

HOUSE BILL No. 2495

By Committee on Corrections and Juvenile Justice

1-23

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to sentencing; probation and postrelease supervision; amending K.S.A.
3 2013 Supp. 21-6604 and 22-3716 and repealing the existing sections.
4

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

6 Section 1. K.S.A. 2013 Supp. 21-6604 is hereby amended to read as
7 follows: 21-6604. (a) Whenever any person has been found guilty of a
8 crime, the court may adjudge any of the following:

9 (1) Commit the defendant to the custody of the secretary of
10 corrections if the current crime of conviction is a felony and the sentence
11 presumes imprisonment, or the sentence imposed is a dispositional
12 departure to imprisonment; or, if confinement is for a misdemeanor, to jail
13 for the term provided by law;

14 (2) impose the fine applicable to the offense and may impose the
15 provisions of subsection (q);

16 (3) release the defendant on probation if the current crime of
17 conviction and criminal history fall within a presumptive nonprison
18 category or through a departure for substantial and compelling reasons
19 subject to such conditions as the court may deem appropriate. In felony
20 cases except for violations of K.S.A. 8-1567, 8-2,144 and K.S.A. 2013
21 Supp. 8-1025, and amendments thereto, the court may include
22 confinement in a county jail not to exceed 60 days, which need not be
23 served consecutively, as a condition of an original probation sentence ~~and~~
24 ~~up to 60 days in a county jail upon each revocation of the probation~~
25 ~~sentence, or community corrections placement;~~

26 (4) assign the defendant to a community correctional services
27 program as provided in K.S.A. 75-5291, and amendments thereto, or
28 through a departure for substantial and compelling reasons subject to such
29 conditions as the court may deem appropriate, including orders requiring
30 full or partial restitution;

31 (5) assign the defendant to a conservation camp for a period not to
32 exceed six months as a condition of probation followed by a six-month
33 period of follow-up through adult intensive supervision by a community
34 correctional services program, if the offender successfully completes the
35 conservation camp program;

36 (6) assign the defendant to a house arrest program pursuant to K.S.A.

1 2013 Supp. 21-6609, and amendments thereto;

2 (7) order the defendant to attend and satisfactorily complete an
3 alcohol or drug education or training program as provided by subsection
4 (c) of K.S.A. 2013 Supp. 21-6602, and amendments thereto;

5 (8) order the defendant to repay the amount of any reward paid by
6 any crime stoppers chapter, individual, corporation or public entity which
7 materially aided in the apprehension or conviction of the defendant; repay
8 the amount of any costs and expenses incurred by any law enforcement
9 agency in the apprehension of the defendant, if one of the current crimes
10 of conviction of the defendant includes escape from custody or aggravated
11 escape from custody, as defined in K.S.A. 2013 Supp. 21-5911, and
12 amendments thereto; repay expenses incurred by a fire district, fire
13 department or fire company responding to a fire which has been
14 determined to be arson or aggravated arson as defined in K.S.A. 2013
15 Supp. 21-5812, and amendments thereto, if the defendant is convicted of
16 such crime; repay the amount of any public funds utilized by a law
17 enforcement agency to purchase controlled substances from the defendant
18 during the investigation which leads to the defendant's conviction; or repay
19 the amount of any medical costs and expenses incurred by any law
20 enforcement agency or county. Such repayment of the amount of any such
21 costs and expenses incurred by a county, law enforcement agency, fire
22 district, fire department or fire company or any public funds utilized by a
23 law enforcement agency shall be deposited and credited to the same fund
24 from which the public funds were credited to prior to use by the county,
25 law enforcement agency, fire district, fire department or fire company;

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

28 (10) order the defendant to pay a domestic violence special program
29 fee authorized by K.S.A. 20-369, and amendments thereto;

30 (11) if the defendant is convicted of a misdemeanor or convicted of a
31 felony specified in subsection (i) of K.S.A. 2013 Supp. 21-6804, and
32 amendments thereto, assign the defendant to work release program, other
33 than a program at a correctional institution under the control of the
34 secretary of corrections as defined in K.S.A. 75-5202, and amendments
35 thereto, provided such work release program requires such defendant to
36 return to confinement at the end of each day in the work release program.
37 On a second or subsequent conviction of K.S.A. 8-1567, and amendments
38 thereto, an offender placed into a work release program shall serve the
39 total number of hours of confinement mandated by that section;

40 (12) order the defendant to pay the full amount of unpaid costs
41 associated with the conditions of release of the appearance bond under
42 K.S.A. 22-2802, and amendments thereto;

43 (13) impose any appropriate combination of (1), (2), (3), (4), (5), (6),

1 (7), (8), (9), (10), (11) and (12); or

2 (14) suspend imposition of sentence in misdemeanor cases.

