

HOUSE BILL No. 2309

By Committee on Corrections and Juvenile Justice

2-12

AN ACT concerning crimes and punishment; relating to possession of drugs; mandatory treatment; amending K.S.A. 2002 Supp. 21-4603d, 21-4714 and 22-3716 and repealing the existing sections.

WHEREAS, Drug abuse treatment programs are a proven public safety and health measure. Nonviolent drug-dependent criminal offenders who receive treatment are much less likely to abuse drugs and commit future crimes and are likely to live healthier, more stable and more productive lives;

WHEREAS, When nonviolent persons convicted of drug possession or drug use are provided appropriate community-based drug abuse treatment programs instead of incarceration, communities are healthier and safer, while taxpayer dollars are saved: Now, therefore *Be it enacted by the Legislature of the State of Kansas:*

New Section 1. (a) There is hereby established a nonprison sanction of certified drug abuse treatment programs for certain offenders. Placement of offenders in certified drug abuse treatment programs by the court shall be limited to placement of adult offenders, convicted of a felony violation of subsection (a) or (b) of K.S.A. 65-4160 or 65-4162, and amendments thereto:

(1) Whose offense is classified in grid blocks 2-E, 2-F, 2-G, 2-H, 2-I, 4-E, 4-F, 4-G, 4-H or 4-I of the sentencing guidelines grid for drug crimes and such offender has no prior felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-4164, and amendments thereto;

or

(2) whose offense is classified in grid blocks 2-A, 2-B, 2-C, 2-D, 4-A, 4-B, 4-C or 4-D of the sentencing guidelines grid for drug crimes and such offender has no prior felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-4164, and amendments thereto, if such person felonies committed by the offender were severity level 8, 9 or 10 of the sentencing guidelines grid for nondrug crimes and the court finds and sets forth with particularity the reasons for finding that the safety of the members of the public will not be jeopardized by such placement in a drug abuse treatment program.

(b) (1) As a part of the presentence investigation pursuant to K.S.A.

1 21-4714, and amendments thereto, offenders who meet the requirements
2 of subsection (a) shall be subject to a drug abuse assessment.

3 (2) The drug abuse assessment shall be a statewide, mandatory, stan-
4 dardized risk assessment tool or instrument validated for drug abuse treat-
5 ment program placements and shall include a clinical interview with a
6 mental health professional. Such assessment shall assign a high or low
7 risk status to the offender and include a recommendation concerning drug
8 abuse treatment for the offender.

9 (c) The sentencing court shall commit the offender to treatment in a
10 drug abuse treatment program until determined suitable for discharge by
11 the court but the term of treatment shall not exceed 18 months.

12 (d) Offenders who are assigned a high risk status shall be supervised
13 by community correctional services. Offenders who are assigned a low
14 risk status shall be supervised by court service officers.

15 (e) Placement of offenders under subsection (a)(2) shall be subject
16 to the departure sentencing statutes of the Kansas sentencing guidelines
17 act.

18 (f) (1) Offenders in drug abuse treatment programs shall be dis-
19 charged from such program if the offender:

20 (A) Is convicted of a new felony, other than a felony conviction of
21 subsection (a) and (b) of K.S.A. 65-4160 or 65-4162, and amendments
22 thereto; or

23 (B) has a pattern of intentional conduct that demonstrates the of-
24 fender's refusal to comply with or participate in the treatment program,
25 as established by judicial finding.

26 (2) Offenders who are discharged from such program shall be subject
27 to the revocation provisions of subsection (n) of K.S.A. 21-4603d, and
28 amendments thereto.

29 (g) As used in this section, "mental health professional" includes li-
30 censed social workers, licensed psychiatrists, licensed psychologists, li-
31 censed professional counselors or registered alcohol and other drug abuse
32 counselors licensed or certified as addiction counselors who have been
33 certified by the secretary of corrections to treat offenders pursuant to
34 section 2, and amendments thereto.

