

2012 Kansas Statutes

22-3716. Arrest for violating condition of probation, assignment to community corrections, suspension of sentence or nonprison sanction, procedure; time limitation on issuing warrant; limitations on serving sentence in department of corrections' facility or serving period of postrelease supervision, exceptions.

(a) At any time during probation, assignment to a community correctional services program, suspension of sentence or pursuant to subsection (d) for defendants who committed a crime prior to July 1, 1993, and at any time during which a defendant is serving a nonprison sanction for a crime committed on or after July 1, 1993, or pursuant to subsection (d), the court may issue a warrant for the arrest of a defendant for violation of any of the conditions of release or assignment, a notice to appear to answer to a charge of violation or a violation of the defendant's nonprison sanction. The notice shall be personally served upon the defendant. The warrant shall authorize all officers named in the warrant to return the defendant to the custody of the court or to any certified detention facility designated by the court. Any court services officer or community correctional services officer may arrest the defendant without a warrant or may deputize any other officer with power of arrest to do so by giving the officer a written or verbal statement setting forth that the defendant has, in the judgment of the court services officer or community correctional services officer, violated the conditions of the defendant's release or a nonprison sanction. A written statement delivered to the official in charge of a county jail or other place of detention shall be sufficient warrant for the detention of the defendant. After making an arrest, the court services officer or community correctional services officer shall present to the detaining authorities a similar statement of the circumstances of violation. Provisions regarding release on bail of persons charged with a crime shall be applicable to defendants arrested under these provisions.

(b) Upon arrest and detention pursuant to subsection (a), the court services officer or community correctional services officer shall immediately notify the court and shall submit in writing a report showing in what manner the defendant has violated the conditions of release or assignment or a nonprison sanction. Thereupon, or upon an arrest by warrant as provided in this section, the court shall cause the defendant to be brought before it without unnecessary delay for a hearing on the violation charged. The hearing shall be in open court and the state shall have the burden of establishing the violation. The defendant shall have the right to be represented by counsel and shall be informed by the judge that, if the defendant is financially unable to obtain counsel, an attorney will be appointed to represent the defendant. The defendant shall have the right to present the testimony of witnesses and other evidence on the defendant's behalf. Relevant written statements made under oath may be admitted and considered by the court along with other evidence presented at the hearing. Except as otherwise provided, if the violation is established, the court may continue or revoke the probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction and may require the defendant to serve the sentence imposed, or any lesser sentence, and, if imposition of sentence was suspended, may impose any sentence which might originally have been imposed. Except as otherwise provided, no offender for whom a violation of conditions of release or assignment or a nonprison sanction has been established as provided in this section shall be required to serve any time for the sentence imposed or which might originally have been imposed in a state facility in the custody of the secretary of corrections for such violation, unless such person has already at least one prior assignment to a community correctional services program related to the crime for which the original sentence was imposed, except these provisions shall not apply to offenders who violate a condition of release or assignment or a nonprison sanction by committing a new misdemeanor or felony offense. The provisions of this subsection shall not apply to adult felony offenders as described in subsection (a)(3) of K.S.A. 75-5291, and amendments thereto. The court may require an offender for whom a violation of conditions of release or assignment or a nonprison sanction has been established as provided in this section to serve any time for the sentence imposed or which might originally have been imposed in a state facility in the custody of the secretary of corrections without a prior assignment to a community correctional services program if the court finds and sets forth with particularity the reasons for finding that the safety of the members of the public will be jeopardized or that the welfare of the inmate will not be served by such assignment to a community correctional services program. When a new felony is committed while the offender is on probation or assignment to a community correctional services program, the new sentence shall be imposed pursuant to the consecutive sentencing requirements of K.S.A. 2012 Supp. 21-6606, and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.

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

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

(e) Notwithstanding the provisions of any other law to the contrary, an offender whose nonprison sanction is revoked and a term of imprisonment imposed pursuant to either the sentencing guidelines grid for nondrug or drug crimes shall not serve a period of postrelease supervision upon the completion of the prison portion of that sentence. The provisions of this subsection shall not apply to offenders sentenced to a nonprison sanction pursuant to a dispositional departure, whose offense falls within a border box of either the sentencing guidelines grid for nondrug or drug crimes, offenders sentenced for a "sexually violent crime" or a "sexually motivated crime" as defined by K.S.A. 22-3717, and amendments thereto, offenders sentenced pursuant to K.S.A. 2012 Supp. 21-6804, and amendments thereto, wherein the sentence is presumptive imprisonment but a nonprison sanction may be imposed without a departure or offenders whose nonprison sanction was revoked as a result of a conviction for a new misdemeanor or felony offense. The provisions of this subsection shall not apply to offenders who are serving or are to begin serving a sentence for any other felony offense that is not excluded from postrelease supervision by this subsection on the effective date of this subsection. The provisions of this subsection shall be applied retroactively. The department of corrections shall conduct a review of all persons who are in the custody of the

department as a result of only a revocation of a nonprison sanction. On or before September 1, 2000, the department shall have discharged from postrelease supervision those offenders as required by this subsection.

(f) Offenders who have been sentenced pursuant to K.S.A. 2012 Supp. 21-6824, and amendments thereto, and who subsequently violate a condition of the drug and alcohol abuse treatment program shall be subject to an additional nonprison sanction for any such subsequent violation. Such nonprison sanctions shall include, but not be limited to, up to 60 days in a county jail, fines, community service, intensified treatment, house arrest and electronic monitoring.

History: L. 1970, ch. 129, § 22-3716; L. 1972, ch. 317, § 89; L. 1984, ch. 112, § 9; L. 1986, ch. 123, § 24; L. 1990, ch. 112, § 1; L. 1992, ch. 239, § 301; L. 1993, ch. 291, § 198; L. 1994, ch. 291, § 65; L. 2000, ch. 182, § 8; L. 2002, ch. 177, § 1; L. 2003, ch. 135, § 6; L. 2008, ch. 183, § 8; L. 2009, ch. 143, § 11; L. 2011, ch. 30, § 135; July 1.

Revisor's Note:

Section was amended twice in the 2008 session, see also 22-3716a.