

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 2008

## SENATE BILL No. 476

By Committee on Judiciary

1-28

12 AN ACT relating to **crimes, punishment and** criminal procedure; con-  
13 cerning arrest for violating condition of probation and conditions of  
14 release; **providing for supervision for certain offenders; [con-**  
15 **cerning sentencing;]** amending K.S.A. **21-4608**[, **21-4716**, **21-**  
16 **4719**] and 22-3716 and K.S.A. 2007 Supp. [**38-2371 and**] 75-5217  
17 and repealing the existing sections.  
18

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

20 **Section 1. K.S.A. 21-4608 is hereby amended to read as fol-**  
21 **lows: 21-4608. (a) When separate sentences of imprisonment for**  
22 **different crimes are imposed on a defendant on the same date,**  
23 **including sentences for crimes for which suspended sentences,**  
24 **probation or assignment to a community correctional services pro-**  
25 **gram have been revoked, such sentences shall run concurrently or**  
26 **consecutively as the court directs. Whenever the record is silent**  
27 **as to the manner in which two or more sentences imposed at the**  
28 **same time shall be served, they shall be served concurrently, ex-**  
29 **cept as provided in subsections (c), (d) and (e).**

30 **(b) Any person who is convicted and sentenced for a crime**  
31 **committed while on probation, assignment to a community cor-**  
32 **rectional services program, parole or conditional release for a mis-**  
33 **demeanor shall serve the sentence concurrently with or consecu-**  
34 **tively to the term or terms under which the person was on**  
35 **probation, assigned to a community correctional services program**  
36 **or on parole or conditional release, as the court directs.**

37 **(c) Any person who is convicted and sentenced for a crime com-**  
38 **mitted while on probation, assigned to a community correctional**  
39 **services program, on parole, on conditional release or on post-**  
40 **release supervision for a felony shall serve the sentence consecu-**  
41 **tively to the term or terms under which the person was on pro-**  
42 **bation, assigned to a community correctional services program or**  
43 **on parole or conditional release.**

1       **(d) Any person who is convicted and sentenced for a crime**  
2 **committed while on release for a felony pursuant to article 28 of**  
3 **chapter 22 of the Kansas Statutes Annotated shall serve the sen-**  
4 **tence consecutively to the term or terms under which the person**  
5 **was released.**

6       **(e) (1) Any person who is convicted and sentenced for a crime**  
7 **committed while such person is incarcerated and serving a sen-**  
8 **tence for a felony in any place of incarceration shall serve the**  
9 **sentence consecutively to the term or terms under which the per-**  
10 **son was incarcerated.**

11       **(2) If a person is sentenced to prison for a crime committed on**  
12 **or after July 1, 1993, while the person was imprisoned for an of-**  
13 **fense committed prior to July 1, 1993, and the person is not eligible**  
14 **for the retroactive application of the sentencing guidelines act, the**  
15 **new sentence shall not be aggregated with the old sentence but**  
16 **shall begin when the person is paroled or reaches the conditional**  
17 **release date on the old sentence, whichever is earlier. If the of-**  
18 **fender was past the offender's conditional release date at the time**  
19 **the new offense was committed, the new sentence shall not be**  
20 **aggregated with the old sentence but shall begin when the person**  
21 **is ordered released by the Kansas parole board or reaches the**  
22 **maximum sentence date on the old sentence, whichever is earlier.**  
23 **The new sentence shall then be served as otherwise provided by**  
24 **law. The period of ~~postrelease~~ *post incarceration* supervision shall be**  
25 **based on the ~~new sentence~~ *longest term of post incarceration supervision***  
26 **imposed for all crimes upon which sentence was imposed or until dis-**  
27 **charged from supervision by the Kansas parole board. The term of post**  
28 **incarceration supervision imposed by this paragraph shall apply retro-**  
29 **actively to crimes committed prior to the effective date of this act.**

30       **(3) As used in this subsection, "post incarceration supervision" in-**  
31 **cludes parole and postrelease supervision.**

32       **(f) The provisions of this subsection relating to parole eligibil-**  
33 **ity shall be applicable to persons convicted of crimes committed**  
34 **prior to January 1, 1979, but shall be applicable to persons con-**  
35 **vinced of crimes committed on or after that date only to the extent**  
36 **that the terms of this subsection are not in conflict with the pro-**  
37 **visions of K.S.A. 22-3717 and amendments thereto. In calculating**  
38 **the time to be served on concurrent and consecutive sentences,**  
39 **the following rules shall apply:**

40       **(1) When indeterminate terms run concurrently, the shorter**  
41 **minimum terms merge in and are satisfied by serving the longest**  
42 **minimum term and the shorter maximum terms merge in and are**  
43 **satisfied by conditional release or discharge on the longest maxi-**