3 (b) (1) In addition to or in lieu of any of the above, the court shall
4 order the defendant to pay restitution, which shall include, but not be
5 limited to, damage or loss caused by the defendant's crime, unless the
6 court finds compelling circumstances which would render a plan of
7 restitution unworkable. In regard to a violation of K.S.A. 2013 Supp. 21-
8 6107, and amendments thereto, such damage or loss shall include, but not
9 be limited to, attorney fees and costs incurred to repair the credit history or
10 rating of the person whose personal identification documents were
11 obtained and used in violation of such section, and to satisfy a debt, lien or
12 other obligation incurred by the person whose personal identification
13 documents were obtained and used in violation of such section. If the court
14 finds a plan of restitution unworkable, the court shall state on the record in
15 detail the reasons therefor.

16 (2) If the court orders restitution, the restitution shall be a judgment
17 against the defendant which may be collected by the court by garnishment
18 or other execution as on judgments in civil cases. If, after 60 days from the
19 date restitution is ordered by the court, a defendant is found to be in
20 noncompliance with the plan established by the court for payment of
21 restitution, and the victim to whom restitution is ordered paid has not
22 initiated proceedings in accordance with K.S.A. 60-4301 et seq., and
23 amendments thereto, the court shall assign an agent procured by the
24 attorney general pursuant to K.S.A. 75-719, and amendments thereto, to
25 collect the restitution on behalf of the victim. The chief judge of each
26 judicial district may assign such cases to an appropriate division of the
27 court for the conduct of civil collection proceedings.

28 (c) In addition to or in lieu of any of the above, the court shall order
29 the defendant to submit to and complete an alcohol and drug evaluation,
30 and pay a fee therefor, when required by subsection (d) of K.S.A. 2013
31 Supp. 21-6602, and amendments thereto.

32 (d) In addition to any of the above, the court shall order the defendant
33 to reimburse the county general fund for all or a part of the expenditures
34 by the county to provide counsel and other defense services to the
35 defendant. Any such reimbursement to the county shall be paid only after
36 any order for restitution has been paid in full. In determining the amount
37 and method of payment of such sum, the court shall take account of the
38 financial resources of the defendant and the nature of the burden that
39 payment of such sum will impose. A defendant who has been required to
40 pay such sum and who is not willfully in default in the payment thereof
41 may at any time petition the court which sentenced the defendant to waive
42 payment of such sum or any unpaid portion thereof. If it appears to the
43 satisfaction of the court that payment of the amount due will impose

1 manifest hardship on the defendant or the defendant's immediate family,
2 the court may waive payment of all or part of the amount due or modify
3 the method of payment.

4 (e) In releasing a defendant on probation, the court shall direct that
5 the defendant be under the supervision of a court services officer. If the
6 court commits the defendant to the custody of the secretary of corrections
7 or to jail, the court may specify in its order the amount of restitution to be
8 paid and the person to whom it shall be paid if restitution is later ordered
9 as a condition of parole, conditional release or postrelease supervision.

10 (f) (1) When a new felony is committed while the offender is
11 incarcerated and serving a sentence for a felony, or while the offender is on
12 probation, assignment to a community correctional services program,
13 parole, conditional release or postrelease supervision for a felony, a new
14 sentence shall be imposed consecutively pursuant to the provisions of
15 K.S.A. 2013 Supp. 21-6606, and amendments thereto, and the court may
16 sentence the offender to imprisonment for the new conviction, even when
17 the new crime of conviction otherwise presumes a nonprison sentence. In
18 this event, imposition of a prison sentence for the new crime does not
19 constitute a departure.

20 (2) When a new felony is committed during a period of time during
21 which the defendant would have been on probation, assignment to a
22 community correctional services program, parole, conditional release or
23 postrelease supervision for a felony had the defendant not been granted
24 release by the court pursuant to subsection (d) of K.S.A. 2013 Supp. 21-
25 6608, and amendments thereto, or the prisoner review board pursuant to
26 K.S.A. 22-3717, and amendments thereto, the court may sentence the
27 offender to imprisonment for the new conviction, even when the new
28 crime of conviction otherwise presumes a nonprison sentence. In this
29 event, imposition of a prison sentence for the new crime does not
30 constitute a departure.

