

HOUSE BILL No. 2447

By Joint Committee on Corrections and Juvenile Justice Oversight

1-12

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to the secretary of corrections; program credits; ***delinquent time lost on***
3 ***parole***; amending K.S.A. 2015 Supp. 21-6821 ***and 75-5217*** and
4 repealing the existing ~~section~~ ***sections***.
5

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

7 Section 1. K.S.A. 2015 Supp. 21-6821 is hereby amended to read as
8 follows: 21-6821. (a) The secretary of corrections is hereby authorized to
9 adopt rules and regulations providing for a system of good time
10 calculations. Such rules and regulations shall provide circumstances upon
11 which an inmate may earn good time credits and for the forfeiture of
12 earned credits. Such circumstances may include factors related to program
13 and work participation and conduct and the inmate's willingness to
14 examine and confront past behavioral patterns that resulted in the
15 commission of the inmate's crimes.

16 (b) For purposes of determining release of an inmate, the following
17 shall apply with regard to good time calculations:

18 (1) Good behavior by inmates is the expected norm and negative
19 behavior will be punished; and

20 (2) the amount of good time which can be earned by an inmate and
21 subtracted from any sentence is limited to:

22 (A) For a crime committed on or after July 1, 1993, an amount equal
23 to 15% of the prison part of the sentence;

24 (B) for a nondrug severity level 7 through 10 crime committed on or
25 after January 1, 2008, an amount equal to 20% of the prison part of the
26 sentence; or

27 (C) for a drug severity level 3 or 4 crime committed on or after
28 January 1, 2008, but prior to July 1, 2012, or a drug severity level 3
29 through 5 crime committed on or after July 1, 2012, an amount equal to
30 20% of the prison part of the sentence.

31 (c) The postrelease supervision term of a person sentenced to a term
32 of imprisonment that includes a sentence for a sexually violent crime as
33 defined in K.S.A. 22-3717, and amendments thereto, a sexually motivated
34 crime in which the offender has been ordered to register pursuant to

1 K.S.A. 22-3717(d)(1)(D)(vii), and amendments thereto, electronic
2 solicitation, K.S.A. 21-3523, prior to its repeal, or K.S.A. 2015 Supp. 21-
3 5509, and amendments thereto, or unlawful sexual relations, K.S.A. 21-
4 3520, prior to its repeal, or K.S.A. 2015 Supp. 21-5512, and amendments
5 thereto, shall have any time which is earned and subtracted from the prison
6 part of such sentence and any other consecutive or concurrent sentence
7 pursuant to good time calculation added to such inmate's postrelease
8 supervision term.

9 (d) An inmate shall not be awarded good time credits pursuant to this
10 section for any review period established by the secretary of corrections in
11 which a court finds that the inmate has done any of the following while in
12 the custody of the secretary of corrections:

13 (1) Filed a false or malicious action or claim with the court;

14 (2) brought an action or claim with the court solely or primarily for
15 delay or harassment;

16 (3) testified falsely or otherwise submitted false evidence or
17 information to the court;

18 (4) attempted to create or obtain a false affidavit, testimony or
19 evidence; or

20 (5) abused the discovery process in any judicial action or proceeding.

21 (e) (1) For purposes of determining release of an inmate who is
22 serving only a sentence for a nondrug severity level 4 through 10 crime or
23 a drug severity level 3 or 4 crime committed on or after January 1, 2008,
24 but prior to July 1, 2012, or an inmate who is serving only a sentence for a
25 nondrug severity level 4 through 10 crime or a drug severity level 3
26 through 5 crime committed on or after July 1, 2012, the secretary of
27 corrections is hereby authorized to adopt rules and regulations regarding
28 program credit calculations. Such rules and regulations shall provide
29 circumstances upon which an inmate may earn program credits and for the
30 forfeiture of earned credits and such circumstances may include factors
31 substantially related to program participation and conduct. In addition to
32 any good time credits earned and retained, the following shall apply with
33 regard to program credit calculations:

34 (A) A system shall be developed whereby program credits may be
35 earned by inmates for the successful completion of requirements for a
36 general education diploma, a technical or vocational training program, a
37 substance abuse treatment program or any other program designated by the
38 secretary which has been shown to reduce offender's risk after release; and

39 (B) the amount of time which can be earned and retained by an
40 inmate for the successful completion of programs and subtracted from any
41 sentence is limited to not more than ~~90~~ 120 days.

