

## HOUSE BILL No. 2281

By Committee on Judiciary

2-12

---

1 AN ACT concerning crimes, punishment and criminal procedure; relating  
2 to sentencing; modification of sentence; amending K.S.A. 2018 Supp.  
3 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. 2018 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, other than a felony specified in K.S.A. 2018  
15 Supp. 21-6804(i), and amendments thereto, and a violation is established,  
16 the court may impose the violation sanctions as provided in subsection (c)  
17 (1).

18 (B) Except as otherwise provided, if the original crime of conviction  
19 was a misdemeanor or a felony specified in K.S.A. 2018 Supp. 21-6804(i),  
20 and amendments thereto, and a violation is established, the court may:

21 (i) Continue or modify the probation, assignment to a community  
22 correctional services program, suspension of sentence or nonprison  
23 sanction and impose confinement in a county jail not to exceed 60 days. If  
24 an offender is serving multiple probation terms concurrently, any  
25 confinement periods imposed shall be imposed concurrently;

26 (ii) impose an intermediate sanction of confinement in a county jail,  
27 to be imposed as a two-day or three-day consecutive period. The total of  
28 all such sanctions imposed pursuant to this subparagraph and subsections  
29 (b)(4)(A) and (b)(4)(B) shall not exceed 18 total days during the term of  
30 supervision; or

31 (iii) revoke the probation, assignment to a community correctional  
32 services program, suspension of sentence or nonprison sanction and  
33 require the defendant to serve the sentence imposed, or any lesser  
34 sentence, and, if imposition of sentence was suspended, may impose any  
35 sentence which might originally have been imposed.

36 (4) Except as otherwise provided, if the defendant waives the right to  
37 a hearing and the sentencing court has not specifically withheld the  
38 authority from court services or community correctional services to  
39 impose sanctions, the following sanctions may be imposed without further  
40 order of the court:

41 (A) If the defendant was on probation at the time of the violation, the  
42 defendant's supervising court services officer, with the concurrence of the  
43 chief court services officer, may impose an intermediate sanction of

1 confinement in a county jail, to be imposed as a two-day or three-day  
2 consecutive period. The total of all such sanctions imposed pursuant to this  
3 subparagraph and subsections (b)(4)(B) and (c)(1)(B) shall not exceed 18  
4 total days during the term of supervision; and

5 (B) if the defendant was assigned to a community correctional  
6 services program at the time of the violation, the defendant's community  
7 corrections officer, with the concurrence of the community corrections  
8 director, may impose an intermediate sanction of confinement in a county  
9 jail, to be imposed as a two-day or three-day consecutive period. The total  
10 of all such sanctions imposed pursuant to this subparagraph and  
11 subsections (b)(4)(A) and (c)(1)(B) shall not exceed 18 total days during  
12 the term of supervision.

13 (c) (1) Except as otherwise provided, if the original crime of  
14 conviction was a felony, other than a felony specified in K.S.A. 2018  
15 Supp. 21-6804(i), and amendments thereto, and a violation is established,  
16 the court may impose the following sanctions:

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

20 (B) continuation or modification of the release conditions of the  
21 probation, assignment to a community correctional services program,  
22 suspension of sentence or nonprison sanction and an intermediate sanction  
23 of confinement in a county jail to be imposed as a two-day or three-day  
24 consecutive period. The total of all such sanctions imposed pursuant to this  
25 subparagraph and subsections (b)(4)(A) and (b)(4)(B) shall not exceed 18  
26 total days during the term of supervision;

27 (C) if the violator already had at least one intermediate sanction  
28 imposed pursuant to subsection (b)(4)(A), (b)(4)(B) or (c)(1)(B) related to  
29 the crime for which the original supervision was imposed, continuation or  
30 modification of the release conditions of the probation, assignment to a  
31 community correctional services program, suspension of sentence or  
32 nonprison sanction and remanding the defendant to the custody of the  
33 secretary of corrections for a period of 120 days, subject to a reduction of  
34 up to 60 days in the discretion of the secretary. This sanction shall not be  
35 imposed more than once during the term of supervision. The sanction  
36 imposed pursuant to this subparagraph shall begin upon pronouncement by  
37 the court and shall not be served by prior confinement credit, except as  
38 provided in subsection (c)(7);

39 (D) if the violator already had a sanction imposed pursuant to  
40 subsection (b)(4)(A), (b)(4)(B), (c)(1)(B) or (c)(1)(C) related to the crime  
41 for which the original supervision was imposed, continuation or  
42 modification of the release conditions of the probation, assignment to a  
43 community correctional services program, suspension of sentence or

1 nonprison sanction and remanding the defendant to the custody of the  
2 secretary of corrections for a period of 180 days, subject to a reduction of  
3 up to 90 days in the discretion of the secretary. This sanction shall not be  
4 imposed more than once during the term of supervision. The sanction  
5 imposed pursuant to this subparagraph shall begin upon pronouncement by  
6 the court and shall not be served by prior confinement credit, except as  
7 provided in subsection (c)(7); or

8 (E) if the violator already had a sanction imposed pursuant to  
9 subsection (c)(1)(C) or (c)(1)(D) related to the crime for which the original  
10 supervision was imposed, revocation of the probation, assignment to a  
11 community corrections services program, suspension of sentence or  
12 nonprison sanction and requiring such violator to serve the sentence  
13 imposed, or any lesser sentence and, if imposition of sentence was  
14 suspended, imposition of any sentence which might originally have been  
15 imposed.

