

**HOUSE BILL No. 2147**

By Committee on Corrections and Juvenile Justice

1-27

1 AN ACT concerning crimes, punishment and criminal procedure; relating  
2 to drug offenders; offenders directly committed to prison; petition for  
3 release to probation or assignment to community corrections; amending  
4 K.S.A. 2020 Supp. 22-3716 and repealing the existing section.

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

7 New Section 1. (a) (1) Upon application by an offender in the custody  
8 of the secretary of corrections who is serving only a sentence for a severity  
9 level 2 through 5 drug crime or serving a sentence for a primary crime that  
10 is a severity level 2 through 5 drug crime, the prisoner review board may  
11 grant release to probation or assignment to a community correctional  
12 services program to such offender for the remainder of such offender's  
13 sentence if such offender has successfully served 50% of the prison part of  
14 the original sentence.

15 (2) All applications for release pursuant to this section shall be  
16 referred to the board. The board shall examine each case and may approve  
17 such application and grant a release. An application for release shall not be  
18 approved unless the board determines that the offender does not represent  
19 a future risk to public safety. The board shall determine whether a hearing  
20 is necessary on the application. The board may request additional  
21 information or evidence it deems necessary.

22 (3) The board shall establish any conditions related to the release of  
23 the offender to probation or assignment to a community correctional  
24 services program. If the offender fails to comply with any condition of  
25 release, probation or assignment to a community correctional services  
26 program or if the board otherwise concludes that the offender presents a  
27 threat or risk to public safety, the release shall be subject to revocation  
28 pursuant to K.S.A. 22-3716, and amendments thereto. Upon release, the  
29 district court in which the offender was convicted shall have jurisdiction  
30 over the offender for all further proceedings. The offender shall remain on  
31 supervision until the release is revoked, expiration of the maximum  
32 sentence or discharge by the district court. A revocation pursuant to this  
33 paragraph shall not be subject to the provisions of K.S.A. 22-3716(c)(1),  
34 and amendments thereto.

35 (4) The secretary of corrections shall cause the offender to be  
36 supervised by community correctional services upon release.

1 (5) The decision of the board on the application or any revocation  
2 shall be final and not subject to review by any administrative agency or  
3 court.

4 (6) In determining whether an offender is eligible for release to  
5 probation, the board shall consider the following:

6 (A) Whether the offender has served 50% of the original sentence  
7 imposed;

8 (B) the risk or threat to public safety in the community if released;

9 (C) whether an appropriate release plan has been established;

10 (D) whether the offender has completed all programs required by the  
11 department of corrections; and

12 (E) any other factors deemed relevant by the board.

13 (b) The provisions of this section shall apply only to offenders in the  
14 custody of the secretary who were committed to custody at the time of  
15 sentencing. This section shall not apply to offenders in the custody of the  
16 secretary as a result of probation revocation pursuant to K.S.A. 22-3716,  
17 and amendments thereto.

18 (c) An offender shall be allowed to make application to the board  
19 pursuant to this section one time during such offender's sentence. The  
20 board may allow subsequent applications and may require certain  
21 conditions before allowing a subsequent application.

22 (d) This section does not apply to any offender sentenced to  
23 imprisonment for an off-grid offense.

24 (e) This section does not apply to any offender under sentence of  
25 death or life without the possibility of parole.

26 Sec. 2. K.S.A. 2020 Supp. 22-3716 is hereby amended to read as  
27 follows: 22-3716. (a) At any time during probation, assignment to a  
28 community correctional services program, suspension of sentence or  
29 pursuant to subsection (e) for defendants who committed a crime prior to  
30 July 1, 1993, and at any time when a defendant is serving a nonprison  
31 sanction for a crime committed on or after July 1, 1993, or pursuant to  
32 subsection (e), the court may issue a warrant for the arrest of a defendant  
33 for violation of any of the conditions of release or assignment, a notice to  
34 appear to answer to a charge of violation or a violation of the defendant's  
35 nonprison sanction. The notice shall be personally served upon the  
36 defendant. The warrant shall authorize all officers named in the warrant to  
37 return the defendant to the custody of the court or to any certified  
38 detention facility designated by the court. Any court services officer or  
39 community correctional services officer may arrest the defendant without a  
40 warrant or may deputize any other officer with power of arrest to do so by  
41 giving the officer a written or verbal statement setting forth that the  
42 defendant has, in the judgment of the court services officer or community  
43 correctional services officer, violated the conditions of the defendant's