- 1    **imum term if the terms are imposed on the same date.**
- 2    **(2) When concurrent terms are imposed on different dates,**  
3 **computation will be made to determine which term or terms re-**  
4 **quire the longest period of imprisonment to reach parole eligibil-**  
5 **ity, conditional release and maximum dates, and that sentence will**  
6 **be considered the controlling sentence. The parole eligibility date**  
7 **may be computed and projected on one sentence and the condi-**  
8 **tional release date and maximum may be computed and projected**  
9 **from another to determine the controlling sentence.**
- 10   **(3) When indeterminate terms imposed on the same date are**  
11 **to be served consecutively, the minimum terms are added to arrive**  
12 **at an aggregate minimum to be served equal to the sum of all**  
13 **minimum terms and the maximum terms are added to arrive at an**  
14 **aggregate maximum equal to the sum of all maximum terms.**
- 15   **(4) When indeterminate sentences are imposed to be served**  
16 **consecutively to sentences previously imposed in any other court**  
17 **or the sentencing court, the aggregated minimums and maximums**  
18 **shall be computed from the effective date of the subsequent sen-**  
19 **tences which have been imposed as consecutive. For the purpose**  
20 **of determining the sentence begins date and the parole eligibility**  
21 **and conditional release dates, the inmate shall be given credit on**  
22 **the aggregate sentence for time spent imprisoned on the previous**  
23 **sentences, but not exceeding an amount equal to the previous min-**  
24 **imum sentence less the maximum amount of good time credit that**  
25 **could have been earned on the minimum sentence. For the pur-**  
26 **pose of computing the maximum date, the inmate shall be given**  
27 **credit for all time spent imprisoned on the previous sentence. This**  
28 **method for computation of the maximum sentence shall be utilized**  
29 **for all sentences computed pursuant to this subsection after July**  
30 **1, 1983.**
- 31   **Nothing in this subsection (f)(4) shall affect the authority of the**  
32 **Kansas parole board to determine the parole eligibility of inmates**  
33 **pursuant to subsection (d) of K.S.A. 22-3717 and amendments**  
34 **thereto.**
- 35   **(5) When consecutive sentences are imposed which are to be**  
36 **served consecutive to sentences for which a prisoner has been on**  
37 **probation, assigned to a community correctional services program,**  
38 **on parole or on conditional release, the amount of time served on**  
39 **probation, on assignment to a community correctional services**  
40 **program, on parole or on conditional release shall not be credited**  
41 **as service on the aggregate sentence in determining the parole**  
42 **eligibility, conditional release and maximum dates, except that**  
43 **credit shall be given for any amount of time spent in a residential**

1 facility while on probation or assignment to a community correc-  
2 tional residential services program.

3 (g) When a definite and an indefinite term run consecutively,  
4 the period of the definite term is added to both the minimum and  
5 maximum of the indeterminate term and both sentences are sat-  
6 isfied by serving the indeterminate term. The provisions of this  
7 subsection shall not apply to crimes committed on or after July 1,  
8 1993.

9 (h) When a defendant is sentenced in a state court and is also  
10 under sentence from a federal court or other state court or is sub-  
11 ject to sentence in a federal court or other state court for an of-  
12 fense committed prior to the defendant's sentence in a Kansas  
13 state court, the court may direct that custody of the defendant may  
14 be relinquished to federal or other state authorities and that such  
15 state sentences as are imposed may run concurrently with any fed-  
16 eral or other state sentence imposed.

17 [Sec. 2. K.S.A. 21-4716 is hereby amended to read as follows:  
18 21-4716. (a) Except as provided in subsection (b), the sentencing  
19 judge shall impose the presumptive sentence provided by the sen-  
20 tencing guidelines for crimes committed on or after July 1, 1993,  
21 unless the judge finds substantial and compelling reasons to im-  
22 pose a departure. If the sentencing judge departs from the pre-  
23 sumptive sentence, the judge shall state on the record at the time  
24 of sentencing the substantial and compelling reasons for the  
25 departure.

26 [(b) Subject to the provisions of subsection (b) of K.S.A. 21-  
27 4718, and amendments thereto, any fact that would increase the  
28 penalty for a crime beyond the statutory maximum, other than a  
29 prior conviction, shall be submitted to a jury and proved beyond  
30 a reasonable doubt.

31 [(c) (1) Subject to the provisions of subsections ~~(c)(3)~~ (c)(2),  
32 (c)(4) and (e), the following nonexclusive list of mitigating factors  
33 may be considered in determining whether substantial and com-  
34 pelling reasons for a departure exist:

35 [(A) The victim was an aggressor or participant in the criminal  
36 conduct associated with the crime of conviction.