35 New Sec 2. (a) Drug abuse treatment programs certified in accord-
36 ance with subsection (b) shall provide:

37 (1) Presentence drug abuse assessments of any person who is con-
38 victed of a felony violation of subsection (a) or (b) of K.S.A. 65-4160 or
39 65-4162, and amendments thereto, and meets the requirements of sec-
40 tion 1, and amendments thereto;

41 (2) supervision and monitoring of all persons who are convicted of a
42 felony violation of subsection (a) or (b) of K.S.A. 65-4160 or 65-4162, and
43 amendments thereto, and meet the requirements of section 1, and

1 amendments thereto, and whose sentence requires completion of a cer-
2 tified drug abuse treatment program, as provided in this section;

3 (3) treatment options to address the continuum of services needed
4 to reach recovery: Detoxification, rehabilitation, continuing care and af-
5 tercare, and relapse prevention;

6 (4) treatment options to incorporate family and auxiliary support serv-
7 ices; and

8 (5) treatment options for alcohol abuse when indicated by the as-
9 sessment of the offender or required by the court.

10 (b) The presentence drug abuse assessment shall be conducted by a
11 drug abuse treatment program certified in accordance with the provisions
12 of this subsection to provide assessment and supervision services. A drug
13 abuse treatment program shall be certified by the secretary of corrections.
14 The secretary may establish qualifications for the certification of pro-
15 grams, which may include requirements for supervision and monitoring
16 of clients; fee reimbursement procedures; handling of conflicts of inter-
17 est; delivery of services to clients unable to pay; and other matters relating
18 to quality and delivery of services by the program. The certification shall
19 be for a four-year period. Recertification of a program shall be by the
20 secretary. To be eligible for certification under this subsection, the se-
21 cretary shall determine that a drug abuse treatment program: (1) Meets
22 the qualifications established by the secretary; (2) is capable of providing
23 the assessments, supervision and monitoring required under subsection
24 (a); (3) has employed or contracted with certified treatment providers;
25 and (4) meets any other functions and duties specified by law.

26 (c) Any treatment provider who is employed or has contracted with
27 a certified drug abuse treatment program who provides services to of-
28 fenders shall be certified by the secretary of corrections. The secretary
29 shall require education and training which shall include, but not be lim-
30 ited to, case management and cognitive behavior training. The duties of
31 providers who prepare the presentence drug abuse assessment may also
32 include appearing at sentencing and probation hearings in accordance
33 with the orders of the court, monitoring offenders in the treatment pro-
34 grams, notifying the probation department and the court of any offender
35 failing to meet the conditions of probation or referrals to treatment, ap-
36 pearing at revocation hearings as may be required and providing assis-
37 tance and data reporting and program evaluation.

38 (d) The cost of any certified drug abuse treatment programs for any
39 person shall be paid by such person. If financial obligations are not met
40 or cannot be met, the sentencing court shall be notified for the purpose
41 of collection or review and further action on the offender's sentence.

42 (e) The secretary of corrections is hereby authorized to adopt rules
43 and regulations to carry out the provisions of this section.

1 New Sec 3. (a) Persons who were convicted of a felony violation of
2 subsection (a) or (b) of K.S.A. 65-4160 or 65-4162, on or after July 1,
3 1993, but prior to the effective date of this act, shall have their sentences
4 modified according to the provisions of this section. Persons who meet
5 the requirements of section 1, and amendments thereto, shall have such
6 persons' sentence modified and be subject to the mandatory drug abuse
7 treatment programs.

8 (b) (1) The department of corrections shall conduct a review and
9 prepare a report on all persons who committed such crimes during such
10 dates. A copy of the report shall be transmitted to the inmate, the county
11 or district attorney for the county from which the inmate was sentenced
12 and the sentencing court.

13 (2) The department of corrections shall complete and submit to the
14 appropriate parties the report on all imprisoned inmates who were con-
15 victed of a felony violation of subsection (a) or (b) of K.S.A. 65-4160 or
16 65-4162, on or after July 1, 1993 but prior to the effective date of this
17 act, and who have greater than 180 days to serve on such inmates' sen-
18 tence prior to such inmates' initial release date. The department of cor-
19 rections shall review inmates based on such inmate's custody or security
20 classification in the following order: Minimum, within 60 days of the ef-
21 fective date of this act; medium, within 90 days of the effective date of
22 this act; and maximum, within 120 days of the effective date of this act.

23 (c) Prior to the modification of the sentence of offenders who were
24 convicted of subsection (b) of K.S.A. 65-4160, and amendments thereto,
25 the department of corrections shall review such offenders' records and
26 make a finding that the safety of the members of the public will not be
27 jeopardized by such modification of sentence.