31 (3) When a new felony is committed while the offender is
32 incarcerated in a juvenile correctional facility pursuant to K.S.A. 38-1671,
33 prior to its repeal, or K.S.A. 2013 Supp. 38-2373, and amendments
34 thereto, for an offense, which if committed by an adult would constitute
35 the commission of a felony, upon conviction, the court shall sentence the
36 offender to imprisonment for the new conviction, even when the new
37 crime of conviction otherwise presumes a nonprison sentence. In this
38 event, imposition of a prison sentence for the new crime does not
39 constitute a departure. The conviction shall operate as a full and complete
40 discharge from any obligations, except for an order of restitution, imposed
41 on the offender arising from the offense for which the offender was
42 committed to a juvenile correctional facility.

43 (4) When a new felony is committed while the offender is on release

1 for a felony pursuant to the provisions of article 28 of chapter 22 of the
2 Kansas Statutes Annotated, and amendments thereto, or similar provisions
3 of the laws of another jurisdiction, a new sentence may be imposed
4 consecutively pursuant to the provisions of K.S.A. 2013 Supp. 21-6606,
5 and amendments thereto, and the court may sentence the offender to
6 imprisonment for the new conviction, even when the new crime of
7 conviction otherwise presumes a nonprison sentence. In this event,
8 imposition of a prison sentence for the new crime does not constitute a
9 departure.

10 (g) Prior to imposing a dispositional departure for a defendant whose
11 offense is classified in the presumptive nonprison grid block of either
12 sentencing guideline grid, prior to sentencing a defendant to incarceration
13 whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing
14 guidelines grid for nondrug crimes, in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I
15 of the sentencing guidelines grid for drug crimes committed prior to July
16 1, 2012, or in grid blocks 4-E, 4-F, 4-G, 4-H or 4-I of the sentencing
17 guidelines grid for drug crimes committed on or after July 1, 2012, prior to
18 sentencing a defendant to incarceration whose offense is classified in grid
19 blocks 4-E or 4-F of the sentencing guidelines grid for drug crimes
20 committed prior to July 1, 2012, or in grid blocks 5-C, 5-D, 5-E or 5-F of
21 the sentencing guidelines grid for drug crimes committed on or after July
22 1, 2012, and whose offense does not meet the requirements of K.S.A. 2013
23 Supp. 21-6824, and amendments thereto, prior to revocation of a
24 nonprison sanction of a defendant whose offense is classified in grid
25 blocks 4-E or 4-F of the sentencing guidelines grid for drug crimes
26 committed prior to July 1, 2012, or in grid blocks 5-C, 5-D, 5-E or 5-F of
27 the sentencing guidelines grid for drug crimes committed on or after July
28 1, 2012, and whose offense does not meet the requirements of K.S.A. 2013
29 Supp. 21-6824, and amendments thereto, or prior to revocation of a
30 nonprison sanction of a defendant whose offense is classified in the
31 presumptive nonprison grid block of either sentencing guideline grid or
32 grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug
33 crimes, in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing
34 guidelines grid for drug crimes committed prior to July 1, 2012, or in grid
35 blocks 4-E, 4-F, 4-G, 4-H or 4-I of the sentencing guidelines grid for drug
36 crimes committed on or after July 1, 2012, the court shall consider
37 placement of the defendant in the Labette correctional conservation camp,
38 conservation camps established by the secretary of corrections pursuant to
39 K.S.A. 75-52,127, and amendments thereto, or a community intermediate
40 sanction center. Pursuant to this subsection the defendant shall not be
41 sentenced to imprisonment if space is available in a conservation camp or
42 community intermediate sanction center and the defendant meets all of the
43 conservation camp's or community intermediate sanction center's

1 placement criteria unless the court states on the record the reasons for not
2 placing the defendant in a conservation camp or community intermediate
3 sanction center.

4 (h) In committing a defendant to the custody of the secretary of
5 corrections, the court shall fix a term of confinement within the limits
6 provided by law. In those cases where the law does not fix a term of
7 confinement for the crime for which the defendant was convicted, the
8 court shall fix the term of such confinement.

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

27 (j) This section shall not deprive the court of any authority conferred
28 by any other Kansas statute to decree a forfeiture of property, suspend or
29 cancel a license, remove a person from office or impose any other civil
30 penalty as a result of conviction of crime.

31 (k) An application for or acceptance of probation or assignment to a
32 community correctional services program shall not constitute an
33 acquiescence in the judgment for purpose of appeal, and any convicted
34 person may appeal from such conviction, as provided by law, without
35 regard to whether such person has applied for probation, suspended
36 sentence or assignment to a community correctional services program.

