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HOUSE Substitute for Substitute for SENATE BILL NO. 159

By Committee on Corrections and Juvenile Justice

AN ACT concerning crimes, punishment and criminal procedure; relating to conditions of release; conditions for persons on probation; searches of parolees and persons on postrelease supervision; conditions for sex offenders; amending K.S.A. 2011 Supp. 21-6607 and 22-3717 and repealing the existing sections.

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

Section 1. K.S.A. 2011 Supp. 21-6607 is hereby amended to read as follows: 21-6607.

(a) Except as required by subsection (c), nothing in this section shall be construed to limit the authority of the court to impose or modify any general or specific conditions of probation, suspension of sentence or assignment to a community correctional services program. The court services officer or community correctional services officer may recommend, and the court may order, the imposition of any conditions of probation, suspension of sentence or assignment to a community correctional services program. For crimes committed on or after July 1, 1993, in presumptive nonprison cases, the court services officer or community correctional services officer may recommend, and the court may order, the imposition of any conditions of probation or assignment to a community correctional services program. The court may at any time order the modification of such conditions, after notice to the court services officer or community correctional services officer and an opportunity for such officer to be heard thereon. The court shall cause a copy of any such order to be delivered to the court services officer and the probationer or to the community correctional services officer and the community corrections participant, as the case may be. The provisions of K.S.A. 75-5291, and amendments thereto, shall be applicable to any assignment to a community correctional services program pursuant to this section.

(b) The court may impose any conditions of probation, suspension of sentence or

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court order for reimbursement shall be the amount claimed by appointed counsel on the payment voucher for indigents' defense services or the amount prescribed by the board of indigents' defense services reimbursement tables as provided in K.S.A. 22-4522, and amendments thereto, whichever is less;

(5) be subject to searches of the defendant's person, effects, vehicle, residence and property by a court services officer, a community correctional services officer and any other law enforcement officer based on reasonable suspicion of the defendant violating conditions of probation or criminal activity; and

(6) be subject to random, but reasonable, tests for drug and alcohol consumption as ordered by a court services officer or community correctional services officer.

(d) Any law enforcement officer conducting a search pursuant to subsection (c)(5) shall submit a written report to the appropriate court services officer or community correctional services officer no later than the close of the next business day after such search. The written report shall include the facts leading to such search, the scope of such search and any findings resulting from such search.

(d) (e) There is hereby established in the state treasury the correctional supervision fund. All moneys credited to the correctional supervision fund shall be used for the implementation of and training for use of a statewide, mandatory, standardized risk assessment tool or instrument as specified by the Kansas sentencing commission, pursuant to K.S.A. 75-5291, and amendments thereto, and for evidence-based offender supervision programs by judicial branch personnel. If all expenditures for the program have been paid and moneys remain in the correctional supervision fund for a fiscal year, remaining moneys may be expended from

such deferral by the board shall require the board to state the basis for its findings. If parole is denied for an inmate sentenced for a class A or class B felony or an off-grid felony, the board shall hold another parole hearing for the inmate not later than three years after the denial unless the parole board finds that it is not reasonable to expect that parole would be granted at a hearing if held in the next 10 years or during the interim period of a deferral. In such case, the parole board may defer subsequent parole hearings for up to 10 years but any such deferral shall require the board to state the basis for its findings.

(2) Inmates sentenced for a class A or class B felony who have not had a parole board hearing in the five years prior to July 1, 2010, shall have such inmates' cases reviewed by the parole board on or before July 1, 2012. Such review shall begin with the inmates with the oldest deferral date and progress to the most recent. Such review shall be done utilizing existing resources unless the parole board determines that such resources are insufficient. If the parole board determines that such resources are insufficient, then the provisions of this paragraph are subject to appropriations therefor:

(k) (1) Parolees and persons on postrelease supervision shall be assigned, upon release, to the appropriate level of supervision pursuant to the criteria established by the secretary of corrections.

(2) Parolees and persons on postrelease supervision are, and shall agree in writing to be, subject to search or seizure by a parole officer or a department of corrections enforcement, apprehension and investigation officer, at any time of the day or night, with or without a search warrant and with or without cause. Nothing in this subsection shall be construed to authorize such officers to conduct arbitrary or capricious searches or searches for the sole purpose of

harassment.

(3) Parolees and persons on postrelease supervision are, and shall agree in writing to be, subject to search or seizure by any law enforcement officer based on reasonable suspicion of the person violating conditions of parole or postrelease supervision or reasonable suspicion of criminal activity. Any law enforcement officer who conducts such a search shall submit a written report to the appropriate parole officer no later than the close of the next business day after such search. The written report shall include the facts leading to such search, the scope of such search and any findings resulting from such search.