28 (d) The modification of sentence as determined by the department
29 of corrections shall be deemed to be correct unless objection thereto is
30 filed by either the person or the prosecution officer within the 60-day
31 period provided to request a hearing. If an objection is filed, the sen-
32 tencing court shall determine the person's modification of sentence. The
33 burden of proof shall be on the prosecution officer to prove that the safety
34 of the members of the public will be jeopardized by such modification of
35 sentence.

36 (e) (1) Within 60 days of the issuance of such report, the prosecution
37 officer shall have the right to request a hearing by filing a motion with
38 the sentencing court, regarding the modification of the sentence under
39 this act to be held in the jurisdiction where the original criminal case was
40 filed. The secretary of corrections shall be provided written notice of any
41 request for a hearing. If a request for a hearing is not filed within 60 days
42 of the issuance of the report, the department shall modify the person's
43 sentence to one provided for under this act and provide notification of

1 that action to the person, the prosecution officer, and the court in the
2 jurisdiction where the original criminal case was held. The secretary of
3 corrections shall be authorized to implement a modified sentence as pro-
4 vided in this act, if the secretary has not received written notice of a
5 request for a hearing by the close of normal business hours on the fifth
6 business day after expiration of the 60-day period.

7 (2) In the event a hearing is requested and held, the court shall de-
8 termine whether the safety of the members of the public will be jeop-
9 ardized by such modification of sentence.

10 (3) In the event a hearing is requested, and the court deems the
11 hearing is necessary, the court shall schedule and hold the hearing within
12 60 days after it was requested and shall rule on the issues raised by the
13 parties within 30 days after the hearing.

14 (4) Such offender shall be represented by counsel pursuant to the
15 provisions of K.S.A. 22-4501 *et seq.* and amendments thereto.

16 (5) Nothing contained in this section shall be construed as requiring
17 the appearance in person of the offender or creating such a right of ap-
18 pearance in person of the offender at the hearing provided in this section
19 regarding the modification of a sentence under this section.

20 (6) The court shall enter an order regarding the person's modification
21 of sentence and forward that order to the secretary of corrections who
22 shall administer the modification of sentence.

23 (f) All sentence modifications that result in an offender being re-
24 leased from a state correctional facility shall be placed under the super-
25 vision of community corrections.

26 (g) (1) In the case of any person to whom the provisions of this sec-
27 tion shall apply, who committed a crime prior to the effective date of this
28 act, but was sentenced after the effective date of this act, the sentencing
29 court shall impose a sentence as provided by this act.

30 (2) In the case of any person to whom the provisions of this section
31 shall apply, who was sentenced prior to the effective date of this act, but
32 is in county jail waiting to be admitted into a department of corrections
33 facility after the effective date of this act, the secretary of corrections is
34 authorized to implement a modified sentence as provided in this act
35 within 180 days of the effective date of this act.

36 Sec. 4. K.S.A. 2002 Supp. 21-4603d is hereby amended to read as
37 follows: 21-4603d. (a) Whenever any person has been found guilty of a
38 crime, the court may adjudge any of the following:

39 (1) Commit the defendant to the custody of the secretary of correc-
40 tions if the current crime of conviction is a felony and the sentence pre-
41 sumes imprisonment, or the sentence imposed is a dispositional departure
42 to imprisonment; or, if confinement is for a misdemeanor, to jail for the
43 term provided by law;

