of rape, as defined in K.S.A. 21-3502,
21 prior to its repeal, or section 67 of chapter 136 of the 2010 Session Laws
22 of Kansas, and amendments thereto; and

23 (ii) at the time of the conviction under ~~paragraph~~ subsection (j)(2)
24 (B)(i) has at least one conviction for rape in this state or comparable
25 felony under the laws of another state, the federal government or a
26 foreign government.

27 (3) Except as provided in ~~paragraph~~ subsection (j)(2)(B), the
28 provisions of this subsection shall not apply to any person whose current
29 convicted crime is a severity level 1 or 2 felony.

30 (k) (1) If it is shown at sentencing that the offender committed any
31 felony violation for the benefit of, at the direction of, or in association
32 with any criminal street gang, with the specific intent to promote, further
33 or assist in any criminal conduct by gang members, the offender's
34 sentence shall be presumed imprisonment. The court may impose an
35 optional nonprison sentence as provided in subsection (q).

36 (2) As used in this subsection, "criminal street gang" means any
37 organization, association or group of three or more persons, whether
38 formal or informal, having as one of its primary activities:

39 (A) The commission of one or more person felonies; or

40 (B) the commission of felony violations of K.S.A. ~~2009~~ 2010 Supp.
41 21-36a01 through 21-36a17, and amendments thereto; and

42 (C) its members have a common name or common identifying sign
43 or symbol; and

1 (D) its members, individually or collectively, engage in or have
2 engaged in the commission, attempted commission, conspiracy to commit
3 or solicitation of two or more person felonies or felony violations of
4 K.S.A. ~~2009~~ 2010 Supp. 21-36a01 through 21-36a17, and amendments
5 thereto, or any substantially similar offense from another jurisdiction.

6 (l) Except as provided in subsection (o), the sentence for a violation
7 of subsection (a)(1) of section 93 *of chapter 136 of the 2010 Session*
8 *Laws of Kansas*, and amendments thereto, *or any attempt or conspiracy,*
9 *as defined in sections 33 and 34 of chapter 136 of the 2010 Session Laws*
10 *of Kansas, and amendments thereto, to commit such offense*, when such
11 person being sentenced has a prior conviction for a violation of
12 subsection (a) or (b) of K.S.A. 21-3715, prior to its repeal, 21-3716, prior
13 to its repeal, subsection (a)(1) or (a)(2) of section 93 *of chapter 136 of the*
14 *2010 Session Laws of Kansas*, or subsection (b) of section 93 *of chapter*
15 *136 of the 2010 Session Laws of Kansas*, and amendments thereto, *or any*
16 *attempt or conspiracy to commit such offense*, shall be ~~presumed~~
17 *presumptive imprisonment*.

18 (m) The sentence for a violation of K.S.A 22-4903 or subsection (a)
19 (2) of section 138 *of chapter 136 of the 2010 Session Laws of Kansas*,
20 and amendments thereto, shall be presumptive imprisonment. If an
21 offense under such sections is classified in grid blocks 5-E, 5-F, 5-G, 5-H
22 or 5-I, the court may impose an optional nonprison sentence as provided
23 in subsection (q).

24 (n) The sentence for a violation of criminal deprivation of property,
25 as defined in section 89 *of chapter 136 of the 2010 Session Laws of*
26 *Kansas*, and amendments thereto, when such property is a motor vehicle,
27 and when such person being sentenced has any combination of two or
28 more prior convictions of subsection (b) of K.S.A. 21-3705, prior to its
29 repeal, or of criminal deprivation of property, as defined in section 89 *of*
30 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments
31 thereto, when such property is a motor vehicle, shall be presumptive
32 imprisonment. Such sentence shall not be considered a departure and
33 shall not be subject to appeal.

34 (o) The sentence for a felony violation of theft of property as defined
35 in section 87 *of chapter 136 of the 2010 Session Laws of Kansas*, and
36 amendments thereto, or burglary as defined in subsection (a) of section 93
37 *of chapter 136 of the 2010 Session Laws of Kansas*, and amendments
38 thereto, when such person being sentenced has no prior convictions for a
39 violation of K.S.A. 21-3701 or 21-3715, prior to their repeal, or theft of
40 property as defined in section 87 *of chapter 136 of the 2010 Session Laws*
41 *of Kansas*, and amendments thereto, or burglary as defined in subsection
42 (a) of section 93 *of chapter 136 of the 2010 Session Laws of Kansas*, and
43 amendments thereto; or the sentence for a felony violation of theft of

1 property as defined in section 87 of chapter 136 of the 2010 Session Laws
2 of Kansas, and amendments thereto, when such person being sentenced
3 has one or two prior felony convictions for a violation of K.S.A. 21-3701,
4 21-3715 or 21-3716, prior to their repeal, or theft of property as defined
5 in section 87 of chapter 136 of the 2010 Session Laws of Kansas, and
6 amendments thereto, or burglary or aggravated burglary as defined in
7 section 93 of chapter 136 of the 2010 Session Laws of Kansas, and
8 amendments thereto; or the sentence for a felony violation of burglary as
9 defined in subsection (a) of section 93 of chapter 136 of the 2010 Session
10 Laws of Kansas, and amendments thereto, when such person being
11 sentenced has one prior felony conviction for a violation of K.S.A. 21-
12 3701, 21-3715 or 21-3716, prior to their repeal, or theft of property as
13 defined in section 87 of chapter 136 of the 2010 Session Laws of Kansas,
14 and amendments thereto, or burglary or aggravated burglary as defined
15 in section 93 of chapter 136 of the 2010 Session Laws of Kansas, and
16 amendments thereto, shall be the sentence as provided by this section,
17 except that the court may order an optional nonprison sentence for a
18 defendant to participate in a drug treatment program, including, but not
19 limited to, an approved after-care plan, if the court makes the following
20 findings on the record:

21 (1) Substance abuse was an underlying factor in the commission of
22 the crime;

23 (2) substance abuse treatment in the community is likely to be more
24 effective than a prison term in reducing the risk of offender recidivism;
25 and

26 (3) participation in an intensive substance abuse treatment program
27 will serve community safety interests.

