

HOUSE BILL No. 2425

By Joint Committee on Corrections and Juvenile Justice Oversight

1-9

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to probation and postrelease supervision; violation sanctions; amending
3 K.S.A. 2013 Supp. 22-3716 and repealing the existing section.
4

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

6 Section 1. K.S.A. 2013 Supp. 22-3716 is hereby amended to read as
7 follows: 22-3716. (a) At any time during probation, assignment to a
8 community correctional services program, suspension of sentence or
9 pursuant to subsection (e) for defendants who committed a crime prior to
10 July 1, 1993, and at any time during which a defendant is serving a
11 nonprison sanction for a crime committed on or after July 1, 1993, or
12 pursuant to subsection (e), the court may issue a warrant for the arrest of a
13 defendant for violation of any of the conditions of release or assignment, a
14 notice to appear to answer to a charge of violation or a violation of the
15 defendant's nonprison sanction. The notice shall be personally served upon
16 the defendant. The warrant shall authorize all officers named in the
17 warrant to return the defendant to the custody of the court or to any
18 certified detention facility designated by the court. Any court services
19 officer or community correctional services officer may arrest the defendant
20 without a warrant or may deputize any other officer with power of arrest to
21 do so by giving the officer a written or verbal statement setting forth that
22 the defendant has, in the judgment of the court services officer or
23 community correctional services officer, violated the conditions of the
24 defendant's release or a nonprison sanction. A written statement delivered
25 to the official in charge of a county jail or other place of detention shall be
26 sufficient warrant for the detention of the defendant. After making an
27 arrest, the court services officer or community correctional services officer
28 shall present to the detaining authorities a similar statement of the
29 circumstances of violation. Provisions regarding release on bail of persons
30 charged with a crime shall be applicable to defendants arrested under these
31 provisions.

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

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

13 (3) (A) Except as otherwise provided, if the original crime of
14 conviction was a felony and a violation is established, the court may
15 impose the violation sanctions as provided in subsection (c)(1).

16 (B) Except as otherwise provided, if the original crime of conviction
17 was a misdemeanor and a violation is established, the court may continue
18 or revoke the probation, assignment to a community correctional services
19 program, suspension of sentence or nonprison sanction and may require
20 the defendant to serve the sentence imposed, or any lesser sentence, and, if
21 imposition of sentence was suspended, may impose any sentence which
22 might originally have been imposed.

23 (4) Except as otherwise provided, if *the original crime of conviction*
24 *was a felony*, the defendant waives the right to a hearing and the
25 sentencing court has not specifically withheld the authority from court
26 services or community correctional services to impose sanctions, the
27 following sanctions may be imposed without further order of the court:

28 (A) If the defendant was on probation at the time of the violation, the
29 defendant's supervising court services officer, with the concurrence of the
30 chief court services officer, may impose the violation sanctions as
31 provided in subsection (c)(1)(B); and

32 (B) if the defendant was assigned to a community correctional
33 services program at the time of the violation, the defendant's community
34 corrections officer, with the concurrence of the community corrections
35 director, may impose the violation sanctions as provided in subsection (c)
36 (1)(B).

37 (c) (1) Except as otherwise provided, *if the original crime of*
38 *conviction was a felony and a violation is established*, the following
39 violation sanctions may be imposed:

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

43 (B) an intermediate sanction of confinement in jail for a total of not

1 more than six days per month in any three separate months during the
2 period of release supervision. The six days per month confinement may
3 only be imposed as two-day or three-day consecutive periods, not to
4 exceed 18 days of total confinement;

5 (C) if the violator already had at least one intermediate sanction
6 imposed pursuant to subsection (c)(1)(B) related to the felony crime for
7 which the original supervision was imposed, remanding the defendant to
8 the custody of the secretary of corrections for a period of 120 days, subject
9 to a reduction of up to 60 days in the discretion of the secretary. This
10 sanction shall not be imposed more than once during the term of
11 supervision;

12 (D) if the violator already had a sanction imposed pursuant to
13 subsection (c)(1)(B) or (c)(1)(C) related to the felony crime for which the
14 original supervision was imposed, remanding the defendant to the custody
15 of the secretary of corrections for a period of 180 days, subject to a
16 reduction of up to 90 days in the discretion of the secretary. This sanction
17 shall not be imposed more than once during the term of supervision; or

18 (E) if the violator already had a sanction imposed pursuant to
19 subsection (c)(1)(C) or (c)(1)(D) related to the felony crime for which the
20 original supervision was imposed, revocation of the probation, assignment
21 to a community corrections services program, suspension of sentence or
22 nonprison sanction and requiring such violator to serve the sentence
23 imposed, or any lesser sentence and, if imposition of sentence was
24 suspended, imposition of any sentence which might originally have been
25 imposed.