42 (2) Any time which is earned and subtracted from the prison part of
43 the sentence of any inmate pursuant to program credit calculation shall not

1 be added to such inmate's postrelease supervision term, if applicable,
2 except that the postrelease supervision term of a person sentenced to a
3 term of imprisonment that includes a sentence for a sexually violent crime
4 as defined in K.S.A. 22-3717, and amendments thereto, a sexually
5 motivated crime in which the offender has been ordered to register
6 pursuant to K.S.A. 22-3717(d)(1)(D)(vii), and amendments thereto,
7 electronic solicitation, K.S.A. 21-3523, prior to its repeal, or K.S.A. 2015
8 Supp. 21-5509, and amendments thereto, or unlawful sexual relations,
9 K.S.A. 21-3520, prior to its repeal, or K.S.A. 2015 Supp. 21-5512, and
10 amendments thereto, shall have any time which is earned and subtracted
11 from the prison part of such sentence and any other consecutive or
12 concurrent sentence pursuant to program credit calculation added to such
13 inmate's postrelease supervision term.

14 (3) When separate sentences of imprisonment for different crimes are
15 imposed on a defendant on the same date, a defendant shall only be
16 eligible for program credits if such crimes are a nondrug severity level 4
17 through 10, a drug severity level 3 or 4 committed prior to July 1, 2012, or
18 a drug severity level 3 through 5 committed on or after July 1, 2012.

19 (4) Program credits shall not be earned by any offender successfully
20 completing a sex offender treatment program.

21 (5) The secretary of corrections shall report to the Kansas sentencing
22 commission and the Kansas reentry policy council the data on the program
23 credit calculations.

24 (f) The state of Kansas, the secretary of corrections and the
25 secretary's agents or employees shall not be liable for damages caused by
26 any negligent or wrongful act or omission in making the good time and
27 program credit calculations authorized by this section.

28 ~~(g) The secretary of corrections shall make the good time and~~
29 ~~program credit calculations authorized by the amendments to this section~~
30 ~~by this act no later than January 1, 2016.~~

31 **(1) The secretary of corrections shall make the good time and**
32 **program credit calculations authorized by section 1 of chapter 54 of**
33 **the 2015 Session Laws of Kansas no later than January 1, 2016.**

34 **(2) The secretary of corrections shall make the program credit**
35 **calculations authorized by the amendments to this section by this act**
36 **no later than January 1, 2017.**

37 ~~(h)~~ **(h)** The amendments to this section by *section 1 of chapter 54*
38 *of the 2015 session laws of Kansas* and this act shall be construed and
39 applied retroactively.

40 ***Sec. 2. K.S.A. 2015 Supp. 75-5217 is hereby amended to read as***
41 ***follows: 75-5217. (a) At any time during release on parole, conditional***
42 ***release or postrelease supervision, the secretary of corrections may issue***
43 ***a warrant for the arrest of a released inmate for violation of any of the***

1 *conditions of release, or a notice to appear to answer to a charge of*
2 *violation. Such notice shall be served personally upon the released*
3 *inmate. The warrant shall authorize any law enforcement officer to*
4 *arrest and deliver the released inmate to a place as provided by*
5 *subsection (g). Any parole officer may arrest such released inmate*
6 *without a warrant, or may deputize any other officer with power of*
7 *arrest to do so by giving such officer a written or verbal arrest and*
8 *detain order setting forth that the released inmate, in the judgment of*
9 *the parole officer, has violated the conditions of the inmate's release. A*
10 *written arrest and detain order delivered to the official in charge of the*
11 *institution or place to which the released inmate is brought for detention*
12 *shall be sufficient warrant for detaining the inmate. After making an*
13 *arrest the parole officer shall present to the detaining authorities a*
14 *similar arrest and detain order and statement of the circumstances of*
15 *violation. Pending a hearing, as provided in this section, upon any*
16 *charge of violation the released inmate shall remain incarcerated in the*
17 *institution or place to which the inmate is taken for detention.*