37 [(B) The offender played a minor or passive role in the crime  
38 or participated under circumstances of duress or compulsion. This  
39 factor is not sufficient as a complete defense.

40 [(C) The offender, because of physical or mental impairment,  
41 lacked substantial capacity for judgment when the offense was  
42 committed. The voluntary use of intoxicants, drugs or alcohol does  
43 not fall within the purview of this factor.

- 1     **[(D) The defendant, or the defendant’s children, suffered a**  
2 **continuing pattern of physical or sexual abuse by the victim of the**  
3 **offense and the offense is a response to that abuse.**
- 4     **[(E) The degree of harm or loss attributed to the current crime**  
5 **of conviction was significantly less than typical for such an offense.**
- 6     **[(2) Subject to the provisions of subsections (c)(4) and (e), for any**  
7 **person felony ranked in severity levels 1 through 4 of the nondrug grid**  
8 **as provided in K.S.A. 21-4704, and amendments thereto, and for any**  
9 **offender who has a criminal history score category of A or B, the following**  
10 **exclusive list of mitigating factors may be considered in determining**  
11 **whether substantial and compelling reasons for a departure exists:**
- 12     **[(A) The victim was an aggressor or participant in the criminal con-**  
13 **duct associated with the crime of conviction.**
- 14     **[(B) The offender played a minor or passive role in the crime or par-**  
15 **ticipated under circumstances of duress or compulsion. This factor is not**  
16 **sufficient as a complete defense.**
- 17     **[(C) The offender, because of physical or mental impairment, lacked**  
18 **substantial capacity for judgment when the offense was committed. The**  
19 **voluntary use of intoxicants, drugs or alcohol does not fall within the**  
20 **purview of this factor.**
- 21     **[(D) The defendant, or the defendant’s children, suffered a continuing**  
22 **pattern of physical or sexual abuse by the victim of the offense and the**  
23 **offense is a response to that abuse.**
- 24     **[(E) The degree of harm or loss attributed to the current crime of**  
25 **conviction was significantly less than typical for such an offense.**
- 26     **[(3) Subject to the provisions of subsection ~~(c)(3)~~ (c)(4), the fol-**  
27 **lowing nonexclusive list of aggravating factors may be considered**  
28 **in determining whether substantial and compelling reasons for de-**  
29 **parture exist:**
- 30     **[(A) The victim was particularly vulnerable due to age, infir-**  
31 **mity, or reduced physical or mental capacity which was known or**  
32 **should have been known to the offender.**
- 33     **[(B) The defendant’s conduct during the commission of the**  
34 **current offense manifested excessive brutality to the victim in a**  
35 **manner not normally present in that offense.**
- 36     **[(C) The offense was motivated entirely or in part by the race,**  
37 **color, religion, ethnicity, national origin or sexual orientation of**  
38 **the victim or the offense was motivated by the defendant’s belief**  
39 **or perception, entirely or in part, of the race, color, religion, eth-**  
40 **nicity, national origin or sexual orientation of the victim whether**  
41 **or not the defendant’s belief or perception was correct.**
- 42     **[(D) The offense involved a fiduciary relationship which ex-**  
43 **isted between the defendant and the victim.**

- 1     **[(E) The defendant, 18 or more years of age, employed, hired,**  
2 **used, persuaded, induced, enticed or coerced any individual under**  
3 **16 years of age to commit or assist in avoiding detection or appre-**  
4 **hension for commission of any person felony or any attempt, con-**  
5 **spiracy or solicitation as defined in K.S.A. 21-3301, 21-3302 or 21-**  
6 **3303 and amendments thereto to commit any person felony**  
7 **regardless of whether the defendant knew the age of the individual**  
8 **under 16 years of age.**
- 9     **[(F) The defendant’s current crime of conviction is a crime of**  
10 **extreme sexual violence and the defendant is a predatory sex of-**  
11 **fender. As used in this subsection:**
- 12     **[(i) “Crime of extreme sexual violence” is a felony limited to**  
13 **the following:**
- 14       **[(a) A crime involving a nonconsensual act of sexual inter-**  
15 **course or sodomy with any person;**
- 16       **[(b) a crime involving an act of sexual intercourse, sodomy or**  
17 **lewd fondling and touching with any child who is 14 or more years**  
18 **of age but less than 16 years of age and with whom a relationship**  
19 **has been established or promoted for the primary purpose of vic-**  
20 **timization; or**
- 21       **[(c) a crime involving an act of sexual intercourse, sodomy or**  
22 **lewd fondling and touching with any child who is less than 14 years**  
23 **of age.**
- 24     **[(ii) “Predatory sex offender” is an offender who has been con-**  
25 **vinced of a crime of extreme sexual violence as the current crime**  
26 **of conviction and who:**
- 27       **[(a) Has one or more prior convictions of any crimes of extreme**  
28 **sexual violence. Any prior conviction used to establish the defend-**  
29 **ant as a predatory sex offender pursuant to this subsection shall**  
30 **also be counted in determining the criminal history category; or**
- 31       **[(b) suffers from a mental condition or personality disorder**  
32 **which makes the offender likely to engage in additional acts con-**  
33 **stituting crimes of extreme sexual violence.**
- 34     **[(iii) “Mental condition or personality disorder” means an**  
35 **emotional, mental or physical illness, disease, abnormality, disor-**  
36 **der, pathology or condition which motivates the person, affects the**  
37 **predisposition or desires of the person, or interferes with the ca-**  
38 **capacity of the person to control impulses to commit crimes of ex-**  
39 **trême sexual violence.**
- 40     **[(G) The defendant was incarcerated during the commission of**  
41 **the offense.**
- 42     **[(H) The crime involved two or more participants in the crim-**  
43 **inal conduct, and the defendant played a major role in the crime**

