Kansas Sentencing Commission

Understanding Probation in Kansas: Violations, Revocations, and Extensions Explained

FRANCIS GIVENS, KSSC SPECIAL PROJECTS MANAGER

CHRIS LYON, KSSC STAFF ATTORNEY

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Overview

- Probation Basics
- Sanctions and Revocations
- Other Misc. Issues

Probation Basics

Length of probation

- Probation for misdemeanor cases shall not exceed two years, subject to renewal and extension for additional fixed periods of two years. See K.S.A. 2025 Supp. 21-6608(a).
- Felonies are based off SL and found in K.S.A. 2025 Supp. 21-6608(c)
- SB 123 is 18 months
- With three exceptions, the total period in all cases shall not exceed 60 months or the maximum period of the prison sentence that could be imposed, whichever is longer. K.S.A. 2025 Supp. 21-6608(c).
  - The first exception is that the sentencing court may modify or extend the period of supervision, pursuant to a modification hearing and a judicial finding of necessity, up to a maximum of 5 years or the maximum period of the prison sentence that could be imposed, whichever is longer. K.S.A. 2025 Supp. 21-6608(c)(8).
  - Second, if the defendant is convicted of nonsupport of a child, the period may be extended as long as the responsibility for support continues. K.S.A. 2025 Supp. 21-6608(c)(7).
  - Third, if the defendant is ordered to pay full or partial restitution, the period may be extended as long as the amount of restitution ordered has not been paid. K.S.A. 2025 Supp. 21-6608(c)(7). Other unpaid assessments, such as costs, BIDS fee reimbursements, and lab fees are not restitution, and thus the fact that such may remain unpaid does not justify a probation extension under the statute. *State v. Hoffman*, 45 Kan. App. 2d 272, 246 P.3d 992 (2011).

The extension of probation is not considered a modification of a sentence under Kansas law. *State v. Jackson*, 577 P.3d 631, 637 (Kan. App. August 29, 2025).

MULTIPLE PROBATION SENTENCES

Multiple Probation Sentences in individual cases with multiple nonprison sentences, the nonprison (probation) terms shall not be aggregated or served consecutively. If the underlying prison sentences for a nonprison sentence are ordered to run consecutively and the nonprison term is revoked, the offender will serve the prison terms consecutively. K.S.A. 2024 Supp. 21-6819(b)(8).

The Court of Appeals recently held that a district court does not have the authority to impose consecutive terms of probation on a defendant convicted of multiple felonies in two or more cases handled in a joint sentencing hearing. See *State v. Oathout*, 65 Kan.App.2d 851, 851, 573 P.3d 751 (Kan. App. 2025).

Community Corrections target population

The target population consists of adult offenders convicted of felony offenses who meet one of the following criteria:

(A) Who, on or after July 1, 2014, are determined to be an appropriate risk level as determined by the Kansas sentencing commission by use of a statewide, mandatory, standardized risk assessment tool or instrument which shall be specified by the Kansas sentencing commission;

(B) whose severity level and criminal history score designate a presumptive prison sentence on either sentencing guidelines grid but receive a nonprison sentence as a result of departure;

(C) who have been convicted of an offense which satisfies the definition of offender pursuant to K.S.A. 22-4902, and amendments thereto, and which is classified as a severity level 7 or higher offense and who receive a nonprison sentence, regardless of the manner in which the sentence is imposed;

K.S.A. 2024 Supp. 75-5291(a)(2)

Community Corrections target population continued

(D) for whom a violation of conditions of release or assignment or a nonprison sanction has been established as provided in K.S.A. 22-3716, and amendments thereto, prior to revocation resulting in the offender being required to serve any time for the sentence imposed or which might originally have been imposed in a state facility in the custody of the secretary of corrections;

(E) who have been placed in a community correctional services program as a condition of supervision following the successful completion of a conservation camp program;

(F) who have been sentenced to community corrections supervision pursuant to K.S.A. 21-4729, prior to its repeal, or K.S.A. 2023 Supp. 21-6824, and amendments thereto; or

(G) who have been placed in a community correctional services program for supervision by the court pursuant to K.S.A. 8-1567, and amendments thereto.