1 release or a nonprison sanction. A written statement delivered to the  
2 official in charge of a county jail or other place of detention shall be  
3 sufficient warrant for the detention of the defendant. After making an  
4 arrest, the court services officer or community correctional services officer  
5 shall present to the detaining authorities a similar statement of the  
6 circumstances of violation. Provisions regarding release on bail of persons  
7 charged with a crime shall be applicable to defendants arrested under these  
8 provisions.

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

14 (2) Unless the defendant, after being apprised of the right to a hearing  
15 by the supervising court services or community correctional services  
16 officer, waives such hearing, the court shall cause the defendant to be  
17 brought before it without unnecessary delay for a hearing on the violation  
18 charged. The hearing shall be in open court and the state shall have the  
19 burden of establishing the violation. The defendant shall have the right to  
20 be represented by counsel and shall be informed by the judge that, if the  
21 defendant is financially unable to obtain counsel, an attorney will be  
22 appointed to represent the defendant. The defendant shall have the right to  
23 present the testimony of witnesses and other evidence on the defendant's  
24 behalf. Relevant written statements made under oath may be admitted and  
25 considered by the court along with other evidence presented at the hearing.

26 (3) (A) Except as otherwise provided, if the original crime of  
27 conviction was a felony, other than a felony specified in K.S.A. 2020  
28 Supp. 21-6804(i), and amendments thereto, and a violation is established,  
29 the court may impose the violation sanctions as provided in subsection (c)  
30 (1).

31 (B) Except as otherwise provided, if the original crime of conviction  
32 was a misdemeanor or a felony specified in K.S.A. 2020 Supp. 21-6804(i),  
33 and amendments thereto, and a violation is established, the court may:

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

39 (ii) impose an intermediate sanction of confinement in a county jail,  
40 to be imposed as a two-day or three-day consecutive period. The total of  
41 all such sanctions imposed pursuant to this subparagraph and subsection  
42 (b)(4) shall not exceed 18 total days during the term of supervision, except  
43 as provided in subsection (h); or

1 (iii) revoke the probation, assignment to a community correctional  
2 services program, suspension of sentence or nonprison sanction and  
3 require the defendant to serve the sentence imposed, or any lesser  
4 sentence, and, if imposition of sentence was suspended, may impose any  
5 sentence that might originally have been imposed.

6 (4) Except as otherwise provided, if the defendant waives the right to  
7 a hearing, the following sanctions may be imposed without further order of  
8 the court:

9 (A) If the defendant was on probation at the time of the violation, the  
10 defendant's supervising court services officer, with the concurrence of the  
11 chief court services officer, may impose an intermediate sanction of  
12 confinement in a county jail, to be imposed as a two-day or three-day  
13 consecutive period. The total of all such sanctions imposed pursuant to this  
14 subparagraph and subsections (b)(4)(B) and (c)(1)(B) shall not exceed 18  
15 total days during the term of supervision, except as provided in subsection  
16 (h); and

17 (B) if the defendant was assigned to a community correctional  
18 services program at the time of the violation, the defendant's community  
19 corrections officer, with the concurrence of the community corrections  
20 director, may impose an intermediate sanction of confinement in a county  
21 jail, to be imposed as a two-day or three-day consecutive period. The total  
22 of all such sanctions imposed pursuant to this subparagraph and  
23 subsections (b)(4)(A) and (c)(1)(B) shall not exceed 18 total days during  
24 the term of supervision, except as provided in subsection (h).