1 as the organizer, leader, recruiter, manager or supervisor.

2 [In determining whether aggravating factors exist as provided  
3 in this section, the court shall review the victim impact statement.  
4 ~~[(3)~~ (4) If a factual aspect of a crime is a statutory element of  
5 the crime or is used to subclassify the crime on the crime severity  
6 scale, that aspect of the current crime of conviction may be used  
7 as an aggravating or mitigating factor only if the criminal conduct  
8 constituting that aspect of the current crime of conviction is sig-  
9 nificantly different from the usual criminal conduct captured by  
10 the aspect of the crime.

11 [(d) In determining aggravating or mitigating circumstances,  
12 the court shall consider:

13 [(1) Any evidence received during the proceeding;

14 [(2) the presentence report;

15 [(3) written briefs and oral arguments of either the state or  
16 counsel for the defendant; and

17 [(4) any other evidence relevant to such aggravating or miti-  
18 gating circumstances that the court finds trustworthy and reliable.

19 [(e) Upon motion of the prosecutor stating that the defendant  
20 has provided substantial assistance in the investigation or prose-  
21 cution of another person who is alleged to have committed an of-  
22 fense, the court may consider such mitigation in determining  
23 whether substantial and compelling reasons for a departure exist.  
24 In considering this mitigating factor, the court may consider the  
25 following:

26 [(i) The court's evaluation of the significance and usefulness of  
27 the defendant's assistance, taking into consideration the prosecu-  
28 tor's evaluation of the assistance rendered;

29 [(ii) the truthfulness, completeness and reliability of any infor-  
30 mation or testimony provided by the defendant;

31 [(iii) the nature and extent of the defendant's assistance;

32 [(iv) any injury suffered, or any danger or risk of injury to the  
33 defendant or the defendant's family resulting from such assistance;  
34 and

35 [(v) the timeliness of the defendant's assistance.

36 [Sec. 3. K.S.A. 21-4719 is hereby amended to read as follows:

37 21-4719. (a) When a departure sentence is appropriate, the sen-  
38 tencing judge may depart from the sentencing guidelines as pro-  
39 vided in this section. *The sentencing judge shall not impose a downward*  
40 *dispositional departure sentence for any crime of extreme sexual violence,*  
41 *as defined in K.S.A. 21-4716, and amendments thereto. The sentencing*  
42 *judge shall not impose a downward durational departure sentence for any*  
43 *crime of extreme sexual violence, as defined in K.S.A. 21-4716, and*

1 *amendments thereto, to less than 50% of the center of the range of the*  
2 *sentence for such crime.*

3 **[(b) When a sentencing judge departs in setting the duration**  
4 **of a presumptive term of imprisonment: (1) The judge shall con-**  
5 **sider and apply the enacted purposes and principles of sentencing**  
6 **guidelines to impose a sentence which is proportionate to the se-**  
7 **verity of the crime of conviction and the offender's criminal his-**  
8 **tory; and**

9 **[(2) the presumptive term of imprisonment set in such depart-**  
10 **ture shall not total more than double the maximum duration of the**  
11 **presumptive imprisonment term.**

12 **[(c) When a sentencing judge imposes a prison term as a dis-**  
13 **positional departure: (1) The judge shall consider and apply the**  
14 **enacted purposes and principles of sentencing guidelines to im-**  
15 **pose a sentence which is proportionate to the severity of the crime**  
16 **of conviction; and**