28 A defendant sentenced to an optional nonprison sentence under this
29 subsection shall be supervised by community correctional services. The
30 provisions of subsection (f)(1) of section 305 of chapter 136 of the 2010
31 Session Laws of Kansas, and amendments thereto, shall apply to a
32 defendant sentenced under this subsection. The sentence under this
33 subsection shall not be considered a departure and shall not be subject to
34 appeal.

35 (p) The sentence for a felony violation of theft of property as defined
36 in section 87 of chapter 136 of the 2010 Session Laws of Kansas, and
37 amendments thereto, when such person being sentenced has any
38 combination of three or more prior felony convictions for violations of
39 K.S.A. 21-3701, 21-3715 or 21-3716, prior to their repeal, or theft of
40 property as defined in section 87 of chapter 136 of the 2010 Session Laws
41 of Kansas, and amendments thereto, or burglary or aggravated burglary
42 as defined in section 93 of chapter 136 of the 2010 Session Laws of
43 Kansas; or the sentence for a violation of burglary as defined in

1 subsection (a) of section 93 of chapter 136 of the 2010 Session Laws of
2 Kansas, and amendments thereto, when such person being sentenced has
3 any combination of two or more prior convictions for violations of
4 K.S.A. 21-3701, 21-3715 and 21-3716, prior to their repeal, or theft of
5 property as defined in section 87 of chapter 136 of the 2010 Session Laws
6 of Kansas, and amendments thereto, or burglary or aggravated burglary
7 as defined in section 93 of chapter 136 of the 2010 Session Laws of
8 Kansas, and amendments thereto, shall be presumed imprisonment and
9 the defendant shall be sentenced to prison as provided by this section,
10 except that the court may recommend that an offender be placed in the
11 custody of the secretary of corrections, in a facility designated by the
12 secretary to participate in an intensive substance abuse treatment
13 program, upon making the following findings on the record:

14 (1) Substance abuse was an underlying factor in the commission of
15 the crime;

16 (2) substance abuse treatment with a possibility of an early release
17 from imprisonment is likely to be more effective than a prison term in
18 reducing the risk of offender recidivism; and

19 (3) participation in an intensive substance abuse treatment program
20 with the possibility of an early release from imprisonment will serve
21 community safety interests by promoting offender reformation.

22 The intensive substance abuse treatment program shall be determined
23 by the secretary of corrections, but shall be for a period of at least four
24 months. Upon the successful completion of such intensive treatment
25 program, the offender shall be returned to the court and the court may
26 modify the sentence by directing that a less severe penalty be imposed in
27 lieu of that originally adjudged within statutory limits. If the offender's
28 term of imprisonment expires, the offender shall be placed under the
29 applicable period of postrelease supervision. The sentence under this
30 subsection shall not be considered a departure and shall not be subject to
31 appeal.

32 (q) As used in this section, an "optional nonprison sentence" is a
33 sentence which the court may impose, in lieu of the presumptive
34 sentence, upon making the following findings on the record:

35 (1) An appropriate treatment program exists which is likely to be
36 more effective than the presumptive prison term in reducing the risk of
37 offender recidivism; and

38 (2) the recommended treatment program is available and the
39 offender can be admitted to such program within a reasonable period of
40 time; or

41 (3) the nonprison sanction will serve community safety interests by
42 promoting offender reformation.

43 Any decision made by the court regarding the imposition of an

1 optional nonprison sentence shall not be considered a departure and shall
2 not be subject to appeal.

3 (r) The sentence for a violation of subsection (c)(2) of section 48 of
4 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments
5 thereto, shall be presumptive imprisonment and shall be served
6 consecutively to any other term or terms of imprisonment imposed. Such
7 sentence shall not be considered a departure and shall not be subject to
8 appeal.

9 (s) *The sentence for a violation of section 76 of chapter 136 of the*
10 *2010 Session Laws of Kansas, and amendments thereto, shall be*
11 *presumptive imprisonment. Such sentence shall not be considered a*
12 *departure and shall not be subject to appeal.*

13 (t) (1) *If the trier of fact makes a finding that an offender wore or*
14 *used ballistic resistant material in the commission of, or attempt to*
15 *commit, or flight from any felony, in addition to the sentence imposed*
16 *pursuant to the Kansas sentencing guidelines act, the offender shall be*
17 *sentenced to an additional 30 months' imprisonment.*

18 (2) *The sentence imposed pursuant to subsection (t)(1) shall be*
19 *presumptive imprisonment and shall be served consecutively to any other*
20 *term or terms of imprisonment imposed. Such sentence shall not be*
21 *considered a departure and shall not be subject to appeal.*

22 (3) *As used in this subsection, "ballistic resistant material" means:*
23 *(A) Any commercially produced material designed with the purpose of*
24 *providing ballistic and trauma protection, including, but not limited to,*
25 *bulletproof vests and kevlar vests; and (B) any homemade or fabricated*
26 *substance or item designed with the purpose of providing ballistic and*
27 *trauma protection.*

28 Sec. 3. Sections 249 and 285 of chapter 136 of the 2010 Sessions
29 Laws of Kansas are hereby repealed.

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

32