

PROBATION

ABA STANDARD

PART I. GENERAL PRINCIPLES

1.1 NATURE OF SENTENCE TO PROBATION.

(a) THE LEGISLATURE SHOULD AUTHORIZE THE SENTENCING COURT IN EVERY CASE TO IMPOSE A SENTENCE OF PROBATION. EXCEPTIONS TO THIS PRINCIPLE ARE NOT FAVORED AND, IF MADE, SHOULD BE LIMITED TO THE MOST SERIOUS OFFENSES.

KANSAS CODE

Whenever any person has been found guilty of a crime upon verdict or plea and a sentence of death is not imposed, the court may adjudge any of the following:

... (c) Release the defendant on probation...
(K.S.A. 1971 Supp. 21-4603(1)(c)).

COMMENT

The Kansas code is in conformity with the Standard. The granting of probation is exclusively a function of the trial court. (State v. Benson, 207 Kan. 453, 485 P2d 1266 (1971)).

ABA STANDARD

(b) IN THIS REPORT THE TERM "PROBATION" MEANS A SENTENCE NOT INVOLVING CONFINEMENT WHICH IMPOSES CONDITIONS AND RETAINS AUTHORITY IN THE SENTENCING COURT TO MODIFY THE CONDITIONS OF THE SENTENCE OR TO RESENTENCE THE OFFENDER IF HE VIOLATES THE CONDITIONS. SUCH A SENTENCE SHOULD NOT INVOLVE OR REQUIRE SUSPENSION OF THE IMPOSITION OR THE EXECUTION OF ANY OTHER SENTENCE.

KANSAS CODE

"Probation" is a procedure under which a defendant, found guilty of a crime upon

verdict or plea, is released by the court after imposition of sentence, without imprisonment subject to conditions imposed by the court and subject to the supervision of the probation service of the state, county or court; (K.S.A. 1971 Supp. 21-4602(3)).

COMMENT

Although framed in somewhat more limited language, the Kansas code is in line with the Standard. While the Standard appears to allow a sentence to probation without the imposition of a sentence, the Kansas provision requires the imposition of a sentence.

ABA STANDARD

(c) UPON A SENTENCE TO PROBATION, THE COURT SHOULD NOT BE REQUIRED TO ATTACH A CONDITION OF SUPERVISION BY THE PROBATION DEPARTMENT IF IN ITS JUDGMENT SUPERVISION IS NOT APPROPRIATE FOR THE PARTICULAR CASE.

KANSAS CODE

...In releasing a defendant on probation the court shall direct that he be under the supervision of the state board of probation and parole or the probation or parole officer of the court or county... (K.S.A. 1971 Supp. 21-4603).

COMMENT

The Kansas code is not in conformity with the Standard as it requires that the court place the defendant under supervision.

ABA STANDARD

(d) THE COURT SHOULD SPECIFY AT THE TIME OF SENTENCING THE LENGTH OF ANY TERM DURING WHICH THE DEFENDANT IS TO BE SUPERVISED AND DURING WHICH THE COURT WILL RETAIN POWER TO REVOKE THE SENTENCE FOR THE VIOLATION OF SPECIFIED CONDITIONS. NEITHER SUPERVISION NOR THE POWER TO REVOKE SHOULD BE PERMITTED TO EXTEND BEYOND A LEGISLATIVELY FIXED TIME, WHICH SHOULD IN NO EVENT EXCEED TWO YEARS FOR A MISDEMEANOR OR FIVE YEARS FOR A FELONY.

KANSAS CODE

The period of suspension of sentence or probation fixed by the court shall not exceed five (5) years in felony cases or two (2) years in misdemeanor cases, subject to renewal and extension for additional fixed periods not exceeding five (5) years in felony cases, nor two (2) years in misdemeanor cases, but in no event shall the total period of probation or suspension of sentence for a felony exceed the maximum term provided by law for the crime, except that where the defendant is convicted of nonsupport of a child, the period may be continued as long as the responsibility for support continues... (K.S.A. 1971 Supp. 21-4611).

COMMENT

The Kansas code conforms with the Standard except that the term of probation may be extended for additional fixed periods.

ABA STANDARD

(e) A SENTENCE TO PROBATION SHOULD BE TREATED AS A FINAL JUDGMENT FOR PURPOSES OF APPEAL AND SIMILAR PROCEDURAL PURPOSES.

KANSAS CODE

No comparable code provision. But see, Criminal Appeals and K.S.A. 1971 Supp. 22-3608 on the time for appeals.

COMMENT

Kansas conforms with the Standard.

ABA STANDARD

(f) UPON REVOCATION OF PROBATION THE COURT SHOULD HAVE AVAILABLE THE SAME SENTENCING ALTERNATIVES THAT WERE AVAILABLE AT THE TIME OF INITIAL SENTENCING. THE COURT SHOULD NOT FORECLOSE ANY OF THESE ALTERNATIVES BEFORE REVOCATION.