- 1 (2) impose the fine applicable to the offense;
- 2 (3) release the defendant on probation if the current crime of con-
3 viction and criminal history fall within a presumptive nonprison category
4 or through a departure for substantial and compelling reasons subject to
5 such conditions as the court may deem appropriate. In felony cases except
6 for violations of K.S.A. 8-1567 and amendments thereto, the court may
7 include confinement in a county jail not to exceed 60 days, which need
8 not be served consecutively, as a condition of an original probation sen-
9 tence and up to 60 days in a county jail upon each revocation of the
10 probation sentence, or community corrections placement;
- 11 (4) assign the defendant to a community correctional services pro-
12 gram as provided in K.S.A. 75-5291, and amendments thereto, or through
13 a departure for substantial and compelling reasons subject to such condi-
14 tions as the court may deem appropriate, including orders requiring full
15 or partial restitution;
- 16 (5) assign the defendant to a conservation camp for a period not to
17 exceed six months as a condition of probation followed by a six-month
18 period of follow-up through adult intensive supervision by a community
19 correctional services program, if the offender successfully completes the
20 conservation camp program;
- 21 (6) assign the defendant to a house arrest program pursuant to K.S.A.
22 21-4603b and amendments thereto;
- 23 (7) order the defendant to attend and satisfactorily complete an al-
24 cohol or drug education or training program as provided by subsection
25 (3) of K.S.A. 21-4502 and amendments thereto;
- 26 (8) order the defendant to repay the amount of any reward paid by
27 any crime stoppers chapter, individual, corporation or public entity which
28 materially aided in the apprehension or conviction of the defendant; repay
29 the amount of any costs and expenses incurred by any law enforcement
30 agency in the apprehension of the defendant, if one of the current crimes
31 of conviction of the defendant includes escape, as defined in K.S.A. 21-
32 3809 and amendments thereto or aggravated escape, as defined in K.S.A.
33 21-3810 and amendments thereto; or repay the amount of any public
34 funds utilized by a law enforcement agency to purchase controlled sub-
35 stances from the defendant during the investigation which leads to the
36 defendant's conviction. Such repayment of the amount of any such costs
37 and expenses incurred by a law enforcement agency or any public funds
38 utilized by a law enforcement agency shall be deposited and credited to
39 the same fund from which the public funds were credited to prior to use
40 by the law enforcement agency;
- 41 (9) order the defendant to pay the administrative fee authorized by
42 K.S.A. 2002 Supp. 22-4529 and amendments thereto, unless waived by
43 the court;

1 (10) order the defendant to pay a domestic violence special program
2 fee authorized by K.S.A. 2002 Supp. 20-369, and amendments thereto;

3 (11) impose any appropriate combination of (1), (2), (3), (4), (5), (6),
4 (7), (8), (9) and (10); or

5 (12) suspend imposition of sentence in misdemeanor cases.

6 (b) (1) In addition to or in lieu of any of the above, the court shall
7 order the defendant to pay restitution, which shall include, but not be
8 limited to, damage or loss caused by the defendant's crime, unless the
9 court finds compelling circumstances which would render a plan of res-
10 titution unworkable. If the court finds a plan of restitution unworkable,
11 the court shall state on the record in detail the reasons therefor.

12 (2) If the court orders restitution, the restitution shall be a judgment
13 against the defendant which may be collected by the court by garnishment
14 or other execution as on judgments in civil cases. If, after 60 days from
15 the date restitution is ordered by the court, a defendant is found to be in
16 noncompliance with the plan established by the court for payment of
17 restitution, and the victim to whom restitution is ordered paid has not
18 initiated proceedings in accordance with K.S.A. 2002 Supp. 60-4301 *et*
19 *seq.* and amendments thereto, the court shall assign an agent procured
20 by the attorney general pursuant to K.S.A. 75-719 and amendments
21 thereto to collect the restitution on behalf of the victim. The administra-
22 tive judge of each judicial district may assign such cases to an appropriate
23 division of the court for the conduct of civil collection proceedings.

24 (c) In addition to or in lieu of any of the above, the court shall order
25 the defendant to submit to and complete an alcohol and drug evaluation,
26 and pay a fee therefor, when required by subsection (4) of K.S.A. 21-
27 4502 and amendments thereto.

28 (d) In addition to any of the above, the court shall order the defend-
29 ant to reimburse the county general fund for all or a part of the expend-
30 itures by the county to provide counsel and other defense services to the
31 defendant. Any such reimbursement to the county shall be paid only after
32 any order for restitution has been paid in full. In determining the amount
33 and method of payment of such sum, the court shall take account of the
34 financial resources of the defendant and the nature of the burden that
35 payment of such sum will impose. A defendant who has been required
36 to pay such sum and who is not willfully in default in the payment thereof
37 may at any time petition the court which sentenced the defendant to
38 waive payment of such sum or any unpaid portion thereof. If it appears
39 to the satisfaction of the court that payment of the amount due will im-
40 pose manifest hardship on the defendant or the defendant's immediate
41 family, the court may waive payment of all or part of the amount due or
42 modify the method of payment.