37 (l) The secretary of corrections is authorized to make direct
38 placement to the Labette correctional conservation camp or a conservation
39 camp established by the secretary pursuant to K.S.A. 75-52,127, and
40 amendments thereto, of an inmate sentenced to the secretary's custody if
41 the inmate:

42 (1) Has been sentenced to the secretary for a probation revocation, as
43 a departure from the presumptive nonimprisonment grid block of either

1 sentencing grid, for an offense which is classified in grid blocks 5-H, 5-I
2 or 6-G of the sentencing guidelines grid for nondrug crimes, in grid blocks
3 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes
4 committed prior to July 1, 2012, in grid blocks 4-E, 4-F, 4-G, 4-H or 4-I of
5 the sentencing guidelines grid for drug crimes committed on or after July
6 1, 2012, or for an offense which is classified in grid blocks 4-E or 4-F of
7 the sentencing guidelines grid for drug crimes committed prior to July 1,
8 2012, or in grid blocks 5-C, 5-D, 5-E or 5-F of the sentencing guidelines
9 grid for drug crimes committed on or after July 1, 2012, and such offense
10 does not meet the requirements of K.S.A. 2013 Supp. 21-6824, and
11 amendments thereto; and

12 (2) otherwise meets admission criteria of the camp.

13 If the inmate successfully completes a conservation camp program, the
14 secretary of corrections shall report such completion to the sentencing
15 court and the county or district attorney. The inmate shall then be assigned
16 by the court to six months of follow-up supervision conducted by the
17 appropriate community corrections services program. The court may also
18 order that supervision continue thereafter for the length of time authorized
19 by K.S.A. 2013 Supp. 21-6608, and amendments thereto.

20 (m) When it is provided by law that a person shall be sentenced
21 pursuant to K.S.A. 1993 Supp. 21-4628, prior to its repeal, the provisions
22 of this section shall not apply.

23 (n) (1) Except as provided by subsection (f) of K.S.A. 2013 Supp. 21-
24 6805, and amendments thereto, in addition to any of the above, for felony
25 violations of K.S.A. 2013 Supp. 21-5706, and amendments thereto, the
26 court shall require the defendant who meets the requirements established
27 in K.S.A. 2013 Supp. 21-6824, and amendments thereto, to participate in a
28 certified drug abuse treatment program, as provided in K.S.A. 2013 Supp.
29 75-52,144, and amendments thereto, including, but not limited to, an
30 approved after-care plan. The amount of time spent participating in such
31 program shall not be credited as service on the underlying prison sentence.

32 (2) If the defendant fails to participate in or has a pattern of
33 intentional conduct that demonstrates the defendant's refusal to comply
34 with or participate in the treatment program, as established by judicial
35 finding, the defendant shall be subject to sanction or revocation pursuant
36 to the provisions of K.S.A. 22-3716, and amendments thereto. If the
37 defendant's probation is revoked, the defendant shall serve the underlying
38 prison sentence as established in K.S.A. 2013 Supp. 21-6805, and
39 amendments thereto.

40 (A) Except as provided in subsection (n)(2)(B), for those offenders
41 who are convicted on or after July 1, 2003, but prior to July 1, 2013, upon
42 completion of the underlying prison sentence, the offender shall not be
43 subject to a period of postrelease supervision.

1 (B) Offenders whose crime of conviction was committed on or after
2 July 1, 2013, and whose probation is revoked pursuant to subsection (c) of
3 K.S.A. 22-3716, and amendments thereto, or whose underlying prison
4 term expires while serving a sanction pursuant to subsection (c)(1)(C) or
5 (c)(1)(D) of K.S.A. 22-3716, and amendments thereto, shall serve a period
6 of postrelease supervision upon the completion of the underlying prison
7 term.

8 (o) (1) Except as provided in paragraph (3), in addition to any other
9 penalty or disposition imposed by law, upon a conviction for unlawful
10 possession of a controlled substance or controlled substance analog in
11 violation of K.S.A. 2013 Supp. 21-5706, and amendments thereto, in
12 which the trier of fact makes a finding that the unlawful possession
13 occurred while transporting the controlled substance or controlled
14 substance analog in any vehicle upon a highway or street, the offender's
15 driver's license or privilege to operate a motor vehicle on the streets and
16 highways of this state shall be suspended for one year.