18 *(b) Upon such arrest and detention, the parole officer shall notify*
19 *the secretary of corrections, or the secretary's designee, within five days*
20 *and shall submit in writing a report showing in what manner the*
21 *released inmate had violated the conditions of release. After such*
22 *notification is given to the secretary of corrections, or upon an arrest by*
23 *warrant as herein provided and the finding of probable cause pursuant*
24 *to procedures established by the secretary of a violation of the released*
25 *inmate's conditions of release, the secretary or the secretary's designee*
26 *may cause the released inmate to be brought before the prisoner review*
27 *board, its designee or designees, for a hearing on the violation charged,*
28 *under such rules and regulations as the board may adopt, or may*
29 *dismiss the charges that the released inmate has violated the conditions*
30 *of release and order the released inmate to remain on parole,*
31 *conditional release or post release supervision. A dismissal of charges*
32 *may be conditioned on the released inmate agreeing to the withholding*
33 *of credit for the period of time from the date of the issuance of the*
34 *secretary's warrant and the offender's arrest or return to Kansas as*
35 *provided by subsection (f). It is within the discretion of the board*
36 *whether such hearing requires the released inmate to appear personally*
37 *before the board when such inmate's violation results from a conviction*
38 *for a new felony or misdemeanor. An offender under determinant*
39 *sentencing whose violation does not result from a conviction of a new*
40 *felony or misdemeanor may waive the right to a final revocation hearing*
41 *before the board under such conditions and terms as may be prescribed*
42 *by rules and regulations promulgated by the secretary of corrections.*
43 *Relevant written statements made under oath shall be admitted and*

1 *considered by the board, its designee or designees, along with other*
2 *evidence presented at the hearing. If the violation is established to the*
3 *satisfaction of the board, the board may continue or revoke the parole or*
4 *conditional release, or enter such other order as the board may see fit.*
5 *The revocation of release of inmates who are on a specified period of*
6 *postrelease supervision shall be for a six-month period of confinement*
7 *from the date of the revocation hearing before the board or the effective*
8 *date of waiver of such hearing by the offender pursuant to rules and*
9 *regulations promulgated by the board, if the violation does not result*
10 *from a conviction for a new felony or misdemeanor. Such period of*
11 *confinement may be reduced by not more than three months based on*
12 *the inmate's conduct, work and program participation during the*
13 *incarceration period. The reduction in the incarceration period shall be*
14 *on an earned basis pursuant to rules and regulations adopted by the*
15 *secretary of corrections.*

16 *(c) If the violation results from a conviction for a new felony, upon*
17 *revocation, the inmate shall serve a period of confinement, to be*
18 *determined by the prisoner review board, which shall not exceed the*
19 *remaining balance of the period of postrelease supervision, even if the*
20 *new conviction did not result in the imposition of a new term of*
21 *imprisonment.*

22 *(d) If the violation results from a conviction for a new*
23 *misdemeanor, upon revocation, the inmate shall serve a period of*
24 *confinement, to be determined by the prisoner review board, which shall*
25 *not exceed the remaining balance of the period of postrelease*
26 *supervision.*

27 *(e) In the event the released inmate reaches conditional release date*
28 *as provided by K.S.A. 22-3718, and amendments thereto, after a finding*
29 *of probable cause, pursuant to procedures established by the secretary of*
30 *corrections of a violation of the released inmate's conditions of release,*
31 *but prior to a hearing before the prisoner review board, the secretary of*
32 *corrections shall be authorized to detain the inmate until the hearing by*
33 *the board. The secretary shall then enforce the order issued by the*
34 *board.*