43 (e) In imposing a fine the court may authorize the payment thereof

1 in installments. In releasing a defendant on probation, the court shall
2 direct that the defendant be under the supervision of a court services
3 officer. If the court commits the defendant to the custody of the secretary
4 of corrections or to jail, the court may specify in its order the amount of
5 restitution to be paid and the person to whom it shall be paid if restitution
6 is later ordered as a condition of parole ~~or~~, conditional release *or post-*
7 *release supervision.*

8 (f) When a new felony is committed while the offender is incarcer-
9 ated and serving a sentence for a felony or while the offender is on pro-
10 bation, assignment to a community correctional services program, parole,
11 conditional release, or postrelease supervision for a felony, a new sentence
12 shall be imposed pursuant to the consecutive sentencing requirements of
13 K.S.A. 21-4608, and amendments thereto, and the court may sentence
14 the offender to imprisonment for the new conviction, even when the new
15 crime of conviction otherwise presumes a nonprison sentence. In this
16 event, imposition of a prison sentence for the new crime does not con-
17 stitute a departure. When a new felony is committed while the offender
18 is on release for a felony pursuant to the provisions of article 28 of chapter
19 22 of the Kansas Statutes Annotated, a new sentence may be imposed
20 pursuant to the consecutive sentencing requirements of K.S.A. 21-4608
21 and amendments thereto, and the court may sentence the offender to
22 imprisonment for the new conviction, even when the new crime of con-
23 viction otherwise presumes a nonprison sentence. In this event, imposi-
24 tion of a prison sentence for the new crime does not constitute a
25 departure.

26 (g) Prior to imposing a dispositional departure for a defendant whose
27 offense is classified in the presumptive nonprison grid block of either
28 sentencing guideline grid, prior to sentencing a defendant to incarceration
29 whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing
30 guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H,
31 3-I, 4-E or 4-F of the sentencing guidelines grid for drug crimes, or prior
32 to revocation of a nonprison sanction of a defendant whose offense is
33 classified in the presumptive nonprison grid block of either sentencing
34 guideline grid or grid blocks 5-H, 5-I or 6-G of the sentencing guidelines
35 grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H, 3-I, 4-E or
36 4-F of the sentencing guidelines grid for drug crimes, the court shall
37 consider placement of the defendant in the Labette correctional conser-
38 vation camp, conservation camps established by the secretary of correc-
39 tions pursuant to K.S.A. 75-52,127, and amendment thereto or a com-
40 munity intermediate sanction center. Pursuant to this paragraph the
41 defendant shall not be sentenced to imprisonment if space is available in
42 a conservation camp or a community intermediate sanction center and
43 the defendant meets all of the conservation camp's or a community in-

1 intermediate sanction center's placement criteria unless the court states on
2 the record the reasons for not placing the defendant in a conservation
3 camp or a community intermediate sanction center.

4 (h) The court in committing a defendant to the custody of the sec-
5 retary of corrections shall fix a term of confinement within the limits
6 provided by law. In those cases where the law does not fix a term of
7 confinement for the crime for which the defendant was convicted, the
8 court shall fix the term of such confinement.

9 (i) In addition to any of the above, the court shall order the defendant
10 to reimburse the state general fund for all or a part of the expenditures
11 by the state board of indigents' defense services to provide counsel and
12 other defense services to the defendant. In determining the amount and
13 method of payment of such sum, the court shall take account of the
14 financial resources of the defendant and the nature of the burden that
15 payment of such sum will impose. A defendant who has been required
16 to pay such sum and who is not willfully in default in the payment thereof
17 may at any time petition the court which sentenced the defendant to
18 waive payment of such sum or any unpaid portion thereof. If it appears
19 to the satisfaction of the court that payment of the amount due will im-
20 pose manifest hardship on the defendant or the defendant's immediate
21 family, the court may waive payment of all or part of the amount due or
22 modify the method of payment. The amount of attorney fees to be in-
23 cluded in the court order for reimbursement shall be the amount claimed
24 by appointed counsel on the payment voucher for indigents' defense serv-
25 ices or the amount prescribed by the board of indigents' defense services
26 reimbursement tables as provided in K.S.A. 22-4522, and amendments
27 thereto, whichever is less.

28 (j) This section shall not deprive the court of any authority conferred
29 by any other Kansas statute to decree a forfeiture of property, suspend
30 or cancel a license, remove a person from office, or impose any other civil
31 penalty as a result of conviction of crime.

32 (k) An application for or acceptance of probation or assignment to a
33 community correctional services program shall not constitute an acqui-
34 escence in the judgment for purpose of appeal, and any convicted person
35 may appeal from such conviction, as provided by law, without regard to
36 whether such person has applied for probation, suspended sentence or
37 assignment to a community correctional services program.

