

SENATE BILL No. 483

By Committee on Judiciary

1-28

9 AN ACT concerning criminal procedure; relating to violation of condi-
10 tions of release; providing for substance abuse treatment; amending
11 K.S.A. 22-3716 and K.S.A. 2007 Supp. 75-5210 and 75-5220 and re-
12 pealing the existing sections.
13

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

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

41 (b) Upon arrest and detention pursuant to subsection (a), the court
42 services officer or community correctional services officer shall immedi-
43 ately notify the court and shall submit in writing a report showing in what

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

1 *rections in the custody of the secretary of corrections to participate in an*
2 *intensified substance abuse treatment program. The intensified substance*
3 *abuse treatment program shall be determined by the secretary of correc-*
4 *tions, but shall be for a period of at least 120 days. Upon completion of*
5 *such intensified treatment program or expiration of the term of probation,*
6 *the offender shall be returned to the court. When a new felony is com-*
7 *mitted while the offender is on probation or assignment to a community*
8 *correctional services program, the new sentence shall be imposed pur-*
9 *suant to the consecutive sentencing requirements of K.S.A. 21-4608 and*
10 *amendments thereto, and the court may sentence the offender to im-*
11 *prisonment for the new conviction, even when the new crime of convic-*
12 *tion otherwise presumes a nonprison sentence. In this event, imposition*
13 *of a prison sentence for the new crime does not constitute a departure.*

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

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

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

1 felony offense that is not excluded from postrelease supervision by this
2 subsection on the effective date of this subsection. The provisions of this
3 subsection shall be applied retroactively. The department of corrections
4 shall conduct a review of all persons who are in the custody of the de-
5 partment as a result of only a revocation of a nonprison sanction. On or
6 before September 1, 2000, the department shall have discharged from
7 postrelease supervision those offenders as required by this subsection.

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

15 Sec. 2. K.S.A. 2007 Supp. 75-5210 is hereby amended to read as
16 follows: 75-5210. (a) Persons committed to the institutional care of the
17 secretary of corrections shall be dealt with humanely, with efforts directed
18 to their rehabilitation and return to the community as safely and promptly
19 as practicable. For these purposes, the secretary shall establish programs
20 of classification and diagnosis, education, casework, mental health, coun-
21 seling and psychotherapy, chemical dependency counseling and treat-
22 ment, sexual offender counseling, prerelease programs which emphasize
23 re-entry skills, adjustment counseling and job placement, vocational train-
24 ing and guidance, work, library, physical education and other rehabilita-
25 tion and recreation services; the secretary may establish facilities for re-
26 ligious worship; and the secretary shall institute procedures for the study
27 and classification of inmates. The secretary shall maintain a comprehen-
28 sive record of the behavior of each inmate reflecting accomplishments
29 and progress toward rehabilitation as well as charges of infractions of rules
30 and regulations, punishments imposed and medical inspections made.

31 (b) Programs of work, education or training shall include a system of
32 promotional rewards entitling inmates to progressive transfer from high
33 security status to a lesser security status. The secretary shall have authority
34 at any time to transfer an inmate from one level of status to another level
35 of status. Inmates may apply to the secretary for such status privileges.
36 The secretary shall adopt a custody classification manual establishing stan-
37 dards relating to the transfer of an inmate from one status to another,
38 and in developing such standards the secretary shall take into consider-
39 ation progress made by the inmate toward attaining the educational, vo-
40 cational and behavioral goals set by the secretary for the individual in-
41 mate. In order to facilitate the reintegration into the community of some
42 inmates who are scheduled for release within the next 90 days, there shall
43 be a presumption of minimum security status for those offenders who

1 have been returned to prison for violating conditions of their postrelease
2 supervision not involving a new criminal conviction and whose last facility
3 security custody status was not either special management or maximum.
4 ~~This presumption shall be applied to the initial security custody status~~
5 ~~assigned to the offender upon readmission into a correctional facility.~~ *In-*
6 *mates sentenced to a state substance abuse treatment facility established*
7 *by the department of corrections shall have a presumption of minimum*
8 *security status. These presumptions of minimum security status shall be*
9 *applied to the initial security custody upon readmission into a correctional*
10 *facility or admission into a state substance abuse treatment facility, unless*
11 the security custody status is increased pursuant to policies adopted by
12 the secretary. The security custody status designated by the department
13 shall not be subject to judicial review.

14 (c) The secretary, with the cooperation of the department of health
15 and environment, shall adopt rules and regulations establishing and pre-
16 scribing standards for health, medical and dental services for each insti-
17 tution, including preventive, diagnostic and therapeutic measures on both
18 an outpatient and a hospital basis, for all types of patients. An inmate may
19 be taken, when necessary, to a medical facility outside the institution.

20 (d) Under rules and regulations adopted by the secretary, directors
21 of institutions may authorize visits, correspondence and communication,
22 under reasonable conditions, between inmates and appropriate friends,
23 relatives and others.

24 (e) The secretary shall adopt rules and regulations under which in-
25 mates, as part of a program anticipating their release from minimum
26 security status, may be granted temporary furloughs from a correctional
27 institution or contract facility to visit their families or to be interviewed
28 by prospective employers.