17 **[(2) the term of imprisonment shall not exceed the maximum**  
18 **duration of the presumptive imprisonment term listed within the**  
19 **sentencing grid. Any sentence inconsistent with the provisions of**  
20 **this section shall constitute an additional departure and shall re-**  
21 **quire substantial and compelling reasons independent of the rea-**  
22 **sons given for the dispositional departure.**

23 **[(d) If the sentencing judge imposes a nonprison sentence as a**  
24 **dispositional departure from the guidelines, the recommended du-**  
25 **ration shall be as provided in subsection (c) of K.S.A. 21-4611 and**  
26 **amendments thereto.**

27 ~~Section 1, Sec. 2~~ **[4.]** K.S.A. 22-3716 is hereby amended to read as  
28 follows: 22-3716. (a) At any time during probation, assignment to a com-  
29 munity correctional services program, suspension of sentence or pursuant  
30 to subsection (d) for defendants who committed a crime prior to July 1,  
31 1993, and at any time during which a defendant is serving a nonprison  
32 sanction for a crime committed on or after July 1, 1993, or pursuant to  
33 subsection (d), the court may issue a warrant for the arrest of a defendant  
34 for violation of any of the conditions of release or assignment, a notice to  
35 appear to answer to a charge of violation or a violation of the defendant's  
36 nonprison sanction. The notice shall be personally served upon the de-  
37 fendant. The warrant shall authorize all officers named in the warrant to  
38 return the defendant to the custody of the court or to any certified de-  
39 tention facility designated by the court. Any court services officer or com-  
40 munity correctional services officer may arrest the defendant without a  
41 warrant or may deputize any other officer with power of arrest to do so  
42 by giving the officer a written *or verbal* statement setting forth that the  
43 defendant has, in the judgment of the court services officer or community



1 correctional services officer, violated the conditions of the defendant's  
2 release or a nonprison sanction. ~~The~~ A written statement delivered ~~with~~  
3 ~~the defendant by the arresting officer~~ to the official in charge of a county  
4 jail or other place of detention shall be sufficient warrant for the detention  
5 of the defendant. After making an arrest, the court services officer or  
6 community correctional services officer shall present to the detaining au-  
7 thorities a similar statement of the circumstances of violation. Provisions  
8 regarding release on bail of persons charged with a crime shall be appli-  
9 cable to defendants arrested under these provisions.

10 (b) Upon arrest and detention pursuant to subsection (a), the court  
11 services officer or community correctional services officer shall immedi-  
12 ately notify the court and shall submit in writing a report showing in what  
13 manner the defendant has violated the conditions of release or assignment  
14 or a nonprison sanction. Thereupon, or upon an arrest by warrant as  
15 provided in this section, the court shall cause the defendant to be brought  
16 before it without unnecessary delay for a hearing on the violation charged.  
17 The hearing shall be in open court and the state shall have the burden of  
18 establishing the violation. The defendant shall have the right to be rep-  
19 resented by counsel and shall be informed by the judge that, if the de-  
20 fendant is financially unable to obtain counsel, an attorney will be ap-  
21 pointed to represent the defendant. The defendant shall have the right  
22 to present the testimony of witnesses and other evidence on the defend-  
23 ant's behalf. Relevant written statements made under oath may be ad-  
24 mitted and considered by the court along with other evidence presented  
25 at the hearing. Except as otherwise provided, if the violation is estab-  
26 lished, the court may continue or revoke the probation, assignment to a  
27 community correctional services program, suspension of sentence or non-  
28 prison sanction and may require the defendant to serve the sentence  
29 imposed, or any lesser sentence, and, if imposition of sentence was sus-  
30 pended, may impose any sentence which might originally have been im-  
31 posed. Except as otherwise provided, no offender for whom a violation  
32 of conditions of release or assignment or a nonprison sanction has been  
33 established as provided in this section shall be required to serve any time  
34 for the sentence imposed or which might originally have been imposed  
35 in a state facility in the custody of the secretary of corrections for such  
36 violation, unless such person has already at least one prior assignment to  
37 a community correctional services program related to the crime for which  
38 the original sentence was imposed, except these provisions shall not apply  
39 to offenders who violate a condition of release or assignment or a non-  
40 prison sanction by committing a new misdemeanor or felony offense. The  
41 provisions of this subsection shall not apply to adult felony offenders as  
42 described in subsection (a)(3) of K.S.A. 75-5291, and amendments  
43 thereto. The court may require an offender for whom a violation of con-