17 (2) Upon suspension of a license pursuant to this subsection, the court
18 shall require the person to surrender the license to the court, which shall
19 transmit the license to the division of motor vehicles of the department of
20 revenue, to be retained until the period of suspension expires. At that time,
21 the licensee may apply to the division for return of the license. If the
22 license has expired, the person may apply for a new license, which shall be
23 issued promptly upon payment of the proper fee and satisfaction of other
24 conditions established by law for obtaining a license unless another
25 suspension or revocation of the person's privilege to operate a motor
26 vehicle is in effect.

27 (3) (A) In lieu of suspending the driver's license or privilege to
28 operate a motor vehicle on the highways of this state of any person as
29 provided in paragraph (1), the judge of the court in which such person was
30 convicted may enter an order which places conditions on such person's
31 privilege of operating a motor vehicle on the highways of this state, a
32 certified copy of which such person shall be required to carry any time
33 such person is operating a motor vehicle on the highways of this state. Any
34 such order shall prescribe the duration of the conditions imposed, which in
35 no event shall be for a period of more than one year.

36 (B) Upon entering an order restricting a person's license hereunder,
37 the judge shall require such person to surrender such person's driver's
38 license to the judge who shall cause it to be transmitted to the division of
39 vehicles, together with a copy of the order. Upon receipt thereof, the
40 division of vehicles shall issue without charge a driver's license which
41 shall indicate on its face that conditions have been imposed on such
42 person's privilege of operating a motor vehicle and that a certified copy of
43 the order imposing such conditions is required to be carried by the person

1 for whom the license was issued any time such person is operating a motor
2 vehicle on the highways of this state. If the person convicted is a
3 nonresident, the judge shall cause a copy of the order to be transmitted to
4 the division and the division shall forward a copy of it to the motor vehicle
5 administrator of such person's state of residence. Such judge shall furnish
6 to any person whose driver's license has had conditions imposed on it
7 under this paragraph a copy of the order, which shall be recognized as a
8 valid Kansas driver's license until such time as the division shall issue the
9 restricted license provided for in this paragraph.

10 (C) Upon expiration of the period of time for which conditions are
11 imposed pursuant to this subsection, the licensee may apply to the division
12 for the return of the license previously surrendered by such licensee. In the
13 event such license has expired, such person may apply to the division for a
14 new license, which shall be issued immediately by the division upon
15 payment of the proper fee and satisfaction of the other conditions
16 established by law, unless such person's privilege to operate a motor
17 vehicle on the highways of this state has been suspended or revoked prior
18 thereto. If any person shall violate any of the conditions imposed under
19 this paragraph, such person's driver's license or privilege to operate a
20 motor vehicle on the highways of this state shall be revoked for a period of
21 not less than 60 days nor more than one year by the judge of the court in
22 which such person is convicted of violating such conditions.

23 (4) As used in this subsection, "highway" and "street" mean the same
24 as in K.S.A. 8-1424 and 8-1473, and amendments thereto.

25 (p) In addition to any of the above, for any criminal offense that
26 includes the domestic violence designation pursuant to K.S.A. 2013 Supp.
27 22-4616, and amendments thereto, the court shall require the defendant to:
28 (1) Undergo a domestic violence offender assessment conducted by a
29 certified batterer intervention program; and (2) follow all
30 recommendations made by such program, unless otherwise ordered by the
31 court or the department of corrections. The court may order a domestic
32 violence offender assessment and any other evaluation prior to sentencing
33 if the assessment or evaluation would assist the court in determining an
34 appropriate sentence. The entity completing the assessment or evaluation
35 shall provide the assessment or evaluation and recommendations to the
36 court and the court shall provide the domestic violence offender
37 assessment to any entity responsible for supervising such defendant. A
38 defendant ordered to undergo a domestic violence offender assessment
39 shall be required to pay for the assessment and, unless otherwise ordered
40 by the court or the department of corrections, for completion of all
41 recommendations.

42 (q) In imposing a fine, the court may authorize the payment thereof in
43 installments. In lieu of payment of any fine imposed, the court may order

1 that the person perform community service specified by the court. The
2 person shall receive a credit on the fine imposed in an amount equal to \$5
3 for each full hour spent by the person in the specified community service.
4 The community service ordered by the court shall be required to be
5 performed by the later of one year after the fine is imposed or one year
6 after release from imprisonment or jail, or by an earlier date specified by
7 the court. If by the required date the person performs an insufficient
8 amount of community service to reduce to zero the portion of the fine
9 required to be paid by the person, the remaining balance shall become due
10 on that date. If conditional reduction of any fine is rescinded by the court
11 for any reason, then pursuant to the court's order the person may be
12 ordered to perform community service by one year after the date of such
13 rescission or by an earlier date specified by the court. If by the required
14 date the person performs an insufficient amount of community service to
15 reduce to zero the portion of the fine required to be paid by the person, the
16 remaining balance of the fine shall become due on that date. All credits for
17 community service shall be subject to review and approval by the court.