38 (l) The secretary of corrections is authorized to make direct place-
39 ment to the Labette correctional conservation camp or a conservation
40 camp established by the secretary pursuant to K.S.A. 75-52,127, and
41 amendments thereto, of an inmate sentenced to the secretary's custody
42 if the inmate: (1) Has been sentenced to the secretary for a probation
43 revocation, as a departure from the presumptive nonimprisonment grid

1 block of either sentencing grid, or for an offense which is classified in
2 grid blocks 5-H, 5-I, or 6-G of the sentencing guidelines grid for nondrug
3 crimes or in grid blocks 3-E, 3-F, 3-G, 3-H, 3-I, 4-E or 4-F of the sen-
4 tencing guidelines grid for drug crimes and (2) otherwise meets admission
5 criteria of the camp. If the inmate successfully completes a conservation
6 camp program, the secretary of corrections shall report such completion
7 to the sentencing court and the county or district attorney. The inmate
8 shall then be assigned by the court to six months of follow-up supervision
9 conducted by the appropriate community corrections services program.
10 The court may also order that supervision continue thereafter for the
11 length of time authorized by K.S.A. 21-4611 and amendments thereto.

12 (m) When it is provided by law that a person shall be sentenced pur-
13 suant to K.S.A. 1993 Supp. 21-4628, prior to its repeal, the provisions of
14 this section shall not apply.

15 (n) *In addition to any of the above, for felony violations of subsection*
16 *(a) or (b) of K.S.A. 65-4160 or 65-4162, and amendments thereto, the*
17 *court shall require the defendant who meets the requirements established*
18 *in section 1, and amendments thereto, to participate in a certified drug*
19 *abuse treatment program, as provided in section 2, and amendments*
20 *thereto, including but not limited to, an approved after-care plan. If the*
21 *defendant fails to participate in or has a pattern of intentional conduct*
22 *that demonstrates the offender's refusal to comply with or participate in*
23 *the treatment program, as established by judicial finding, the defendant*
24 *shall be subject to revocation of postrelease supervision or probation and*
25 *the defendant shall serve the underlying prison sentence as established in*
26 *K.S.A. 21-4705, and amendments thereto. Upon completion of the under-*
27 *lying prison sentence, the defendant shall not be subject to a period of*
28 *postrelease supervision. The amount of time spent participating in such*
29 *program shall not be credited as service on the underlying prison sentence.*

30 Sec. 5. K.S.A. 2002 Supp. 21-4714 is hereby amended to read as
31 follows: 21-4714. (a) The court shall order the preparation of the pre-
32 sentence investigation report by the court services officer as soon as pos-
33 sible after conviction of the defendant.

34 (b) Each presentence report prepared for an offender to be sen-
35 tenced for one or more felonies committed on or after July 1, 1993, shall
36 be limited to the following information:

37 (1) A summary of the factual circumstances of the crime or crimes
38 of conviction.

39 (2) If the defendant desires to do so, a summary of the defendant's
40 version of the crime.

41 (3) When there is an identifiable victim, a victim report. The person
42 preparing the victim report shall submit the report to the victim and
43 request that the information be returned to be submitted as a part of the

1 presentence investigation. To the extent possible, the report shall include
2 a complete listing of restitution for damages suffered by the victim.

3 (4) An appropriate classification of each crime of conviction on the
4 crime severity scale.

5 (5) A listing of prior adult convictions or juvenile adjudications for
6 felony or misdemeanor crimes or violations of county resolutions or city
7 ordinances comparable to any misdemeanor defined by state law. Such
8 listing shall include an assessment of the appropriate classification of the
9 criminal history on the criminal history scale and the source of informa-
10 tion regarding each listed prior conviction and any available source of
11 journal entries or other documents through which the listed convictions
12 may be verified. If any such journal entries or other documents are ob-
13 tained by the court services officer, they shall be attached to the pre-
14 sentence investigation report. Any prior criminal history worksheets of
15 the defendant shall also be attached.

16 (6) A proposed grid block classification for each crime, or crimes of
17 conviction and the presumptive sentence for each crime, or crimes of
18 conviction.

19 (7) If the proposed grid block classification is a grid block which pre-
20 sumes imprisonment, the presumptive prison term range and the pre-
21 sumptive duration of postprison supervision as it relates to the crime
22 severity scale.