KSA 2024 Supp. 75-5291(a)(2)

Revocations and Sanctions

Previous 120/180 day prison sanctions

- No programming in KDOC during this time
- Purely punitive
- 120/180 days eliminated in 2019 through legislation
- Average time violators spent in KDOC on 120/180 day prison sanctions*:
  - 120 day sanctions: 34 days
  - 180 day sanctions: 63 days
  - *source: FY 2019 Kansas Department of Corrections Admissions Data

Can offenders who committed crimes prior to July 1, 2019 be ordered to serve 120/180 day sanctions?

Statutory subsection that authorized a trial court to revoke probation without first imposing intermediate sanctions if probation was originally granted as the result of a dispositional departure did not apply retroactively to defendant whose underlying offenses were committed before the effective date of the subsection. *State v. Coleman*, 311 Kan. 332, 460 P.3d 828 (2020)

Although Coleman addressed the retroactivity of a different amendment to the probation revocation statute, the same reasoning applies here**. The retroactivity language now found in K.S.A. 2019 Supp. 22-3716(c)(10) was enacted and inserted into the statute in 2014 to serve as an effective date for the new intermediate sanctioning scheme that had been enacted in 2013. Because the 2019 version of the sanctioning scheme did not exist at the time the language in subsection (c)(10) was enacted, the language in subsection (c)(10) cannot serve as a clear indication that the Legislature intended the 2019 amendment to operate retroactively.** See *State v. Churchill*, No. 118,821, 2019 WL 1087352, at *4 (Kan. App. 2019) (unpublished opinion) (holding that 2016 amendment to juvenile decay rules in K.S.A. 21-6810 did not apply retroactively despite express language in the statute that prior amendments were intended to apply retroactively). *State v. Dominguez*, 58 Kan. App. 2d 630, 635, 473 P.3d 932, 935–36 (2020)

What options does the court have when an offender has violated their probation?

NON-GRID FELONIES AND MISDEMEANORS

K.S.A. 22-3716(b)(3)(B) Except as otherwise provided, if the original crime of conviction was a misdemeanor or a felony specified in K.S.A. 2019 Supp. 21-6804(i), and amendments thereto, and a violation is established, the court may:

(i) Continue or modify the probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction and **impose confinement in a county jail not to exceed 60 days.** If an offender is serving multiple probation terms concurrently, any confinement periods imposed shall be imposed concurrently;

(ii) impose an intermediate sanction of confinement in a county jail, to be imposed as a **two-day or three-day consecutive period.** The total of all such sanctions imposed pursuant to this subparagraph and subsection (b)(4) shall not exceed 18 total days during the term of supervision, except as provided in subsection (h); or

[Additional 18 days allowed in subsection (h) allowing for 36 days total.]

(iii) revoke the probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction and require the defendant to serve the sentence imposed, or any lesser sentence, and, if imposition of sentence was suspended, may impose any sentence that might originally have been imposed.

No requirement that defendant served previous sanction

On Grid Felonies - Probation Violation Sanctions

(c) (1) Except as otherwise provided, if the original crime of conviction was a felony, other than a felony specified in K.S.A. 21-6804(i), and amendments thereto, and a violation is established, the court may impose the following sanctions:

(A) Continuation or modification of the release conditions of the probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction;

(B) continuation or modification of the release conditions of the probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction and an intermediate sanction of confinement in a county jail to be imposed as a two-day or three-day consecutive period. The total of all such sanctions imposed pursuant to this subparagraph and subsection (b)(4) shall not exceed 18 total days during the term of supervision, except as provided in subsection (h); or

(C) if the violator already had a sanction imposed pursuant to subsection (c)(1)(B) related to the crime for which the original supervision was imposed, revocation of the probation, assignment to a community corrections services program, suspension of sentence or nonprison sanction and requiring such violator to serve the sentence imposed, or any lesser sentence and, if imposition of sentence was suspended, imposition of any sentence that might originally have been imposed.

K.S.A. 22-3716(c)(1)

60 day sanction continued

- ***State v. Chardon***
  - Defendant entitled to jail credit towards underlying PV sanction time (not just underlying sentence) for time in jail awaiting hearing/disposition on the 60 day jail credit.
  - In *Chardon*, where a defendant was in jail for 65 days awaiting disposition of a probation violation, the Court found that the defendant should have been credited the 65 days towards his 60 day sanction because the 60 day sanction is "separate and distinct" from the intermediate sanctions where the legislature made it clear that the sentence cannot be served by prior confinement credit. See *State v. Chardon*, No. 119,464, 2019 WL 3977828 (Kan. App.2019)(unpublished opinion).

