

{As Amended by House Committee of the Whole}

As Amended by House Committee

Session of 2013

HOUSE BILL No. 2170

By Committee on Corrections and Juvenile Justice

1-30

1 AN ACT concerning crimes, criminal procedure and punishment; relating
2 to probation and postrelease supervision; relating to sentencing;
3 amending K.S.A. 2012 Supp. 21-6604, 21-6606, 21-6608, 21-6821, 22-
4 3716, 22-3717, 74-9101 and 75-5217 and repealing the existing
5 sections; also repealing K.S.A. 2012 Supp. 21-6604a and 21-6604b.
6

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

7 Section 1. K.S.A. 2012 Supp. 21-6604 is hereby amended to read as
8 follows: 21-6604. (a) Whenever any person has been found guilty of a
9 crime, the court may adjudge any of the following:

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

15 (2) Impose the fine applicable to the offense and may impose the
16 provisions of subsection (g);

17 (3) Release the defendant on probation if the current crime of
18 conviction and criminal history fall within a presumptive nonprison
19 category or through a departure for substantial and compelling reasons
20 subject to such conditions as the court may deem appropriate. In felony
21 cases except for violations of K.S.A. 8-1567, 8-2,144 and K.S.A. 2012
22 Supp. 8-1025, and amendments thereto, the court may include confinement
23 in a county jail not to exceed 60 days, which need not be served
24 consecutively, as a condition of an original probation sentence and up to
25 60 days in a county jail upon each revocation of the probation sentence, or
26 community corrections placement;

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

32 (5) Assign the defendant to a conservation camp for a period not to
33 exceed six months as a condition of probation followed by a six-month
34

HB2170-Balloon-KCDDAA

Prepared By: Sean Ostrow,
Office of Revisor of Statutes
March 13, 2013

Senate Judiciary Committee

Date: 3-14

Attachment: //

1 who are convicted on or after July 1, 2003, but prior to July 1, 2013, upon
 2 completion of the underlying prison sentence, the offender shall not be
 3 subject to a period of postrelease supervision. ~~The amount of time spent~~
 4 ~~participating in such program shall not be credited as service on the~~
 5 ~~underlying prison sentence.~~

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

13 (o) (1) Except as provided in paragraph (3), in addition to any other
 14 penalty or disposition imposed by law, upon a conviction for unlawful
 15 possession of a controlled substance or controlled substance analog in
 16 violation of K.S.A. 2012 Supp. 21-5706, and amendments thereto, in
 17 which the trier of fact makes a finding that the unlawful possession
 18 occurred while transporting the controlled substance or controlled
 19 substance analog in any vehicle upon a highway or street, the offender's
 20 driver's license or privilege to operate a motor vehicle on the streets and
 21 highways of this state shall be suspended for one year.

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

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

41 (B) Upon entering an order restricting a person's license hereunder,
 42 the judge shall require such person to surrender such person's driver's
 43 license to the judge who shall cause it to be transmitted to the division of

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

4 (B) Except as otherwise provided, if the original crime of conviction
5 was a misdemeanor and a violation is established, the court may continue
6 or revoke the probation, assignment to a community correctional services
7 program, suspension of sentence or nonprison sanction and may require
8 the defendant to serve the sentence imposed, or any lesser sentence, and, if
9 imposition of sentence was suspended, may impose any sentence which
10 might originally have been imposed.

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

16 (A) If the defendant was on probation at the time of the violation, the
17 defendant's supervising court services officer, with the concurrence of the
18 chief court services officer, may impose the violation sanctions as provided
19 in subsection (c)(1)(B); and

20 (B) if the defendant was assigned to a community correctional
21 services program at the time of the violation, the defendant's community
22 corrections officer, with the concurrence of the community corrections
23 director, may impose the violation sanctions as provided in subsection (c)
24 (1)(B).

25 (c) (1) Except as otherwise provided, ~~if the violation is established,~~
26 ~~the court may the following violation sanctions may be imposed:~~

27 (A) ~~Continue or revoke—Continuation or modification of the release~~
28 ~~conditions of the probation, assignment to a community correctional~~
29 ~~services program, suspension of sentence or nonprison sanction and may~~
30 ~~require the defendant to serve the sentence imposed, or any lesser~~
31 ~~sentence, and, if imposition of sentence was suspended, may impose any~~
32 ~~sentence which might originally have been imposed;:~~

33 (B) an intermediate sanction of confinement in jail for a total of not
34 more than six days per month in any three separate months during the
35 period of release supervision. The six days per month confinement may
36 only be imposed as two-day or three-day consecutive periods, not to
37 exceed 18 days of total confinement;

38 (C) if the violator already has at least one intermediate sanction
39 imposed pursuant to subsection (c)(1)(B) related to the felony crime for
40 which the original supervision was imposed, remanding the defendant to
41 the custody of the secretary of corrections for a period of ~~180~~ days, subject
42 to a reduction of up to 60 days in the discretion of the secretary;

43 (D) ~~if the violator already has at least one sanction imposed pursuant~~

not less than 120
days and not more
than 180 days

(c)(1)(C)

1 ~~to subsection (c)(1)(C) related to the felony crime for which the original~~
 2 ~~suspension was imposed, remanding the defendant to the custody of the~~
 3 ~~secretary of corrections for a period of 180 days, subject to a reduction of~~
 4 ~~up to 90 days in the discretion of the secretary; or~~
 5 ~~(E) if the violator already has at least one sanction imposed pursuant~~
 6 ~~to subsection (c)(1)(D) related to the felony crime for which the original~~
 7 ~~supervision was imposed, revocation of the probation, assignment to a~~
 8 ~~community corrections services program, suspension of sentence or~~
 9 ~~nonprison sanction and requiring such violator to serve the sentence~~
 10 ~~imposed or any lesser sentence and, if imposition of sentence was~~
 11 ~~suspended, imposition of any sentence which might originally have been~~
 12 ~~imposed.~~