1 ditions of release or assignment or a nonprison sanction has been estab-  
2 lished as provided in this section to serve any time for the sentence im-  
3 posed or which might originally have been imposed in a state facility in  
4 the custody of the secretary of corrections without a prior assignment to  
5 a community correctional services program if the court finds and sets  
6 forth with particularity the reasons for finding that the safety of the mem-  
7 bers of the public will be jeopardized or that the welfare of the inmate  
8 will not be served by such assignment to a community correctional serv-  
9 ices program. When a new felony is committed while the offender is on  
10 probation or assignment to a community correctional services program,  
11 the new sentence shall be imposed pursuant to the consecutive sentenc-  
12 ing requirements of K.S.A. 21-4608 and amendments thereto, and the  
13 court may sentence the offender to imprisonment for the new conviction,  
14 even when the new crime of conviction otherwise presumes a nonprison  
15 sentence. In this event, imposition of a prison sentence for the new crime  
16 does not constitute a departure.

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

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

34 (e) Notwithstanding the provisions of any other law to the contrary,  
35 an offender whose nonprison sanction is revoked and a term of impris-  
36 onment imposed pursuant to either the sentencing guidelines grid for  
37 nondrug or drug crimes shall not serve a period of postrelease supervision  
38 upon the completion of the prison portion of that sentence. The provi-  
39 sions of this subsection shall not apply to offenders sentenced to a non-  
40 prison sanction pursuant to a dispositional departure, whose offense falls  
41 within a border box of either the sentencing guidelines grid for nondrug  
42 or drug crimes, offenders sentenced for a "sexually violent crime" as de-  
43 fined by K.S.A. 22-3717, and amendments thereto, or whose nonprison

1 sanction was revoked as a result of a conviction for a new misdemeanor  
2 or felony offense. The provisions of this subsection shall not apply to  
3 offenders who are serving or are to begin serving a sentence for any other  
4 felony offense that is not excluded from postrelease supervision by this  
5 subsection on the effective date of this subsection. The provisions of this  
6 subsection shall be applied retroactively. The department of corrections  
7 shall conduct a review of all persons who are in the custody of the de-  
8 partment as a result of only a revocation of a nonprison sanction. On or  
9 before September 1, 2000, the department shall have discharged from  
10 postrelease supervision those offenders as required by this subsection.

11 (f) Offenders who have been sentenced pursuant to K.S.A. 21-4729,  
12 and amendments thereto, and who subsequently violate a condition of  
13 the drug and alcohol abuse treatment program shall be subject to an  
14 additional nonprison sanction for any such subsequent violation. Such  
15 nonprison sanctions shall include, but not be limited to, up to 60 days in  
16 a county jail, fines, community service, intensified treatment, house arrest  
17 and electronic monitoring.

18 **[Sec. 5. K.S.A. 2007 Supp. 38-2371 is hereby amended to read**  
19 **as follows: 38-2371. (a) (1) Whenever a person is adjudicated as a**  
20 **juvenile offender, the court upon motion of the state, shall hold a**  
21 **hearing to consider imposition of a departure sentence. The mo-**  
22 **tion shall state that a departure is sought and the reasons and fac-**  
23 **tors relied upon. The hearing shall be scheduled so that the parties**  
24 **have adequate time to prepare and present arguments regarding**  
25 **the issues of departure sentencing. The victim of a crime or the**  
26 **victim's family shall be notified of the right to be present at the**  
27 **hearing for the convicted person by the county or district attorney.**  
28 **The parties may submit written arguments to the court prior to**  
29 **the date of the hearing and may make oral arguments before the**  
30 **court at the hearing. The court shall review the victim impact state-**  
31 **ment, if available. Prior to the hearing, the court shall transmit to**  
32 **the juvenile offender or the juvenile offender's attorney and the**  
33 **prosecuting attorney copies of the predispositional investigation**  
34 **report.**

35 **[(2) At the conclusion of the hearing or within 20 days there-**  
36 **after, the court shall issue findings of fact and conclusions of law**  
37 **regarding the issues submitted by the parties, and shall enter an**  
38 **appropriate order.**

39 **[(3) If a factual aspect of a crime is a statutory element of the**  
40 **crime, or is used to determine crime severity, that aspect of the**  
41 **current crime of conviction may be used as an aggravating factor**  
42 **only if the criminal conduct constituting that aspect of the current**  
43 **crime of conviction is significantly different from the usual crimi-**

1 nal conduct captured by the aspect of the crime. Subject to this  
2 provision, the nonexclusive lists of aggravating factors provided in  
3 subsection ~~(c)(2)~~ (c)(3) of K.S.A. 21-4716, and amendments thereto,  
4 and in subsection (a) of K.S.A. 21-4717, and amendments thereto,  
5 may be considered in determining whether substantial and com-  
6 pelling reasons exist.