26 (2) Except as otherwise provided, no offender for whom a violation
27 of conditions of release or assignment or a nonprison sanction has been
28 established as provided in this section shall be required to serve any time
29 for the sentence imposed or which might originally have been imposed in
30 a state facility in the custody of the secretary of corrections for such
31 violation, unless such person has already at least one prior assignment to a
32 community correctional services program related to the crime for which
33 the original sentence was imposed.

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

37 (4) The court may require an offender for whom a violation of
38 conditions of release or assignment or a nonprison sanction has been
39 established as provided in this section to serve any time for the sentence
40 imposed or which might originally have been imposed in a state facility in
41 the custody of the secretary of corrections without a prior assignment to a
42 community correctional services program if the court finds and sets forth
43 with particularity the reasons for finding that the safety of the members of

1 the public will be jeopardized or that the welfare of the inmate will not be
2 served by such assignment to a community correctional services program.

3 (5) When a new felony is committed while the offender is on
4 probation or assignment to a community correctional services program, the
5 new sentence shall be imposed consecutively pursuant to the provisions of
6 K.S.A. 2013 Supp. 21-6606, and amendments thereto, and the court may
7 sentence the offender to imprisonment for the new conviction, even when
8 the new crime of conviction otherwise presumes a nonprison sentence. In
9 this event, imposition of a prison sentence for the new crime does not
10 constitute a departure.

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

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

19 (8) If the offender commits a new felony or misdemeanor or absconds
20 from supervision while the offender is on probation, assignment to a
21 community correctional services program, suspension of sentence or
22 nonprison sanction, the court may revoke the probation, assignment to a
23 community correctional services program, suspension of sentence or
24 nonprison sanction of an offender pursuant to subsection (c)(1)(E) without
25 having previously imposed a sanction pursuant to subsection (c)(1)(B), (c)
26 (1)(C) or (c)(1)(D).

27 (9) The court may revoke the probation, assignment to a community
28 correctional services program, suspension of sentence or nonprison
29 sanction of an offender pursuant to subsection (c)(1)(E) without having
30 previously imposed a sanction pursuant to subsection (c)(1)(B), (c)(1)(C)
31 or (c)(1)(D) if the court finds and sets forth with particularity the reasons
32 for finding that the safety of members of the public will be jeopardized or
33 that the welfare of the offender will not be served by such sanction.

34 (10) *The violation sanctions provided in this subsection shall apply to*
35 *any violation of conditions of release or assignment or a nonprison*
36 *sanction occurring on and after July 1, 2013, regardless of the date of*
37 *conviction for the original crime.*

38 (d) A defendant who is on probation, assigned to a community
39 correctional services program, under suspension of sentence or serving a
40 nonprison sanction and for whose return a warrant has been issued by the
41 court shall be considered a fugitive from justice if it is found that the
42 warrant cannot be served. If it appears that the defendant has violated the
43 provisions of the defendant's release or assignment or a nonprison

1 sanction, the court shall determine whether the time from the issuing of the
2 warrant to the date of the defendant's arrest, or any part of it, shall be
3 counted as time served on probation, assignment to a community
4 correctional services program, suspended sentence or pursuant to a
5 nonprison sanction.

6 (e) The court shall have 30 days following the date probation,
7 assignment to a community correctional service program, suspension of
8 sentence or a nonprison sanction was to end to issue a warrant for the
9 arrest or notice to appear for the defendant to answer a charge of a
10 violation of the conditions of probation, assignment to a community
11 correctional service program, suspension of sentence or a nonprison
12 sanction.

13 (f) For crimes committed on and after July 1, 2013, an offender
14 whose nonprison sanction is revoked pursuant to subsection (c) or whose
15 underlying prison term expires while serving a sanction pursuant to
16 subsection (c)(1)(C) or (c)(1)(D) shall serve a period of postrelease
17 supervision upon the completion of the prison portion of the underlying
18 sentence.

19 (g) Offenders who have been sentenced pursuant to K.S.A. 2013
20 Supp. 21-6824, and amendments thereto, and who subsequently violate a
21 condition of the drug and alcohol abuse treatment program shall be subject
22 to an additional nonprison sanction for any such subsequent violation.
23 Such nonprison sanctions shall include, but not be limited to, up to 60 days
24 in a county jail, fines, community service, intensified treatment, house
25 arrest and electronic monitoring.

26 Sec. 2. K.S.A. 2013 Supp. 22-3716 is hereby repealed.

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

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