18 (r) In addition to any other penalty or disposition imposed by law, for
19 any defendant sentenced to imprisonment pursuant to K.S.A. 21-4643,
20 prior to its repeal, or K.S.A. 2013 Supp. 21-6627, and amendments
21 thereto, for crimes committed on or after July 1, 2006, the court shall order
22 that the defendant be electronically monitored upon release from
23 imprisonment for the duration of the defendant's natural life and that the
24 defendant shall reimburse the state for all or part of the cost of such
25 monitoring as determined by the prisoner review board.

26 (s) Whenever the court has released the defendant on probation
27 pursuant to subsection (a)(3), the defendant's supervising court services
28 officer, with the concurrence of the chief court services officer, may
29 impose the violation sanctions as provided in subsection (c)(1)(B) of
30 K.S.A. 22-3716, and amendments thereto, without further order of the
31 court, unless:

32 (1) The court has specifically withheld this authority in its sentencing
33 order; or

34 (2) the defendant, after being apprised of the right to a revocation
35 hearing before the court pursuant to subsection (b) of K.S.A. 22-3716, and
36 amendments thereto, refuses to waive such right.

37 (t) Whenever the court has assigned the defendant to a community
38 correctional services program pursuant to subsection (a)(4), the defendant's
39 community corrections officer, with the concurrence of the community
40 corrections director, may impose the violation sanctions as provided in
41 subsection (c)(1)(B) of K.S.A. 22-3716, and amendments thereto, without
42 further order of the court unless:

43 (1) The court has specifically withheld this authority in its sentencing

1 order; or

2 (2) the defendant, after being apprised of the right to a revocation
3 hearing before the court pursuant to subsection (b) of K.S.A. 22-3716, and
4 amendments thereto, refuses to waive such right.

5 Sec. 2. K.S.A. 2013 Supp. 22-3716 is hereby amended to read as
6 follows: 22-3716. (a) At any time during probation, assignment to a
7 community correctional services program, suspension of sentence or
8 pursuant to subsection (e) for defendants who committed a crime prior to
9 July 1, 1993, and at any time during which a defendant is serving a
10 nonprison sanction for a crime committed on or after July 1, 1993, or
11 pursuant to subsection (e), the court may issue a warrant for the arrest of a
12 defendant for violation of any of the conditions of release or assignment, a
13 notice to appear to answer to a charge of violation or a violation of the
14 defendant's nonprison sanction. The notice shall be personally served upon
15 the defendant. The warrant shall authorize all officers named in the
16 warrant to return the defendant to the custody of the court or to any
17 certified detention facility designated by the court. Any court services
18 officer or community correctional services officer may arrest the defendant
19 without a warrant or may deputize any other officer with power of arrest to
20 do so by giving the officer a written or verbal statement setting forth that
21 the defendant has, in the judgment of the court services officer or
22 community correctional services officer, violated the conditions of the
23 defendant's release or a nonprison sanction. A written statement delivered
24 to the official in charge of a county jail or other place of detention shall be
25 sufficient warrant for the detention of the defendant. After making an
26 arrest, the court services officer or community correctional services officer
27 shall present to the detaining authorities a similar statement of the
28 circumstances of violation. Provisions regarding release on bail of persons
29 charged with a crime shall be applicable to defendants arrested under these
30 provisions.

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

36 (2) Unless the defendant, after being apprised of the right to a hearing
37 by the supervising court services or community correctional services
38 officer, waives such hearing, the court shall cause the defendant to be
39 brought before it without unnecessary delay for a hearing on the violation
40 charged. The hearing shall be in open court and the state shall have the
41 burden of establishing the violation. The defendant shall have the right to
42 be represented by counsel and shall be informed by the judge that, if the
43 defendant is financially unable to obtain counsel, an attorney will be

1 appointed to represent the defendant. The defendant shall have the right to
 2 present the testimony of witnesses and other evidence on the defendant's
 3 behalf. Relevant written statements made under oath may be admitted and
 4 considered by the court along with other evidence presented at the hearing.