7 [(b) If the court decides to depart on its own volition, without  
8 a motion from the state, the court must notify all parties of its  
9 intent and allow reasonable time for either party to respond if they  
10 request. The notice shall state that a departure is intended by the  
11 court and the reasons and factors relied upon.

12 [(c) In each case in which the court imposes a sentence that  
13 deviates from the presumptive sentence, the court shall make find-  
14 ings of fact as to the reasons for departure regardless of whether  
15 a hearing is requested.

16 [(d) If the sentencing judge departs from the presumptive sen-  
17 tence, the judge shall state on the record at the time of sentencing  
18 the substantial and compelling reasons for the departure. When a  
19 departure sentence is appropriate, the sentencing judge may de-  
20 part from the matrix as provided in this section. When a sentencing  
21 judge departs in setting the duration of a presumptive term of  
22 imprisonment:

23 [(1) The presumptive term of imprisonment set in such depart-  
24 ure shall not total more than double the maximum duration of the  
25 presumptive imprisonment term;

26 [(2) the court shall have no authority to reduce the minimum  
27 term of confinement as defined within the placement matrix; and

28 [(3) the maximum term for commitment of any juvenile of-  
29 fender to a juvenile correctional facility is age 22 years, 6 months.

30 [(e) A departure sentence may be appealed as provided in  
31 K.S.A. 2007 Supp. 38-2380, and amendments thereto.]

32 Sec. ~~2~~ 3 [6]. K.S.A. 2007 Supp. 75-5217 is hereby amended to read  
33 as follows: 75-5217. (a) At any time during release on parole, conditional  
34 release or postrelease supervision, the secretary of corrections may issue  
35 a warrant for the arrest of a released inmate for violation of any of the  
36 conditions of release, or a notice to appear to answer to a charge of vio-  
37 lation. Such notice shall be served personally upon the released inmate.  
38 The warrant shall authorize any law enforcement officer to arrest and  
39 deliver the released inmate to a place as provided by subsection (g). Any  
40 parole officer may arrest such released inmate without a warrant, or may  
41 deputize any other officer with power of arrest to do so by giving such  
42 officer a written *or verbal* arrest and detain order setting forth that the  
43 released inmate, in the judgment of the parole officer, has violated the

1 conditions of the inmate's release. ~~The~~ A written arrest and detain order  
2 delivered ~~with the released inmate by the arresting officer~~ to the official  
3 in charge of the institution or place to which the released inmate is  
4 brought for detention shall be sufficient warrant for detaining the inmate.  
5 After making an arrest the parole officer shall present to the detaining  
6 authorities a similar arrest and detain order and statement of the circum-  
7 stances of violation. Pending a hearing, as provided in this section, upon  
8 any charge of violation the released inmate shall remain incarcerated in  
9 the institution or place to which the inmate is taken for detention.

10 (b) Upon such arrest and detention, the parole officer shall notify the  
11 secretary of corrections, or the secretary's designee, within five days and  
12 shall submit in writing a report showing in what manner the released  
13 inmate had violated the conditions of release. After such notification is  
14 given to the secretary of corrections, or upon an arrest by warrant as  
15 herein provided, and the finding of probable cause pursuant to proce-  
16 dures established by the secretary of a violation of the released inmate's  
17 conditions of release, the secretary or the secretary's designee may cause  
18 the released inmate to be brought before the Kansas parole board, its  
19 designee or designees, for a hearing on the violation charged, under such  
20 rules and regulations as the board may adopt, or may dismiss the charges  
21 that the released inmate has violated the conditions of release and order  
22 the released inmate to remain on parole, conditional release or post re-  
23 lease supervision. It is within the discretion of the Kansas parole board  
24 whether such hearing requires the released inmate to appear personally  
25 before the board when such inmate's violation results from a conviction  
26 for a new felony or misdemeanor. An offender under determinative sen-  
27 tencing whose violation does not result from a conviction of a new felony  
28 or misdemeanor may waive the right to a final revocation hearing before  
29 the Kansas parole board under such conditions and terms as may be  
30 prescribed by rules and regulations promulgated by the Kansas parole  
31 board. Relevant written statements made under oath shall be admitted  
32 and considered by the Kansas parole board, its designee or designees,  
33 along with other evidence presented at the hearing. If the violation is  
34 established to the satisfaction of the Kansas parole board, the board may  
35 continue or revoke the parole or conditional release, or enter such other  
36 order as the board may see fit. The revocation of release of inmates who  
37 are on a specified period of postrelease supervision shall be for a six-  
38 month period of confinement from the date of the revocation hearing  
39 before the board or the effective date of waiver of such hearing by the  
40 offender pursuant to rules and regulations promulgated by the Kansas  
41 parole board, if the violation does not result from a conviction for a new  
42 felony or misdemeanor. Such period of confinement may be reduced by  
43 not more than three months based on the inmate's conduct, work and

1 program participation during the incarceration period. The reduction in  
2 the incarceration period shall be on an earned basis pursuant to rules and  
3 regulations adopted by the secretary of corrections.