60 day sanction continued

- ***State v. Allen***
- 60 day jail sanctions must be served concurrently on multiple cases.
- *In Allen,* a defendant was on probation for two separate cases and was ordered to two 60 day jail sanctions to run consecutively by two different judges, the Court found that the defendant could only be ordered to serve 60 days because the statute is clear that the sanctions must be run concurrently. See *State v. Allen*, 55 Kan. App. 2d 87, 407 P.3d 661 (Kan.App 2017).

Revocation Without Sanction

The court may revoke the probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction of an offender pursuant to subsection (c)(1) without having previously imposed a sanction pursuant to subsection (c)(1) if:

(A) The court finds and sets forth with particularity the reasons for finding that the safety of members of the public will be jeopardized or that the welfare of the offender will not be served by such sanction;

(B) the probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction was originally granted as the result of a dispositional departure granted by the sentencing court pursuant to K.S.A. 21-6815, and amendments thereto;

(C) the offender commits a new felony or misdemeanor while the offender is on probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction; or

(D) the offender absconds from supervision while the offender is on probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction.

K.S.A. 22-3716(c)(7)

REVOCATION WITHOUT PREVIOUS SANCTION

- Public safety/offender welfare
  - K.S.A. 22-3716(c)(7)(A) The court finds and sets forth with particularity the reasons for finding that the safety of members of the public will be jeopardized or that the welfare of the offender will not be served by such sanction;

PUBLIC SAFETY/OFFENDER WELFARE CONTINUED

Implicit comments are not enough. See *State v. Clapp*, 308 Kan. 976, 425 P.3d 605 (2018).

- Referenced prior weapons cases, defendant's dangerous criminal history and dishonesty with ISO
- 60 day jail sanction to be suspended when defendant went to inpatient treatment ordered at original sentencing, sentenced to 180 days prison at first PV hearing, revoked at second PV hearing
- COA upheld revocation and also considered language used at first PV hearing
- The Supreme Court stated, "we discern the district court's remarks to Clapp were akin to the reasoning historically relied upon by district courts in exercising unfettered discretion to revoke probation for any violation and impose an underlying prison sentence." *Id.* at 991.

PUBLIC SAFETY/OFFENDER WELFARE CONTINUED

- Broad statements about continued drug usage and past behavior are likely not enough. See *State v. Duran*, No. 119,303 2019 WL 2554125 (Kan.App. 2019)(unpublished opinion).
- Defendant committed a new crime while on probation
- Judge gave defendant the choice between probation and prison during dual violation/sentencing hearing
- Stated "no tolerance policy" while on probation, defendant would be revoked for any violation
- Defendant tested positive for methamphetamine 3 days after he was released
- Judge revoked him making comments about the offender's welfare/public safety

PUBLIC SAFETY/OFFENDER WELFARE CONTINUED

District Court stated: "I understand your desire not to go to prison. I understand the rationalization that you justify your desire to not go to prison despite your long-term addiction. But I'm going to find that reinstatement of probation is not in your best interest, would not be in your welfare because you are likely to obtain new probation violation matters based on repeat behaviors, as you've already shown in the prior probation warrants. Drug usage, weapon possession. You have the possibility of incurring new charges. Public safety's impacted in a negative way because of the demonstrated history and the, again, possibility that you would have possession and possibly use of weaponry in the future. You would certainly be fueling the drug economy, which is illegal in and of itself." *Id*. at 765.

COA: "…. "if courts are allowed to make an offender welfare finding based on the likelihood that a person addicted to drugs is going to relapse, then (c)(9) would swallow up the graduated sanctions system." Likewise, if courts can make an offender welfare finding because a person might violate his or her probation again, the exception will swallow the rule. And if courts can base their public safety findings on such generalized conclusions that a defendant's continued drug usage fuels the drug economy, all probation revocations for drug usage could result in such a finding and the bypassing of intermediate sanctions." *State v. Duran*, No. 119,303 2019 WL 2554125 (Kan.App. 2019)(unpublished opinion).

PUBLIC SAFETY/OFFENDER WELFARE CONTINUED

State v. Duran, No. 119,303 2019 WL 2554125 (Kan.App. 2019)(unpublished opinion).