35 *(f) If the secretary of corrections issues a warrant for the arrest of a*
36 *released inmate for violation of any of the conditions of release and the*
37 *released inmate is subsequently arrested in the state of Kansas, either*
38 *pursuant to the warrant issued by the secretary of corrections or for any*
39 *other reason, the released inmate's sentence shall not be credited with*
40 *the period of time from the date of the issuance of the secretary's*
41 *warrant to the date of the released inmate's arrest, except as provided by*
42 *subsection (i).*

43 *If a released inmate for whom a warrant has been issued by the*

1 *secretary of corrections for violation of the conditions of release is*
2 *subsequently arrested in another state, and the released inmate has been*
3 *authorized as a condition of such inmate's release to reside in or travel*
4 *to the state in which the released inmate was arrested, and the released*
5 *inmate has not absconded from supervision, the released inmate's*
6 *sentence shall not be credited with the period of time from the date of the*
7 *issuance of the warrant to the date of the released inmate's arrest, except*
8 *as provided by subsection (i). If the released inmate for whom a warrant*
9 *has been issued by the secretary of corrections for violation of the*
10 *conditions of release is subsequently arrested in another state for*
11 *reasons other than the secretary's warrant and the released inmate does*
12 *not have authorization to be in the other state or if authorized to be in*
13 *the other state has been charged by the secretary with having absconded*
14 *from supervision, the released inmate's sentence shall not be credited*
15 *with the period of time from the date of the issuance of the warrant by*
16 *the secretary to the date the released inmate is first available to be*
17 *returned to the state of Kansas, except as provided by subsection (i). If*
18 *the released inmate for whom a warrant has been issued by the secretary*
19 *of corrections for violation of a condition of release is subsequently*
20 *arrested in another state pursuant only to the secretary's warrant, the*
21 *released inmate's sentence shall not be credited with the period of time*
22 *from the date of the issuance of the secretary's warrant to the date of the*
23 *released inmate's arrest, regardless of whether the released inmate's*
24 *presence in the other state was authorized or the released inmate had*
25 *absconded from supervision, except as provided by subsection (i).*

26 *The secretary may issue a warrant for the arrest of a released inmate*
27 *for violation of any of the conditions of release and may direct that all*
28 *reasonable means to serve the warrant and detain such released inmate*
29 *be employed including, but not limited to, notifying the federal bureau of*
30 *investigation of such violation and issuance of warrant and requesting*
31 *from the federal bureau of investigation any pertinent information it*
32 *may possess concerning the whereabouts of the released inmate.*

33 *(g) Law enforcement officers shall execute warrants issued by the*
34 *secretary of corrections, and shall deliver the inmate named in the*
35 *warrant to the jail used by the county where the inmate is arrested*
36 *unless some other place is designated by the secretary, in the same*
37 *manner as for the execution of any arrest warrant.*

38 *(h) For the purposes of this section, an inmate or released inmate is*
39 *an individual under the supervision of the secretary of corrections,*
40 *including, but not limited to, an individual on parole, conditional*
41 *release, postrelease supervision, probation granted by another state or*
42 *an individual supervised under any interstate compact in accordance*
43 *with the provisions of the uniform act for out-of-state parolee*

1 ***supervision, K.S.A. 22-4101 et seq., and amendments thereto.***

2 *(i) Time not credited to the released inmate's sentence pursuant to*
3 *subsection (f) shall be credited if the violation charges are dismissed*
4 *without an agreement providing otherwise or the violations are not*
5 *established to the satisfaction of the board.*

6 ~~Sec. 2.~~ **3.** K.S.A. 2015 Supp. 21-6821~~is~~ **and 75-5217 are** hereby
7 repealed.

8 ~~Sec. 3.~~ **4.** This act shall take effect and be in force from and after its
9 publication in the ~~statute book~~ **Kansas register.**