4 (c) If the violation results from a conviction for a new felony, upon  
5 revocation, the inmate shall serve the entire remaining balance of the  
6 period of postrelease supervision even if the new conviction did not result  
7 in the imposition of a new term of imprisonment.

8 (d) If the violation results from a conviction for a new misdemeanor,  
9 upon revocation, the inmate shall serve a period of confinement, to be  
10 determined by the Kansas parole board, which shall not exceed the re-  
11 maining balance of the period of postrelease supervision.

12 (e) In the event the released inmate reaches conditional release date  
13 as provided by K.S.A. 22-3718 and amendments thereto after a finding  
14 of probable cause, pursuant to procedures established by the secretary of  
15 corrections of a violation of the released inmate's conditions of release,  
16 but prior to a hearing before the Kansas parole board, the secretary of  
17 corrections shall be authorized to detain the inmate until the hearing by  
18 the Kansas parole board. The secretary shall then enforce the order issued  
19 by the Kansas parole board.

20 (f) If the secretary of corrections issues a warrant for the arrest of a  
21 released inmate for violation of any of the conditions of release and the  
22 released inmate is subsequently arrested in the state of Kansas, either  
23 pursuant to the warrant issued by the secretary of corrections or for any  
24 other reason, the released inmate's sentence shall not be credited with  
25 the period of time from the date of the issuance of the secretary's warrant  
26 to the date of the released inmate's arrest.

27 If a released inmate for whom a warrant has been issued by the sec-  
28 retary of corrections for violation of the conditions of release is subse-  
29 quently arrested in another state, and the released inmate has been au-  
30 thorized as a condition of such inmate's release to reside in or travel to  
31 the state in which the released inmate was arrested, and the released  
32 inmate has not absconded from supervision, the released inmate's sen-  
33 tence shall not be credited with the period of time from the date of the  
34 issuance of the warrant to the date of the released inmate's arrest. If the  
35 released inmate for whom a warrant has been issued by the secretary of  
36 corrections for violation of the conditions of release is subsequently ar-  
37 rested in another state for reasons other than the secretary's warrant and  
38 the released inmate does not have authorization to be in the other state  
39 or if authorized to be in the other state has been charged by the secretary  
40 with having absconded from supervision, the released inmate's sentence  
41 shall not be credited with the period of time from the date of the issuance  
42 of the warrant by the secretary to the date the released inmate is first  
43 available to be returned to the state of Kansas. If the released inmate for

1 whom a warrant has been issued by the secretary of corrections for vio-  
2 lation of a condition of release is subsequently arrested in another state  
3 pursuant only to the secretary's warrant, the released inmate's sentence  
4 shall not be credited with the period of time from the date of the issuance  
5 of the secretary's warrant to the date of the released inmate's arrest,  
6 regardless of whether the released inmate's presence in the other state  
7 was authorized or the released inmate had absconded from supervision.

8 The secretary may issue a warrant for the arrest of a released inmate  
9 for violation of any of the conditions of release and may direct that all  
10 reasonable means to serve the warrant and detain such released inmate  
11 be employed including but not limited to notifying the federal bureau of  
12 investigation of such violation and issuance of warrant and requesting  
13 from the federal bureau of investigation any pertinent information it may  
14 possess concerning the whereabouts of the released inmate.

15 (g) Law enforcement officers shall execute warrants issued by the  
16 secretary of corrections, and shall deliver the inmate named in the warrant  
17 to the jail used by the county where the inmate is arrested unless some  
18 other place is designated by the secretary, in the same manner as for the  
19 execution of any arrest warrant.

20 (h) For the purposes of this section, an inmate or released inmate is  
21 an individual under the supervision of the secretary of corrections, in-  
22 cluding, but not limited to, an individual on parole, conditional release,  
23 postrelease supervision, probation granted by another state or an individ-  
24 ual supervised under any interstate compact in accordance with the pro-  
25 visions of the uniform act for out-of-state parolee supervision, K.S.A. 22-  
26 4101 et seq. and amendments thereto.

27 Sec. ~~3~~ ~~4~~ [7.] K.S.A. **21-4608**, **21-4716**, **21-4719** and 22-3716  
28 and K.S.A. 2007 Supp. [**38-2371 and**] 75-5217 are hereby repealed.

29 Sec. ~~4~~ ~~5~~ [8.] This act shall take effect and be in force from and after  
30 its publication in the Kansas register.