"Broad generalizations that equally could apply to all similar cases are not sufficiently particularized to meet the requirements of K.S.A. 2018 Supp. 22-3716(c)(9)(A)." *Id*. at 767.

"A district court's finding under K.S.A. 2018 Supp. 22-3716(c)(9)(A) that the safety of members of the public will be jeopardized or that the welfare of the offender will not be served by imposing intermediate sanctions for a probation violation is not specific enough to bypass intermediate sanctions if an appellate court must infer from the judge's finding the particularized reasons why public safety would be jeopardized or the offender's welfare would not be served." *Id*.

STATE V. MARSHALL, NO. 127,768, 2025 WL 2267356 (KAN. APP. 2025)(UNPUBLISHED OPINION).

- Pled no contest to 2 counts of aggravated sexual battery, dispositional departure to probation (dispositional departure exception not relied on in PV hearing)
- State alleged that Marshall admitted to using illegal drugs multiple times (including within three days of sentencing), missed therapy and treatment appointments, did not report as directed within a week of starting probation, and lost his job. The State further claimed Marshall had not completed the required risk assessment and, to date, had not provided proof of scheduling it.
- At PV hearing, Marshall admitted to most of the violations
- Defendant was revoked with no prior sanction
- COA found that the district court made the necessary particularized findings
- ***Put another way, to bypass intermediate sanctions under K.S.A. 22-3716(c)(7)(A), the district court must identify the relevant factors that are specific to the defendant, describe how these factors jeopardize public safety, and explain why these harms would not be resolved if the defendant were to serve an intermediate sanction.***

STATE V. MARSHALL

- After reviewing the record, we are convinced that the district court made sufficiently particularized findings to justify bypassing intermediate sanctions under K.S.A. 22-3716(c)(7)(A) in this case. The district court first identified factors specific to Marshall and explained how those factors jeopardized public safety. It noted his Level 4A score on the original psychosexual evaluation—reflecting a risk of recidivism twice that of the average individual convicted of a sexually motivated offense. The court observed that Marshall's drug use was "tied into" the commission of his underlying offenses. It then emphasized that Marshall had "disregarded" multiple court orders—he had continued to use drugs and had failed to complete the updated risk assessment, attend treatment and therapy, and report to his probation officer—all measures the court made clear were necessary to "alleviate [its] concerns" about the threat Marshall posed to the public's safety. Finally, relying on the psychologist's expert testimony, the court found that Marshall's noncompliance signaled a higher risk that he would reoffend.

- The court then found that a brief jail sanction would not decrease the likelihood of future harm because Marshall had "no intent to get any help for [these] underlying issues." In the court's view, even if an intermediate sanction were imposed, Marshall would likely continue to delay treatment, persist in his drug use, and remain at risk of reoffending. The court expressly found that "any sanction" short of revocation would not make "any difference."

- *State v. Marshall*, No. 127,768, 2025 WL 2267356 at *3 (Kan. App. 2025)(unpublished opinion).

REVOCATION WITHOUT PREVIOUS SANCTION

New misdemeanor or felony

State v. Williams, No. 112,228, 2015 WL 5613253 (Kan.App.2015)(unpublished opinion)

- Defendant picks up murder charge while on probation
- Bound over at preliminary hearing (first degree murder and criminal possession of firearm)
- At PV hearing, judge took judicial notice that defendant had been bound over & commented that another judge found PC to bind defendant over
- Court commented that he reviewed that hearing and ruling made; found sufficient evidence for violation but didn't state which standard he used
- Defendant revoked
- COA reversed stating, "a district court may not impose a probable cause standard in place of the preponderance of the evidence standard. Since the mere fact that Williams was bound over for trial under the probable cause standard was insufficient evidence to revoke Williams' probation, and it appears the wrong legal standard was employed to determine whether Williams violated his probation, we reverse the district court's order revoking probation and remand the matter for a new probation revocation hearing." *Id. at* *8.

REVOCATION WITHOUT PREVIOUS SANCTION

Absconding

K.S.A. 22-3716(c)(7)(D) Offender absconds from supervision while offender is on probation assignment to a community correctional services program, suspension of sentence or nonprison sanction

Absconding defined in *State v. Dooley*

"the State must show, and the district court must find, that the probation violator engaged in some course of action (or inaction) with the conscious intent to hide from or otherwise evade the legal process, such as intentionally avoiding probation supervision by hiding within or secretly leaving the jurisdiction." State v. Dooley, 308 Kan. 641, 423 P.3d 469 (2018).