23 (8) If the proposed grid block classification does not presume prison,
24 the presumptive prison term range and the presumptive duration of the
25 nonprison sanction as it relates to the crime severity scale and the court
26 services officer's professional assessment as to recommendations for con-
27 ditions to be mandated as part of the nonprison sanction.

28 (9) *For defendants who are being sentenced for a conviction of a fel-*
29 *ony violation of subsection (a) of (b) of K.S.A. 65-4160 or 65-4162, and*
30 *amendments thereto, and meet the requirements of section 1, and amend-*
31 *ments thereto, the drug and alcohol assessment as provided in section 1,*
32 *and amendments thereto.*

33 (c) The presentence report will become part of the court record and
34 shall be accessible to the public, except that the official version, defend-
35 ant's version and the victim's statement, any psychological reports and
36 drug and alcohol reports *and assessments* shall be accessible only to the
37 parties, the sentencing judge, the department of corrections, and if re-
38 quested, the Kansas sentencing commission. If the offender is committed
39 to the custody of the secretary of corrections, the report shall be sent to
40 the secretary and, in accordance with K.S.A. 75-5220 and amendments
41 thereto to the warden of the state correctional institution to which the
42 defendant is conveyed.

43 (d) The criminal history worksheet will not substitute as a present-

1 ence report.

2 (e) The presentence report will not include optional report compo-
3 nents, which would be subject to the discretion of the sentencing court
4 in each district except for psychological reports and drug and alcohol
5 reports.

6 (f) The court can take judicial notice in a subsequent felony proceed-
7 ing of an earlier presentence report criminal history worksheet prepared
8 for a prior sentencing of the defendant for a felony committed on or after
9 July 1, 1993.

10 (g) All presentence reports in any case in which the defendant has
11 been convicted of a felony shall be on a form approved by the Kansas
12 sentencing commission.

13 Sec. 6. K.S.A. 2002 Supp. 22-3716 is hereby amended to read as
14 follows: 22-3716. (a) At any time during probation, assignment to a com-
15 munity correctional services program, suspension of sentence or pursuant
16 to subsection (d) for defendants who committed a crime prior to July 1,
17 1993, and at any time during which a defendant is serving a nonprison
18 sanction for a crime committed on or after July 1, 1993, or pursuant to
19 subsection (d), the court may issue a warrant for the arrest of a defendant
20 for violation of any of the conditions of release or assignment, a notice to
21 appear to answer to a charge of violation or a violation of the defendant's
22 nonprison sanction. The notice shall be personally served upon the de-
23 fendant. The warrant shall authorize all officers named in the warrant to
24 return the defendant to the custody of the court or to any certified de-
25 tention facility designated by the court. Any court services officer or com-
26 munity correctional services officer may arrest the defendant without a
27 warrant or may deputize any other officer with power of arrest to do so
28 by giving the officer a written statement setting forth that the defendant
29 has, in the judgment of the court services officer or community correc-
30 tional services officer, violated the conditions of the defendant's release
31 or a nonprison sanction. The written statement delivered with the de-
32 fendant by the arresting officer to the official in charge of a county jail or
33 other place of detention shall be sufficient warrant for the detention of
34 the defendant. After making an arrest, the court services officer or com-
35 munity correctional services officer shall present to the detaining author-
36 ities a similar statement of the circumstances of violation. Provisions re-
37 garding release on bail of persons charged with a crime shall be applicable
38 to defendants arrested under these provisions.

39 (b) Upon arrest and detention pursuant to subsection (a), the court
40 services officer or community correctional services officer shall immedi-
41 ately notify the court and shall submit in writing a report showing in what
42 manner the defendant has violated the conditions of release or assignment
43 or a nonprison sanction. Thereupon, or upon an arrest by warrant as