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

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

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

36 (5) When a new felony is committed while the offender is on  
37 probation or assignment to a community correctional services program, the  
38 new sentence shall be imposed consecutively pursuant to the provisions of  
39 K.S.A. 2018 Supp. 21-6606, and amendments thereto, and the court may  
40 sentence the offender to imprisonment for the new conviction, even when  
41 the new crime of conviction otherwise presumes a nonprison sentence. In  
42 this event, imposition of a prison sentence for the new crime does not  
43 constitute a departure.

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

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

9 (8) (A) If the offender commits a new felony or misdemeanor while  
10 the offender is on probation, assignment to a community correctional  
11 services program, suspension of sentence or nonprison sanction, the court  
12 may revoke the probation, assignment to a community correctional  
13 services program, suspension of sentence or nonprison sanction of an  
14 offender pursuant to subsection (c)(1)(E) without having previously  
15 imposed a sanction pursuant to subsection (c)(1)(B), (c)(1)(C) or (c)(1)(D).

16 (B) If the offender absconds from supervision while the offender is on  
17 probation, assignment to a community correctional services program,  
18 suspension of sentence or nonprison sanction, the court may:

19 (i) Revoke the probation, assignment to a community correctional  
20 services program, suspension of sentence or nonprison sanction of an  
21 offender pursuant to subsection (c)(1)(E) without having previously  
22 imposed a sanction pursuant to subsection (c)(1)(B), (c)(1)(C) or (c)(1)  
23 (D); or

24 (ii) sanction the offender under subsection (c)(1)(A), (c)(1)(C) or (c)  
25 (1)(D) without imposing a sanction under (c)(1)(B).

26 (9) The court may revoke the probation, assignment to a community  
27 correctional services program, suspension of sentence or nonprison  
28 sanction of an offender pursuant to subsection (c)(1)(E) without having  
29 previously imposed a sanction pursuant to subsection (c)(1)(B), (c)(1)(C)  
30 or (c)(1)(D) if:

31 (A) The court finds and sets forth with particularity the reasons for  
32 finding that the safety of members of the public will be jeopardized or that  
33 the welfare of the offender will not be served by such sanction; or

34 (B) the probation, assignment to a community correctional services  
35 program, suspension of sentence or nonprison sanction was originally  
36 granted as the result of a dispositional departure granted by the sentencing  
37 court pursuant to K.S.A. 2018 Supp. 21-6815, and amendments thereto.

38 (10) If an offender is serving multiple probation terms concurrently,  
39 any violation sanctions imposed pursuant to subsection (c)(1)(B), (c)(1)(C)  
40 or (c)(1)(D), or any sanction imposed pursuant to subsection (c)(11), shall  
41 be imposed concurrently.

42 (11) If the original crime of conviction was a felony, except for  
43 violations of K.S.A. 8-1567 or 8-2,144, and amendments thereto, and the

1 court makes a finding that the offender has committed one or more  
2 violations of the release conditions of the probation, assignment to a  
3 community correctional services program, suspension of sentence or  
4 nonprison sanction, the court may impose confinement in a county jail not  
5 to exceed 60 days upon each such finding. Such confinement is separate  
6 and distinct from the violation sanctions provided in subsection (c)(1)(B),  
7 (c)(1)(C), (c)(1)(D) and (c)(1)(E) and shall not be imposed at the same  
8 time as any such violation sanction.

9 (12) The violation sanctions provided in this subsection shall apply to  
10 any violation of conditions of release or assignment or a nonprison  
11 sanction occurring on and after July 1, 2013, regardless of when the  
12 offender was sentenced for the original crime or committed the original  
13 crime for which sentenced.

14 (d) *When a court modifies a sentence pursuant to subsection (b)(3)*  
15 *(B) or (c)(1), only the portions of the original sentence specifically*  
16 *addressed by the court in its order shall be considered modified. The*  
17 *portions of the original sentence that are not modified by the court shall*  
18 *remain as part of the defendant's sentence.*

19 (e) A defendant who is on probation, assigned to a community  
20 correctional services program, under suspension of sentence or serving a  
21 nonprison sanction and for whose return a warrant has been issued by the  
22 court shall be considered a fugitive from justice if it is found that the  
23 warrant cannot be served. If it appears that the defendant has violated the  
24 provisions of the defendant's release or assignment or a nonprison  
25 sanction, the court shall determine whether the time from the issuing of the  
26 warrant to the date of the defendant's arrest, or any part of it, shall be  
27 counted as time served on probation, assignment to a community  
28 correctional services program, suspended sentence or pursuant to a  
29 nonprison sanction.

30 ~~(e)~~(f) The court shall have 30 days following the date probation,  
31 assignment to a community correctional service program, suspension of  
32 sentence or a nonprison sanction was to end to issue a warrant for the  
33 arrest or notice to appear for the defendant to answer a charge of a  
34 violation of the conditions of probation, assignment to a community  
35 correctional service program, suspension of sentence or a nonprison  
36 sanction.

37 ~~(f)~~(g) For crimes committed on and after July 1, 2013, a felony  
38 offender whose nonprison sanction is revoked pursuant to subsection (c) or  
39 whose underlying prison term expires while serving a sanction pursuant to  
40 subsection (c)(1)(C) or (c)(1)(D) shall serve a period of postrelease  
41 supervision upon the completion of the prison portion of the underlying  
42 sentence.

43 ~~(g)~~(h) Offenders who have been sentenced pursuant to K.S.A. 2018

1 Supp. 21-6824, and amendments thereto, and who subsequently violate a  
2 condition of the drug and alcohol abuse treatment program shall be subject  
3 to an additional nonprison sanction for any such subsequent violation.  
4 Such nonprison sanctions shall include, but not be limited to, up to 60 days  
5 in a county jail, fines, community service, intensified treatment, house  
6 arrest and electronic monitoring.

7 Sec. 2. K.S.A. 2018 Supp. 22-3716 is hereby repealed.

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