ABSCONDING CONTINUED

Dooley Court goes on to say:

"Evading the legal process of the court includes the offender's conduct in intentionally avoiding probation supervision, for example, by intentionally avoiding detection by one's probation officer. In determining whether an offender has "abscond[ed] from supervision," district courts must consider whether the offender's "acts show the intent that inheres in the definitions of 'abscond'—not simply that the [offender] failed to attend one meeting with a probation officer or could not be located for a brief period of time, but that the [offender] sought to 'evade the legal process of a court by hiding within or secretly leaving the jurisdiction.' " 345 Or. at 36, 188 P.3d 262 (quoting Webster's Third New Int'l Dictionary 6)." Id. at 480.

ABSCONDING CONTINUED

Dooley applied in *State v. Walker*

Defendant was on probation and parole in Kansas

A year of non-reporting, went to Texas without notifying P.O., record not clear how he returned to KS or how long he was in TX

Revoked as an absconder and new misdemeanor in district court (box checked on J.E.)

COA stated:

"There were no facts before the district court to conclude Walker absconded from supervision because **no evidence suggested he was hiding within or secretly leaving the jurisdiction to evade legal process**. No one testified about Walker's whereabouts during his nearly year-long nonreporting period. The affidavits filed with the district court show Walker did not notify his ISO he was leaving Kansas until he was already in Texas in July 2016. However, the affidavits are silent about whether Walker left Kansas to evade legal process." *State v. Walker*, No. 118,411, 2018 WL 6005242 (Kan.App. 2018) (unpublished opinion).

→Court noted that no one testified about defendant's whereabouts

→Make a clear record of offender's whereabouts and why it is believed the offender has absconded.

ABSCONDING CONTINUED

- State v. Oatis
- Defendant reported to P.O. once; provided a local KS address and phone number
- Oatis tried to call P.O. twice in 2012, but no caller ID; P.O called the number he had been given with no response
- P.O. learned that Oatis was living in Illinois & had been charged with crimes there
- At violation hearing in 2018, Oatis was revoked as an absconder
- COA stated:
- "The evidence shows that after two phone calls, Oatis left the state and did not try to contact the CSO. Then for over five years, Oatis made no attempt to contact his probation officer. He purposely chose to evade the legal process of the district court by secretly leaving the jurisdiction." State v. Oatis, No. 120,014, 2019 WL 4230102 at *3 (Kan.App. 2019) (unpublished opinion).
- "Based on the evidence, a reasonable person could conclude that Oatis did more than just fail to report. See State v. Anhorn, No. 111,903, 2015 WL 3632493, at *3 (Kan. App. 2015) (unpublished opinion) (failing to report for three months, leaving the state without telling the probation officer or providing a forwarding address, and being arrested out of state provides substantial evidence that a probationer departed secretly and thus absconded using the Huckey standard). Oatis' secret move to Illinois and his consistent flouting of the conditions of his probation for over five years show his intent to evade the legal process." Id. at *4.

PV Sanctions – hearing waived

- (4) Except as otherwise provided, if the defendant waives the right to a hearing, the following sanctions may be imposed without further order of the court:
- (A) If the defendant was on probation at the time of the violation, the defendant's supervising court services officer, with the concurrence of the chief court services officer, may impose an intermediate sanction of confinement in a county jail, to be imposed as a two-day or three-day consecutive period. The total of all such sanctions imposed pursuant to this subparagraph and subsections (b)(4)(B) and (c)(1)(B) shall not exceed 18 total days during the term of supervision, except as provided in subsection (h); and
- (B) if the defendant was assigned to a community correctional services program at the time of the violation, the defendant's community corrections officer, with the concurrence of the community corrections director, may impose an intermediate sanction of confinement in a county jail, to be imposed as a two-day or three-day consecutive period. The total of all such sanctions imposed pursuant to this subparagraph and subsections (b)(4)(A) and (c)(1)(B) shall not exceed 18 total days during the term of supervision, except as provided in subsection (h).