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

8 (B) Except as otherwise provided, if the original crime of conviction
 9 was a misdemeanor and a violation is established, the court may:

10 (i) Continue or ~~revoke~~ *modify* the probation, assignment to a
 11 community correctional services program, suspension of sentence or
 12 nonprison sanction and ~~may~~ *impose confinement in a county jail not to*
 13 *exceed 60 days. If an offender is serving multiple probation terms*
 14 *concurrently, any confinement periods imposed shall be imposed*
 15 *concurrently; or*

16 (ii) *revoke the probation, assignment to a community correctional*
 17 *services program, suspension of sentence or nonprison sanction and*
 18 *require the defendant to serve the sentence imposed, or any lesser*
 19 *sentence, and, if imposition of sentence was suspended, may impose any*
 20 *sentence which might originally have been imposed.*

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

26 (A) If the defendant was on probation at the time of the violation, the
 27 defendant's supervising court services officer, with the concurrence of the
 28 chief court services officer, may impose ~~the violation sanctions as~~
 29 ~~provided in subsection (c)(1)(B)~~ *an intermediate sanction of confinement*
 30 *in a county jail, to be imposed as a two-day or three-day consecutive*
 31 *period. The total of all such sanctions imposed pursuant to this*
 32 *subparagraph and subsections (b)(4)(B) and (c)(1)(B) shall not exceed 18*
 33 *total days during the term of supervision; and*

34 (B) if the defendant was assigned to a community correctional
 35 services program at the time of the violation, the defendant's community
 36 corrections officer, with the concurrence of the community corrections
 37 director, may impose ~~the violation sanctions as provided in subsection (c)~~
 38 ~~(1)(B)~~ *an intermediate sanction of confinement in a county jail, to be*
 39 *imposed as a two-day or three-day consecutive period. The total of all*
 40 *such sanctions imposed pursuant to this subparagraph and subsections (b)*
 41 *(4)(A) and (c)(1)(B) shall not exceed 18 total days during the term of*
 42 *supervision.*

43 (c) (1) Except as otherwise provided, *if the original crime of*

1 *conviction was a felony and a violation is established, the following*
2 *violation sanctions may be imposed:*

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

6 (B) *continuation or modification of the release conditions of the*
7 *probation, assignment to a community correctional services program,*
8 *suspension of sentence or nonprison sanction and an intermediate sanction*
9 *of confinement in a county jail for a total of not more than six days per*
10 *month in any three separate months during the period of release*
11 *supervision. The six days per month confinement may only to be imposed*
12 *as a two-day or three-day consecutive periods, not to exceed 18 days of*
13 *total confinement period. The total of all such sanctions imposed pursuant*
14 *to this subparagraph and subsections (b)(4)(A) and (b)(4)(B) shall not*
15 *exceed 18 total days during the term of supervision;*

16 (C) if the violator already had at least one intermediate sanction
17 imposed pursuant to subsection (c)(1)(B) related to the felony crime for
18 which the original supervision was imposed, *continuation or modification*
19 *of the release conditions of the probation, assignment to a community*
20 *correctional services program, suspension of sentence or nonprison*
21 *sanction and remanding the defendant to the custody of the secretary of*
22 *corrections for a period of 120 days, subject to a reduction of up to 60 days*
23 *in the discretion of the secretary. This sanction shall not be imposed more*
24 *than once during the term of supervision. The sanction imposed pursuant*
25 *to this subparagraph shall begin upon pronouncement by the court and*
26 *shall not be served by prior confinement credit, except as provided in*
27 *subsection (c)(7);*

28 (D) if the violator already had a sanction imposed pursuant to
29 subsection (c)(1)(B) or (c)(1)(C) related to the felony crime for which the
30 original supervision was imposed, *continuation or modification of the*
31 *release conditions of the probation, assignment to a community*
32 *correctional services program, suspension of sentence or nonprison*
33 *sanction and remanding the defendant to the custody of the secretary of*
34 *corrections for a period of 180 days, subject to a reduction of up to 90 days*
35 *in the discretion of the secretary. This sanction shall not be imposed more*
36 *than once during the term of supervision. The sanction imposed pursuant*
37 *to this subparagraph shall begin upon pronouncement by the court and*
38 *shall not be served by prior confinement credit, except as provided in*
39 *subsection (c)(7); or*

40 (E) if the violator already had a sanction imposed pursuant to
41 subsection (c)(1)(C) or (c)(1)(D) related to the felony crime for which the
42 original supervision was imposed, revocation of the probation, assignment
43 to a community corrections services program, suspension of sentence or

1 nonprison sanction and requiring such violator to serve the sentence
2 imposed, or any lesser sentence and, if imposition of sentence was
3 suspended, imposition of any sentence which might originally have been
4 imposed.