1 provided in this section, the court shall cause the defendant to be brought
2 before it without unnecessary delay for a hearing on the violation charged.
3 The hearing shall be in open court and the state shall have the burden of
4 establishing the violation. The defendant shall have the right to be rep-
5 resented by counsel and shall be informed by the judge that, if the de-
6 fendant is financially unable to obtain counsel, an attorney will be ap-
7 pointed to represent the defendant. The defendant shall have the right
8 to present the testimony of witnesses and other evidence on the defend-
9 ant's behalf. Relevant written statements made under oath may be ad-
10 mitted and considered by the court along with other evidence presented
11 at the hearing. Except as otherwise provided, if the violation is estab-
12 lished, the court may continue or revoke the probation, assignment to a
13 community correctional services program, suspension of sentence or non-
14 prison sanction and may require the defendant to serve the sentence
15 imposed, or any lesser sentence, and, if imposition of sentence was sus-
16 pended, may impose any sentence which might originally have been im-
17 posed. Except as otherwise provided, no offender for whom a violation
18 of conditions of release or assignment or a nonprison sanction has been
19 established as provided in this section shall be required to serve any time
20 for the sentence imposed or which might originally have been imposed
21 in a state facility in the custody of the secretary of corrections for such
22 violation, unless such person has already at least one prior assignment to
23 a community correctional services program related to the crime for which
24 the original sentence was imposed, except these provisions shall not apply
25 to offenders who violate a condition of release or assignment or a non-
26 prison sanction by committing a new misdemeanor or felony offense. The
27 provisions of this subsection shall not apply to adult felony offenders as
28 described in subsection (a)(3) of K.S.A. 75-5291, and amendments
29 thereto. The court may require an offender for whom a violation of con-
30 ditions of release or assignment or a nonprison sanction has been estab-
31 lished as provided in this section to serve any time for the sentence im-
32 posed or which might originally have been imposed in a state facility in
33 the custody of the secretary of corrections without a prior assignment to
34 a community correctional services program if the court finds and sets
35 forth with particularity the reasons for finding that the safety of the mem-
36 bers of the public will be jeopardized or that the welfare of the inmate
37 will not be served by such assignment to a community correctional serv-
38 ices program. When a new felony is committed while the offender is on
39 probation or assignment to a community correctional services program,
40 the new sentence shall be imposed pursuant to the consecutive sentenc-
41 ing requirements of K.S.A. 21-4608 and amendments thereto, and the
42 court may sentence the offender to imprisonment for the new conviction,
43 even when the new crime of conviction otherwise presumes a nonprison

1 sentence. In this event, imposition of a prison sentence for the new crime
2 does not constitute a departure.

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

14 (d) The court shall have 30 days following the date probation, assign-
15 ment to a community correctional service program, suspension of sen-
16 tence or a nonprison sanction was to end to issue a warrant for the arrest
17 or notice to appear for the defendant to answer a charge of a violation of
18 the conditions of probation, assignment to a community correctional serv-
19 ice program, suspension of sentence or a nonprison sanction.

20 (e) Notwithstanding the provisions of any other law to the contrary,
21 an offender whose nonprison sanction is revoked and a term of impris-
22 onment imposed pursuant to either the sentencing guidelines grid for
23 nondrug or drug crimes shall not serve a period of postrelease supervision
24 upon the completion of the prison portion of that sentence. The provi-
25 sions of this subsection shall not apply to offenders sentenced to a non-
26 prison sanction pursuant to a dispositional departure, whose offense falls
27 within a border box of either the sentencing guidelines grid for nondrug
28 or drug crimes, offenders sentenced for a "sexually violent crime" as de-
29 fined by K.S.A. 22-3717, and amendments thereto, or whose nonprison
30 sanction was revoked as a result of a conviction for a new misdemeanor
31 or felony offense. The provisions of this subsection shall not apply to
32 offenders who are serving or are to begin serving a sentence for any other
33 felony offense that is not excluded from postrelease supervision by this
34 subsection on the effective date of this subsection. The provisions of this
35 subsection shall be applied retroactively. The department of corrections
36 shall conduct a review of all persons who are in the custody of the de-
37 partment as a result of only a revocation of a nonprison sanction. On or
38 before September 1, 2000, the department shall have discharged from
39 postrelease supervision those offenders as required by this subsection.

40 (f) *Offenders who have been sentenced pursuant to section 1, and*
41 *amendments thereto, and who violate a condition of the drug and alcohol*
42 *abuse treatment program shall be subject to an additional nonprison sanc-*
43 *tion. Such nonprison sanctions shall include, but not be limited to, up to*

1 *60 days in a county jail, fines, community service, intensified treatment,*
2 *house arrest and electronic monitoring.*

3 Sec. 7. K.S.A. 2002 Supp. 21-4603d, 21-4714 and 22-3716 are hereby
4 repealed.

5 Sec. 8. This act shall take effect and be in force from and after its
6 publication in the Kansas register.

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