13 (2) Except as otherwise provided, no offender for whom a violation
 14 of conditions of release or assignment or a nonprison sanction has been
 15 established as provided in this section shall be required to serve any time
 16 for the sentence imposed or which might originally have been imposed in
 17 a state facility in the custody of the secretary of corrections for such
 18 violation, unless such person has already at least one prior assignment to a
 19 community correctional services program related to the crime for which
 20 the original sentence was imposed, except these provisions shall not apply
 21 to offenders who violate a condition of release or assignment or a
 22 nonprison sanction by committing a new misdemeanor or felony offense.

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

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

35 (5) (A) When a new {nonperson} felony is committed while the
 36 offender is on probation or assignment to a community correctional
 37 services program, the new sentence shall be imposed {either concurrently
 38 or consecutively} pursuant to the sentence-sentencing requirements
 39 {provisions} of K.S.A. 2012 Supp. 21-6606, and amendments thereto, and
 40 the court may sentence the offender to imprisonment for the new
 41 conviction, even when the new crime of conviction otherwise presumes a
 42 nonprison sentence. In this event, imposition of a prison sentence for the
 43 new crime does not constitute a departure.

1 {(B) When a new person felony is committed while the offender is
 2 on probation, assignment to a community correctional services
 3 program,} {parole, conditional release or postrelease supervision for a
 4 felony, a new sentence shall be imposed consecutively pursuant to the
 5 provisions of K.S.A. 2012 Supp. 21-6606, and amendments thereto,
 6 and the court may sentence the offender to imprisonment for the new
 7 conviction, even when the new crime of conviction otherwise presumes
 8 a nonprison sentence. In this event, imposition of a prison sentence for
 9 the new crime does not constitute a departure.}

10 (6) Except as provided in subsection (f), upon completion of a
 11 violation sanction imposed pursuant to subsection (c)(1)(C) ~~or (e)(1)(D)~~
 12 such offender shall be returned to community correctional services
 13 supervision.

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

17 (8) If the offender commits a new felony or misdemeanor or absconds
 18 from supervision while the offender is on probation, assignment to a
 19 community correctional services program, suspension of sentence or
 20 nonprison sanction, the court may impose any of the sanctions provided in
 21 subsection (c)(1).

22 (9) The court may revoke the probation, assignment to a community
 23 correctional services program, suspension of sentence or nonprison
 24 sanction of an offender pursuant to ~~(e)(1)(E)~~ without having previously
 25 imposed a sanction pursuant to (c)(1)(B), ~~(c)(1)(C) or (e)(1)(D)~~ if the
 26 court finds and sets forth with particularity the reasons for finding that the
 27 safety of members of the public will be jeopardized or that the welfare of
 28 the offender will not be served by such sanction.

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

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

OR

(c)(1)(D)

OR

1 violation of the conditions of probation, assignment to a community
2 correctional service program, suspension of sentence or a nonprison
3 sanction.

4 ~~(e) (f) Notwithstanding the provisions of any other law to the
5 contrary, For crimes committed on and after July 1, 2013, an offender
6 whose nonprison sanction is revoked pursuant to subsection (c) and a term
7 of imprisonment imposed pursuant to either the sentencing guidelines grid
8 for nondrug or drug crimes or whose underlying prison term expires while
9 serving a sanction pursuant to subsection (c)(1)(C) or (e)(1)(D) shall not
10 serve a period of postrelease supervision upon the completion of the prison
11 portion of that the underlying sentence. The provisions of this subsection
12 shall not apply to offenders sentenced to a nonprison sanction pursuant to a
13 dispositional departure, whose offense falls within a border box of either
14 the sentencing guidelines grid for nondrug or drug crimes, offenders
15 sentenced for a "sexually violent crime" or a "sexually motivated crime" as
16 defined by K.S.A. 22-3717, and amendments thereto, offenders sentenced
17 pursuant to K.S.A. 2012 Supp. 21-6804, and amendments thereto, wherein
18 the sentence is presumptive imprisonment but a nonprison sanction may be
19 imposed without a departure or offenders whose nonprison sanction was
20 revoked as a result of a conviction for a new misdemeanor or felony
21 offense. The provisions of this subsection shall not apply to offenders who
22 are serving or are to begin serving a sentence for any other felony offense
23 that is not excluded from postrelease supervision by this subsection on the
24 effective date of this subsection. The provisions of this subsection shall be
25 applied retroactively. The department of corrections shall conduct a review
26 of all persons who are in the custody of the department as a result of only a
27 revocation of a nonprison sanction. On or before September 1, 2009, the
28 department shall have discharged from postrelease supervision those
29 offenders as required by this subsection.~~

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

37 Sec. 6. K.S.A. 2012 Supp. 22-3717 is hereby amended to read as
38 follows: 22-3717. (a) Except as otherwise provided by this section, K.S.A.
39 1993 Supp. 21-4628, prior to its repeal; K.S.A. 21-4635 through 21-4638,
40 prior to their repeal; K.S.A. 21-4624, prior to its repeal; K.S.A. 21-4642,
41 prior to its repeal; K.S.A. 2012 Supp. 21-6617, 21-6620, 21-6623, 21-
42 6624, 21-6625 and 21-6626, and amendments thereto; and K.S.A. 8-1567,
43 and amendments thereto; an inmate, including an inmate sentenced

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