KANSAS CODE

...If the violation is established, the court may continue or revoke the probation or suspension of sentence, and may require the defendant to serve the sentence imposed, or any lesser sentence, and, if imposition of sentence was suspended, may impose any sentence which might originally have been imposed. (K.S.A. 1971 Supp. 22-3716(2)).

COMMENT

The Kansas code is in conformity with this Standard.

ABA STANDARD

1.2 DESIRABILITY OF PROBATION.

PROBATION IS A DESIRABLE DISPOSITION IN APPROPRIATE CASES BECAUSE:

- (i) IT MAXIMIZES THE LIBERTY OF THE INDIVIDUAL WHILE AT THE SAME TIME VINDICATING THE AUTHORITY OF THE LAW AND EFFECTIVELY PROTECTING THE PUBLIC FROM FURTHER VIOLATIONS OF THE LAW;
- (ii) IT AFFIRMATIVELY PROMOTES THE REHABILITATION OF THE OFFENDER BY CONTINUING NORMAL COMMUNITY CONTACTS;
- (iii) IT AVOIDS THE NEGATIVE AND FREQUENTLY STULTIFYING EFFECTS OF CONFINEMENT WHICH OFTEN SEVERELY AND UNNECESSARILY COMPLICATE THE REINTEGRATION OF THE OFFENDER INTO THE COMMUNITY;
- (iv) IT GREATLY REDUCES THE FINANCIAL COSTS TO THE PUBLIC TREASURY OF AN EFFECTIVE CORRECTIONAL SYSTEM;
- (v) IT MINIMIZES THE IMPACT OF THE CONVICTION UPON INNOCENT DEPENDENTS OF THE OFFENDER.

KANSAS CODE

This article shall be liberally construed to the end that persons convicted of crime shall be dealt with in accordance with their individual characteristics, circumstances, needs, and potentialities as revealed by case studies; that dangerous offenders shall be correctively treated in custody for long terms as needed; and that other offenders shall be dealt with by probation, suspended sentence, or fine whenever such disposition appears practicable and not detrimental to the needs of public safety and the welfare of the

offender, or shall be committed for at least a minimum term within the limits provided by law. (K.S.A. 1971 Supp. 21-4601).

COMMENT

Kansas statutes and case law are in conformity with the policy declaration of the Standard. In Yates v. U.S., 308 F.2d 737 (10th Cir. 1962), it was said:

"The basic purpose of probation is to provide an individualized program offering a young or unhardened offender an opportunity to rehabilitate himself without institutional confinement under tutelage of a probation official and under continuing power of court to impose institutional punishment for original offense if he abuses this opportunity."

ABA STANDARD

1.3 CRITERIA FOR GRANTING PROBATION.

(a) THE PROBATION DECISION SHOULD NOT TURN UPON GENERALIZATIONS ABOUT TYPES OF OFFENSES OR THE EXISTENCE OF A PRIOR CRIMINAL RECORD, BUT SHOULD BE ROOTED IN THE FACTS AND CIRCUMSTANCES OF EACH CASE. THE COURT SHOULD CONSIDER THE NATURE AND CIRCUMSTANCES OF THE CRIME, THE HISTORY AND CHARACTER OF THE OFFENDER, AND AVAILABLE INSTITUTIONAL AND COMMUNITY RESOURCES. PROBATION SHOULD BE THE SENTENCE UNLESS THE SENTENCING COURT FINDS THAT:

(i) CONFINEMENT IS NECESSARY TO PROTECT THE PUBLIC FROM FURTHER CRIMINAL ACTIVITY BY THE OFFENDER; OR

(ii) THE OFFENDER IS IN NEED OF CORRECTIONAL TREATMENT WHICH CAN MOST EFFECTIVELY BE PROVIDED IF HE IS CONFINED; OR

(iii) IT WOULD UNDULY DEPRECIATE THE SERIOUSNESS OF THE OFFENSE IF A SENTENCE OF PROBATION WERE IMPOSED.

(b) WHETHER THE DEFENDANT PLEADS GUILTY, PLEADS NOT GUILTY OR INTENDS TO APPEAL IS NOT RELEVANT TO THE ISSUE OF WHETHER PROBATION IS AN APPROPRIATE SENTENCE.

KANSAS CODE

See K.S.A. 1971 Supp. 21-4601 cited at 1.2 supra and K.S.A. 1971 Supp. 21-4604 at 1.4 infra.

COMMENT

Kansas is in conformity with the Standard.