5 (2) Except as otherwise provided *in subsections (c)(3), (c)(8) and (c)*
6 *(9)*, no offender for whom a violation of conditions of release or
7 assignment or a nonprison sanction has been established as provided in
8 this section shall be required to serve any time for the sentence imposed or
9 which might originally have been imposed in a state facility in the custody
10 of the secretary of corrections for such violation, unless such person has
11 already at least one prior assignment to a community correctional services
12 program related to the crime for which the original sentence was imposed.

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

16 (4) The court may require an offender for whom a violation of
17 conditions of release or assignment or a nonprison sanction has been
18 established as provided in this section to serve any time for the sentence
19 imposed or which might originally have been imposed in a state facility in
20 the custody of the secretary of corrections without a prior assignment to a
21 community correctional services program if the court finds and sets forth
22 with particularity the reasons for finding that the safety of the members of
23 the public will be jeopardized or that the welfare of the inmate will not be
24 served by such assignment to a community correctional services program.

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

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

38 (7) A violation sanction imposed pursuant to subsection (c)(1)(B), (c)
39 (1)(C) or (c)(1)(D) shall not be longer than the amount of time remaining
40 on the ~~defendant's~~ *offender's* underlying prison sentence.

41 (8) If the offender commits a new felony or misdemeanor or absconds
42 from supervision while the offender is on probation, assignment to a
43 community correctional services program, suspension of sentence or

1 nonprison sanction, the court may revoke the probation, assignment to a
2 community correctional services program, suspension of sentence or
3 nonprison sanction of an offender pursuant to subsection (c)(1)(E) without
4 having previously imposed a sanction pursuant to subsection (c)(1)(B), (c)
5 (1)(C) or (c)(1)(D).

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

13 (10) *If an offender is serving multiple probation terms concurrently,*
14 *any violation sanctions imposed pursuant to subsection (c)(1)(B), (c)(1)*
15 *(C) or (c)(1)(D), or any sanction imposed pursuant to subsection (c)(11),*
16 *shall be imposed concurrently.*

17 (11) *If the original crime of conviction was a felony, except for*
18 *violations of K.S.A. 8-1567, 8-2,144 and K.S.A. 2013 Supp. 8-1025, and*
19 *amendments thereto, and the court makes a finding that the offender has*
20 *committed one or more violations of the release conditions of the*
21 *probation, assignment to a community correctional services program,*
22 *suspension of sentence or nonprison sanction, the court may impose*
23 *confinement in a county jail not to exceed 60 days upon each such finding.*
24 *Such confinement is separate and distinct from the violation sanctions*
25 *provided in subsection (c)(1)(B), (c)(1)(C), (c)(1)(D) and (c)(1)(E) and*
26 *shall not be imposed at the same time as any such violation sanction.*

27 (12) *The violation sanctions provided in this subsection shall apply to*
28 *any violation of conditions of release or assignment or a nonprison*
29 *sanction occurring on and after July 1, 2013, regardless of the date of*
30 *conviction for the original crime.*

31 (d) A defendant who is on probation, assigned to a community
32 correctional services program, under suspension of sentence or serving a
33 nonprison sanction and for whose return a warrant has been issued by the
34 court shall be considered a fugitive from justice if it is found that the
35 warrant cannot be served. If it appears that the defendant has violated the
36 provisions of the defendant's release or assignment or a nonprison
37 sanction, the court shall determine whether the time from the issuing of the
38 warrant to the date of the defendant's arrest, or any part of it, shall be
39 counted as time served on probation, assignment to a community
40 correctional services program, suspended sentence or pursuant to a
41 nonprison sanction.

42 (e) The court shall have 30 days following the date probation,
43 assignment to a community correctional service program, suspension of

1 sentence or a nonprison sanction was to end to issue a warrant for the
2 arrest or notice to appear for the defendant to answer a charge of a
3 violation of the conditions of probation, assignment to a community
4 correctional service program, suspension of sentence or a nonprison
5 sanction.

6 (f) For crimes committed on and after July 1, 2013, ~~an~~ *a felony*
7 offender whose nonprison sanction is revoked pursuant to subsection (c) or
8 whose underlying prison term expires while serving a sanction pursuant to
9 subsection (c)(1)(C) or (c)(1)(D) shall serve a period of postrelease
10 supervision upon the completion of the prison portion of the underlying
11 sentence.

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

19 Sec. 3. K.S.A. 2013 Supp. 21-6604 and 22-3716 are hereby repealed.

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