29 (f) The secretary shall adopt rules and regulations for the mainte-
30 nance of good order and discipline in the correctional institutions, in-
31 cluding procedures for dealing with violations. Disciplinary rules and reg-
32 ulations may provide a system of punishment including segregation,
33 forfeitures of good time earned, fines, extra work, loss of privileges, re-
34 strictions and payment of restitution.

35 The secretary and any persons designated by rules and regulations of
36 the secretary may administer oaths for the purpose of conducting inves-
37 tigations and disciplinary proceedings pursuant to rules and regulations
38 adopted by the secretary under this subsection and under K.S.A. 75-5251
39 and amendments thereto. For this purpose, the secretary shall adopt rules
40 and regulations designating those persons who may administer oaths in
41 such investigations and proceedings and the form and manner of admin-
42 istration of the oaths.

43 (g) A copy of the rules and regulations adopted pursuant to subsec-

1 tion (f) shall be provided to each inmate. Other rules and regulations of
2 the secretary which are required to be published pursuant to K.S.A. 77-
3 415 through 77-437, and amendments thereto, shall be made available to
4 inmates by placing a copy in the inmate library at the institution or by
5 some other means providing reasonable accessibility to inmates.

6 (h) Any inmate participating in work and educational release pro-
7 grams under the provisions of K.S.A. 75-5267 and amendments thereto
8 shall continue to be in the legal custody of the secretary of corrections,
9 notwithstanding the inmate's absence from a correctional institution by
10 reason of employment, education or for any other purpose related to such
11 work and educational release programs, and any employer or educator of
12 that person shall be considered the representative or agent for the
13 secretary.

14 (i) The secretary shall establish administrative and fiscal procedures
15 to permit the use of regional or community institutions, local govern-
16 mental or private facilities or halfway houses for the placement of inmates
17 released for the purposes of this act and for the work and educational
18 release programs under K.S.A. 75-5267 and amendments thereto.

19 (j) The secretary may establish correctional work facilities and select
20 inmates to be assigned to such facilities.

21 (k) The secretary may acquire, in the name of the state, by lease,
22 purchase or contract additional facilities as may be needed for the housing
23 of persons in the secretary's custody.

24 (l) The secretary is hereby authorized to use any of the inmates as-
25 signed to the secretary's custody in the construction and repair of build-
26 ings or property on state owned or leased grounds.

27 (m) For the purposes of establishing and carrying out the programs
28 provided for by subsection (a) and by K.S.A. 75-5267 and amendments
29 thereto, the secretary may contract with qualified individuals, partner-
30 ships, corporations or organizations; with agencies of the state; or with
31 the United States or any political subdivision of the state, or any agency
32 thereof.

33 Sec. 3. K.S.A. 2007 Supp. 75-5220 is hereby amended to read as
34 follows: 75-5220. (a) Except as provided in subsection (d), within three
35 business days of receipt of the notice provided for in K.S.A. 75-5218 and
36 amendments thereto, the secretary of corrections shall notify the sheriff
37 having such offender in custody to convey such offender immediately to
38 the department of corrections reception and diagnostic unit or if space is
39 not available at such facility, then to some other state correctional insti-
40 tution until space at the facility is available, except that, in the case of
41 first offenders who are conveyed to a state correctional institution other
42 than the reception and diagnostic unit, such offenders shall be segregated
43 from the inmates of such correctional institution who are not being held

1 in custody at such institution pending transfer to the reception and di-
2 agnostic unit when space is available therein. The expenses of any such
3 conveyance shall be charged against and paid out of the general fund of
4 the county whose sheriff conveys the offender to the institution as pro-
5 vided in this subsection.

6 (b) Any female offender sentenced according to the provisions of
7 K.S.A. 75-5229 and amendments thereto shall be conveyed by the sheriff
8 having such offender in custody directly to a correctional institution des-
9 ignated by the secretary of corrections, subject to the provisions of K.S.A.
10 75-52,134 and amendments thereto. The expenses of such conveyance to
11 the designated institution shall be charged against and paid out of the
12 general fund of the county whose sheriff conveys such female offender
13 to such institution.

14 (c) Each offender conveyed to a state correctional institution pursu-
15 ant to this section shall be accompanied by the record of the offender's
16 trial and conviction as prepared by the clerk of the district court in ac-
17 cordance with K.S.A. 75-5218 and amendments thereto.

18 (d) If the offender in the custody of the secretary is a juvenile, as
19 described in K.S.A. 2007 Supp. 38-2366, and amendments thereto, such
20 juvenile shall not be transferred to the state reception and diagnostic
21 center until such time as such juvenile is to be transferred from a juvenile
22 correctional facility to a department of corrections institution or facility.

23 (e) *Any offender sentenced to a state substance abuse treatment fa-*
24 *cility established by the department of corrections shall not be transferred*
25 *to the state reception and diagnostic center but directly to such state*
26 *substance abuse treatment facility.*

27 Sec. 4. K.S.A. 22-3716 and K.S.A. 2007 Supp. 75-5210 and 75-5220
28 are hereby repealed.

29 Sec. 5. This act shall take effect and be in force on and after July 1,
30 2010, and its publication in the statute book.