K.S.A. 22-3716(b)(4)

State v. McRoberts, No. 127,120, 2025 WL 942369 (Kan. App. March 28, 2025).

- McRoberts initially entered diversion; diversion revoked & defendant placed on probation
- While on probation, her PO imposed a two-day jail sanction (no court hearing)
- A few months later, with no other sanctions, state moved to revoke probation
- 31 different probation violations mentioned in motion
- Defendant's probation is revoked & she's sent to prison
- Note: Defendant committed traffic misdemeanors while on probation, however, judge specifically stated that this was not the reason for revocation, but rather the quick dip was the reason
- Defendant appealed arguing that the judge could not legally revoke her probation because the court needed to impose a quick dip, not PO

State v. McRoberts, No. 127,120, 2025 WL 942369 (Kan. App. March 28, 2025).

- At revocation hearing, McRoberts stipulated she committed misdemeanors on probation, yet the district court judge did not cite the "new crime exception" in K.S.A. 22-3716(c)(7)(C) at the hearing.
- COA states that this implicit finding has been enough to revoke on the exception in the past, however, judge here made it clear that he was not using the exception to revoke.
- A sanction imposed under subparagraph (c)(1)(B) (by the court) is distinct from a sanction imposed under subsection (b)(4) (by the probation officer).
- K.S.A. 2021 Supp. 22-3716(c)(1)(C) permits a court to revoke if "the violator already had a sanction imposed pursuant to subsection (c)(1)(B)." And (c)(1)(B) speaks only to sanctions that "the court may impose.“
- COA held that a prior two- or three-day jail sanction imposed by a probation officer under K.S.A. 2021 Supp. 22-3716(b)(4)(A) cannot satisfy the requirement that such a jail sanction be "imposed pursuant to subsection (c)(1)(B)" before the district court can revoke probation under K.S.A. 2021 Supp. 22-3716(c)(1)(C).

State v. Inchaurigo

- On probation for 2 cases which were his 7th and 8th DUI convictions
- First Violation hearing
  - Allegations that he failed to report to community corrections, admitted to drinking alcohol and failed to contact his ISO
  - Parties agreed to 60-day jail sanction followed by 90 days of electronic alcohol monitoring
  - Defendant was released early from the 60-day jail sanction to go to inpatient treatment
- Second violation hearing one month later
  - Allegations that he failed to report to community corrections for random UA, a day later he had a BAC of .327 and admitted to drinking alcohol
  - State asked for revocation and defense asked for another 60-day jail sanction
  - Defendant's probation was revoked
  - District court noted that it was worried defendant would kill somebody and said he didn't know anything else that would work

See *State v. Inchaurigo*, Nos. 125,329, 125,330, 2023 WL 8295259 (Kan. App. December 1, 2023)(unpublished opinion).

- The parties agree that the 60-day jail sanction at the first hearing was not appropriate (should have given 2-3-day sanction first)
  - 60-day sanction was not permitted for people serving probation for felony DUI
    - If the original crime of conviction was a felony, except for violations of K.S.A. 8-1567 or 8-2,144, and amendments thereto, and the court makes a finding that the offender has committed one or more violations of the release conditions of the probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction, the court may impose confinement in a county jail not to exceed 60 days upon each such finding. Such confinement is separate and distinct from the violation sanctions provided in subsection (c)(1) and shall not be imposed at the same time as any such violation sanction. K.S.A. 2023 Supp. 22-3716(c)(9).
- Main issue on appeal is if the district court could revoke without imposing 2-3-day sanction
  - State argued that the public safety exception applies here
  - COA found that the district court did not make particularized findings but instead made general statements about his experience in serving on the bench and experience with DUI cases. The judge expressed concern that someday a repeat DUI offender on probation was going to kill someone. And the judge indicated that, in his experience, many people did not successfully complete treatment for alcohol abuse. But the judge did not specifically reference public safety or Inchaurigo's welfare or analyze whether either would be served by imposing an intermediate sanction in Inchaurigo's case.
- Case remanded for new dispositional hearing.

See State v. Inchaurigo, Nos. 125,329, 125,330, 2023 WL 8295259 (Kan. App. December 1, 2023)(unpublished opinion).

PROBATION REVOCATION CONT'D.