(1) The ~~Kansas parole prisoner review~~ board shall adopt rules and regulations in accordance with K.S.A. 77-415 *et seq.*, and amendments thereto, not inconsistent with the law and as it may deem proper or necessary, with respect to the conduct of parole hearings, postrelease supervision reviews, revocation hearings, orders of restitution, reimbursement of expenditures by the state board of indigents' defense services and other conditions to be imposed upon parolees or releasees. Whenever an order for parole or postrelease supervision is issued it shall recite the conditions thereof.

(m) Whenever the ~~Kansas parole prisoner review~~ board orders the parole of an inmate or establishes conditions for an inmate placed on postrelease supervision, the board:

(1) Unless it finds compelling circumstances which would render a plan of payment unworkable, shall order as a condition of parole or postrelease supervision that the parolee or the person on postrelease supervision pay any transportation expenses resulting from returning the parolee or the person on postrelease supervision to this state to answer criminal charges or a warrant for a violation of a condition of probation, assignment to a community correctional

services program, parole, conditional release or postrelease supervision;

(2) to the extent practicable, shall order as a condition of parole or postrelease supervision that the parolee or the person on postrelease supervision make progress towards or successfully complete the equivalent of a secondary education if the inmate has not previously completed such educational equivalent and is capable of doing so;

(3) may order that the parolee or person on postrelease supervision perform community or public service work for local governmental agencies, private corporations organized not-for-profit or charitable or social service organizations performing services for the community;

(4) may order the parolee or person on postrelease supervision to pay the administrative fee imposed pursuant to K.S.A. 22-4529, and amendments thereto, unless the board finds compelling circumstances which would render payment unworkable; and

(5) unless it finds compelling circumstances which would render a plan of payment unworkable, shall order that the parolee or person on postrelease supervision reimburse the state for all or part of the expenditures by the state board of indigents' defense services to provide counsel and other defense services to the person. In determining the amount and method of payment of such sum, the ~~parole~~ prisoner review board shall take account of the financial resources of the person and the nature of the burden that the payment of such sum will impose. Such amount shall not exceed the amount claimed by appointed counsel on the payment voucher for indigents' defense services or the amount prescribed by the board of indigents' defense services reimbursement tables as provided in K.S.A. 22-4522, and amendments thereto, whichever is less, minus any previous payments for such services;

(6) shall order that the parolee or person on postrelease supervision agree in writing to be subject to search or seizure by a parole officer or a department of corrections enforcement, apprehension and investigation officer, at any time of the day or night, with or without a search warrant and with or without cause. Nothing in this subsection shall be construed to authorize such officers to conduct arbitrary or capricious searches or searches for the sole purpose of harassment; and

(7) shall order that the parolee or person on postrelease supervision agree in writing to be subject to search or seizure by any law enforcement officer based on reasonable suspicion of the person violating conditions of parole or postrelease supervision or reasonable suspicion of criminal activity.

(n) If the court which sentenced an inmate specified at the time of sentencing the amount and the recipient of any restitution ordered as a condition of parole or postrelease supervision, the ~~Kansas parole prisoner review~~ board shall order as a condition of parole or postrelease supervision that the inmate pay restitution in the amount and manner provided in the journal entry unless the board finds compelling circumstances which would render a plan of restitution unworkable.

(o) Whenever the ~~Kansas parole prisoner review~~ board grants the parole of an inmate, the board, within 14 days of the date of the decision to grant parole, shall give written notice of the decision to the county or district attorney of the county where the inmate was sentenced.

(p) When an inmate is to be released on postrelease supervision, the secretary, within 30 days prior to release, shall provide the county or district attorney of the county where the inmate was sentenced written notice of the release date.

the ~~Kansas parole~~ prisoner review board. When the board orders the parole of an inmate pursuant to this subsection, the board shall order as a condition of parole that the inmate be electronically monitored for the duration of the inmate's natural life.

(v) Whenever the ~~Kansas parole~~ prisoner review board or the court orders a person to be electronically monitored, the board or court shall order the person to reimburse the state for all or part of the cost of such monitoring. In determining the amount and method of payment of such sum, the board or court shall take account of the financial resources of the person and the nature of the burden that the payment of such sum will impose.

(w) (1) On and after July 1, 2012, for any inmate who is a sex offender, as defined in K.S.A. 22-4902, and amendments thereto, whenever the prisoner review board orders the parole of such inmate or establishes conditions for such inmate placed on postrelease supervision, such inmate shall agree in writing to not possess pornographic materials.

(A) As used in this subsection, "pornographic materials" means: Any obscene material or performance depicting sexual conduct, sexual contact or a sexual performance; and any visual depiction of sexually explicit conduct.

(B) As used in this subsection, all other terms have the meanings provided by K.S.A. 2011 Supp. 21-5510, and amendments thereto.

(2) The provisions of this subsection shall be applied retroactively to every sex offender, as defined in K.S.A. 22-4902, and amendments thereto, who is on parole or postrelease supervision on July 1, 2012. The prisoner review board shall obtain the written agreement required by this subsection from such offenders as soon as practicable.

Sec. 3. K.S.A. 2011 Supp. 21-6607 and 22-3717 are hereby repealed.