25 (c) (1) Except as otherwise provided, if the original crime of  
26 conviction was a felony, other than a felony specified in K.S.A. 2020  
27 Supp. 21-6804(i), and amendments thereto, and a violation is established,  
28 the court may impose the following sanctions:

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

32 (B) continuation or modification of the release conditions of the  
33 probation, assignment to a community correctional services program,  
34 suspension of sentence or nonprison sanction and an intermediate sanction  
35 of confinement in a county jail to be imposed as a two-day or three-day  
36 consecutive period. The total of all such sanctions imposed pursuant to this  
37 subparagraph and subsection (b)(4) shall not exceed 18 total days during  
38 the term of supervision, except as provided in subsection (h); or

39 (C) if the violator already had a sanction imposed pursuant to  
40 subsection (c)(1)(B) related to the crime for which the original supervision  
41 was imposed, revocation of the probation, assignment to a community  
42 corrections services program, suspension of sentence or nonprison  
43 sanction and requiring such violator to serve the sentence imposed, or any

1 lesser sentence and, if imposition of sentence was suspended, imposition  
2 of any sentence that might originally have been imposed.

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

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

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

22 (5) When a new felony is committed while the offender is on  
23 probation or assignment to a community correctional services program, the  
24 new sentence shall be imposed consecutively pursuant to the provisions of  
25 K.S.A. 2020 Supp. 21-6606, and amendments thereto, and the court may  
26 sentence the offender to imprisonment for the new conviction, even when  
27 the new crime of conviction otherwise presumes a nonprison sentence. In  
28 this event, imposition of a prison sentence for the new crime does not  
29 constitute a departure.

30 (6) A violation sanction imposed pursuant to subsection (c)(1) shall  
31 not be longer than the amount of time remaining on the offender's  
32 underlying prison sentence.

33 (7) The court may revoke the probation, assignment to a community  
34 correctional services program, suspension of sentence or nonprison  
35 sanction of an offender pursuant to subsection (c)(1) without having  
36 previously imposed a sanction pursuant to subsection (c)(1) if:

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

40 (B) the probation, assignment to a community correctional services  
41 program, suspension of sentence or nonprison sanction was originally  
42 granted as the result of a dispositional departure granted by the sentencing  
43 court pursuant to K.S.A. 2020 Supp. 21-6815, and amendments thereto;

1 (C) the offender commits a new felony or misdemeanor while the  
2 offender is on probation, assignment to a community correctional services  
3 program, suspension of sentence or nonprison sanction; ~~or~~

4 (D) the offender absconds from supervision while the offender is on  
5 probation, assignment to a community correctional services program,  
6 suspension of sentence or nonprison sanction; *or*

7 *(E) the offender is on probation or assignment to a community*  
8 *correctional services program after having been released from custody*  
9 *pursuant to section 1, and amendments thereto.*

10 (8) If an offender is serving multiple probation terms concurrently,  
11 any violation sanctions imposed pursuant to subsection (c)(1), or any  
12 sanction imposed pursuant to subsection (c)(9), shall be imposed  
13 concurrently.

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

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

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

39 (e) The court shall have 30 days following the date probation,  
40 assignment to a community correctional service program, suspension of  
41 sentence or a nonprison sanction was to end to issue a warrant for the  
42 arrest or notice to appear for the defendant to answer a charge of a  
43 violation of the conditions of probation, assignment to a community

1 correctional service program, suspension of sentence or a nonprison  
2 sanction.

3 (f) For crimes committed on and after July 1, 2013, a felony offender  
4 whose nonprison sanction is revoked pursuant to subsection (c) or whose  
5 underlying prison term expires while serving a sanction pursuant to  
6 subsection (c)(1) shall serve a period of postrelease supervision upon the  
7 completion of the prison portion of the underlying sentence.

8 (g) Offenders who have been sentenced pursuant to K.S.A. 2020  
9 Supp. 21-6824, and amendments thereto, and who subsequently violate a  
10 condition of the drug and alcohol abuse treatment program shall be subject  
11 to an additional nonprison sanction for any such subsequent violation.  
12 Such nonprison sanctions shall include, but not be limited to, up to 60 days  
13 in a county jail, fines, community service, intensified treatment, house  
14 arrest and electronic monitoring.

15 (h) If the court continues or modifies the probation, assignment to a  
16 community correctional services program, suspension of sentence or  
17 nonprison sanction, pursuant to subsection (b) or (c), the court shall  
18 authorize an additional 18 days of sanction time in a county jail to be  
19 reserved for sanctions as set forth in subsection (b)(3), (b)(4) or (c)(1).

20 Sec. 3. K.S.A. 2020 Supp. 22-3716 is hereby repealed.

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