Sentenced to probation in current case

- After he was sentenced, he was detained in a different county for a separate case
- Before he was released, the state moved to revoke his probation for failure to report and failure to pay costs and restitution

At sentencing, defendant not directed to report to probation or pay while he was incarcerated. Nonetheless, district court revoked probation

District court lacked substantial competent evidence in its decision to revoke

See *State v. Romero Jr.*, No. 125,281, 2024 WL 504066 (Kan. App. February 9, 2024)(unpublished opinion).

State v. Romero Jr. Cont'd.

"At sentencing, the district court ordered Romero's probation to begin immediately and stated that he would be released from jail that afternoon. The prosecutor then noted to the court that there may be a "hold" on Romero due to the pending charges in Sedgwick County and that "if he does [have a hold], he's gonna have to go back to Sedgwick County" Jail. The court then explained to Romero that it would have a court services officer (CSO) "come up and visit with you now, and give you a date and time to come up and report on probation. Now, if you're in custody on that date, you need to make sure that gets communicated over here. Otherwise, it will show up as a failure to report." Romero replied, "Okay." *State v. Romero Jr.*, No. 125,281, 2024 WL 504066 at *1(Kan. App. February 9, 2024)(unpublished opinion).

- Ordered to report as directed
- No evidence that CSO spoke to or contacted defendant after sentencing hearing
- Defendant's wife called CSO and told CSO defendant was in custody; CSO told wife that defendant needed to contact them upon release

State v. Romero Jr. Cont'd.

"At the time of Romero's sentencing, the district court knew he was likely to be detained in a separate matter and directed Romero to report to the CSO for his probation after his release from custody in that separate case. The CSO knew he was incarcerated, and Romero followed directions to have his family keep the CSO notified of his continued incarceration. Despite the clear directions to report after his release from custody, the State sought to revoke Romero's probation prior to his release from custody—the condition precedent to the terms and conditions of his probation. Romero had no instructions to report or make restitution payments while incarcerated in the separate case. The district court abused its discretion in revoking and reinstating Romero's probation because it lacked substantial competent evidence supporting the allegations that Romero violated the terms and conditions of his probation.

The district court's revocation and reinstatement is reversed and remanded with directions to reinstate Romero's original probation, determine if Romero has completed the terms and conditions of the original probation, and enter any further orders that may be necessary and consistent with this opinion." *Id*. at *7.

Early Release

In addition to the provisions of subsection (a), a defendant who has a risk assessment of low risk, has paid all restitution and has been compliant with the terms of probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction for a period of 12 months shall be eligible for discharge from such period of supervision by the court. The court shall grant such discharge unless the court finds by clear and convincing evidence that denial of such discharge will serve community safety interests. K.S.A. 21-6608(d).

SB 123

Discharge from SB 123/SB 123+

- K.S.A. 21-6824(f)(1) Offenders in drug abuse treatment programs shall be discharged from such program if the offender:
  - (A) Is convicted of a new felony; or
  - (B) has a pattern of intentional conduct that demonstrates the offender's refusal to comply with or participate in the treatment program, as established by judicial finding.

In a case where the defendant was revoked from probation after he failed to participate in the required drug treatment program under SB 123, the COA found that the defendant was still entitled to the sanction structure as set forth in K.S.A. 22-3716 even though his conduct also fell under K.S.A. 21-6604(n)(2). *State v. Schmidt*, Nos. 128,219, 128,220, 2025 WL 1602560 at *2 (Kan. App. June 6, 2025)(unpublished opinion) review denied (Sept. 9, 2025).

Can an offender qualify for SB 123 treatment after being revoked from RAFT?

Nothing in case law….yet

However, because the offender will fall into grid blocks 5-C-5-I of the sentencing guidelines, then the plain language of K.S.A. 21-6824 mandates SB123 drug treatment if offender qualifies. ***Offender would still need to meet the risk/needs criteria.***

Other FAQ

30 day grace period

K.S.A. 22-3617(e) The court shall have 30 days following the date probation, assignment to a community correctional service program, suspension of sentence or a nonprison sanction was to end to issue a warrant for the arrest or notice to appear for the defendant to answer a charge of a violation of the conditions of probation, assignment to a community correctional service program, suspension of sentence or a nonprison sanction.

Which PVJE should be used?

QUESTIONS?

KSSC RESOURCES

Training

- Francis.givens@ks.gov

Questions

- KSSCAttorney@ks.gov

KSSC Website