

SENATE BILL No. 356

By Committee on Judiciary

1-26

AN ACT concerning crimes; relating to violation of probation; amending K.S.A. 2003 Supp. 22-3716 and repealing the existing section.

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

Section 1. K.S.A. 2003 Supp. 22-3716 is hereby amended to read as follows: 22-3716. (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 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. The written statement delivered with the defendant by the arresting officer 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

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 K.S.A. 2003
41 Supp. 21-4729, and amendments thereto, and who subsequently violate
42 a condition of the drug and alcohol abuse treatment program shall be
43 subject to an additional nonprison sanction for any such subsequent vi-

1 olation. Such nonprison sanctions shall include, but not be limited to, up
2 to 60 days in a county jail, fines, community service, intensified treatment,
3 house arrest and electronic monitoring.

4 Sec. 2. K.S.A. 2003 Supp. 22-3716 is hereby repealed.

5 Sec. 3. This act shall take effect and be in force from and after its
6 publication in the statute book.

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