

HOUSE BILL No. 2489

By Committee on Corrections and Juvenile Justice

1-20

9 AN ACT concerning crimes, criminal procedure and punishment; relat-
10 ing to the violation of parole, probation or other postrelease supervi-
11 sion term by a defendant; amending K.S.A. 22-3716 and repealing the
12 existing section.
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14 *Be it enacted by the Legislature of the State of Kansas:*

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

40 (b) Upon arrest and detention pursuant to subsection (a), the court
41 services officer or community correctional services officer shall immedi-
42 ately notify the court and shall submit in writing a report showing in what
43 manner the defendant has violated the conditions of release or assignment

1 or a nonprison sanction. Thereupon, or upon an arrest by warrant as
2 provided in this section, the court shall cause the defendant to be brought
3 before it without unnecessary delay for a hearing on the violation charged.
4 The hearing shall be in open court and the state shall have the burden of
5 establishing the violation. The defendant shall have the right to be rep-
6 resented by counsel and shall be informed by the judge that, if the de-
7 fendant is financially unable to obtain counsel, an attorney will be ap-
8 pointed to represent the defendant. The defendant shall have the right
9 to present the testimony of witnesses and other evidence on the defend-
10 ant's behalf. Relevant written statements made under oath may be ad-
11 mitted and considered by the court along with other evidence presented
12 at the hearing. Except as otherwise provided, if the violation is estab-
13 lished, the court may continue or revoke the probation, assignment to a
14 community correctional services program, suspension of sentence or non-
15 prison sanction and may require the defendant to serve the sentence
16 imposed, ~~or but not any lesser sentence, and.~~ If imposition of sentence
17 was suspended, *the court* may impose any sentence which might originally
18 have been imposed. Except as otherwise provided, no offender for whom
19 a violation of conditions of release or assignment or a nonprison sanction
20 has been established as provided in this section shall be required to serve
21 any time for the sentence imposed or which might originally have been
22 imposed in a state facility in the custody of the secretary of corrections
23 for such violation, unless such person has already at least one prior as-
24 signment to a community correctional services program related to the
25 crime for which the original sentence was imposed, except these provi-
26 sions shall not apply to offenders who violate a condition of release or
27 assignment or a nonprison sanction by committing a new misdemeanor
28 or felony offense. The provisions of this subsection shall not apply to adult
29 felony offenders as described in subsection (a)(3) of K.S.A. 75-5291, and
30 amendments thereto. The court may require an offender for whom a
31 violation of conditions of release or assignment or a nonprison sanction
32 has been established as provided in this section to serve any time for the
33 sentence imposed or which might originally have been imposed in a state
34 facility in the custody of the secretary of corrections without a prior as-
35 signment to a community correctional services program if the court finds
36 and sets forth with particularity the reasons for finding that the safety of
37 the members of the public will be jeopardized or that the welfare of the
38 inmate will not be served by such assignment to a community correctional
39 services program. When a new felony is committed while the offender is
40 on probation or assignment to a community correctional services pro-
41 gram, the new sentence shall be imposed pursuant to the consecutive
42 sentencing requirements of K.S.A. 21-4608 and amendments thereto, and
43 the court may sentence the offender to imprisonment for the new con-

1 viction, even when the new crime of conviction otherwise presumes a
2 nonprison sentence. In this event, imposition of a prison sentence for the
3 new crime does not constitute a departure.

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

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

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

1 by this subsection.

2 (f) Offenders who have been sentenced pursuant to K.S.A. 21-4729,
3 and amendments thereto, and who subsequently violate a condition of
4 the drug and alcohol abuse treatment program shall be subject to an
5 additional nonprison sanction for any such subsequent violation. Such
6 nonprison sanctions shall include, but not be limited to, up to 60 days in
7 a county jail, fines, community service, intensified treatment, house arrest
8 and electronic monitoring.

9 Sec. 2. K.S.A. 22-3716 is hereby repealed.

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