ABA STANDARD

PART II. THE PRESENTENCE REPORT

2.1 AVAILABILITY AND USE.

(a) ALL COURTS TRYING CRIMINAL CASES SHOULD BE SUPPLIED WITH THE RESOURCES AND SUPPORTING STAFF TO PERMIT A PRESENTENCE INVESTIGATION AND A WRITTEN REPORT OF ITS RESULTS IN EVERY CASE.

(b) THE COURT SHOULD EXPLICITLY BE AUTHORIZED BY STATUTE TO CALL FOR SUCH AN INVESTIGATION AND REPORT IN EVERY CASE. THE STATUTE SHOULD ALSO PROVIDE THAT SUCH AN INVESTIGATION AND REPORT SHOULD BE MADE IN EVERY CASE WHERE INCARCERATION FOR ONE YEAR OR MORE IS A POSSIBLE DISPOSITION, WHERE THE DEFENDANT IS LESS THAN 21 YEARS OLD, OR WHERE THE DEFENDANT IS A FIRST OFFENDER, UNLESS THE COURT SPECIFICALLY ORDERS TO THE CONTRARY IN A PARTICULAR CASE.

KANSAS CODE

Whenever a defendant is convicted of a crime or offense, the court before whom the conviction is had may request a presentence investigation by a probation officer. Whenever an investigation is requested, the probation officer shall promptly inquire into the circumstances of the offense; the attitude of the complainant or victim, and of the victim's immediate family, where possible, in cases of homicide; and the criminal record, social history, and present condition of the defendant. All local and state police agencies shall furnish to the probation officer such criminal records as the probation officer may request. Where in the opinion of the court it is desirable, the investigation shall include a physical and mental examination of the defendant. If a defendant is committed to any institution, the investigating agency shall send a report of its investigation to the institution at the time of commitment. (K.S.A. 1971 Supp. 21-4604).

The judge shall make the presentence report, any report that may be received from the diagnostic center, and other diagnostic reports, available to

the attorney for the state and to the counsel for the defendant when requested by them, or either of them. Such reports shall be part of the record but shall be sealed and opened only on order of the court.

If a defendant is committed to a state institution such reports shall be sent to the director of penal institutions. (K.S.A. 1971 Supp. 21-4605).

COMMENT

Kansas is in substantial conformity with the Standard. The Kansas statute makes the requesting of a presentence report optional with the court. (State v. Johnson, 201 Kan. 126, 439 P2d 86 (1968)).

ABA STANDARD

2.2 PURPOSE OF REPORT

THE PRIMARY PURPOSE OF THE PRESENTENCE REPORT IS TO PROVIDE THE SENTENCING COURT WITH SUCCINCT AND PRECISE INFORMATION UPON WHICH TO BASE A RATIONAL SENTENCING DECISION. POTENTIAL USE OF THE REPORT BY OTHER AGENCIES IN THE CORRECTIONAL PROCESS SHOULD BE RECOGNIZED AS A FACTOR IN DETERMINING THE CONTENT AND LENGTH OF THE REPORT, BUT SHOULD BE SUBORDINATED TO ITS PRIMARY PURPOSE. WHERE THE PRESENTENCE INVESTIGATION DISCLOSES INFORMATION USEFUL TO OTHER CORRECTIONAL AGENCIES, METHODS SHOULD BE DEVELOPED TO ASSURE THAT THIS DATA IS MADE AVAILABLE FOR THEIR USE.

KANSAS CODE

See K.S.A. 1971 Supp. 21-4604 and 21-4605 cited at 2.1 supra.

COMMENT

The Kansas code is in conformity with the Standard.

ABA STANDARD

2.3 CONTENT, SCOPE AND LENGTH OF REPORT.

PRESENTENCE REPORTS SHOULD BE FLEXIBLE IN FORMAT, REFLECTING DIFFERENCES IN THE BACKGROUND OF DIFFERENT OFFENDERS AND MAKING THE BEST USE OF AVAILABLE RESOURCES AND PROBATION DEPARTMENT CAPABILITIES. EACH PROBATION DEPARTMENT SHOULD DEVELOP GRADATIONS OF REPORTS BETWEEN:

(i) A SHORT-FORM REPORT FOR PRIMARY USE IN SCREENING OFFENDERS IN ORDER TO ASSIST IN A DETERMINATION OF WHEN ADDITIONAL AND MORE COMPLETE INFORMATION IS DESIRABLE. SHORT-FORM REPORTS COULD ALSO BE USEFUL IN COURTS WHICH DO NOT HAVE ADEQUATE PROBATION SERVICES;

(ii) A FULL REPORT, WHICH NORMALLY SHOULD CONTAIN THE FOLLOWING ITEMS:

(A) A COMPLETE DESCRIPTION OF THE OFFENSE AND THE CIRCUMSTANCES SURROUNDING IT, NOT LIMITED TO ASPECTS DEVELOPED FOR THE RECORD AS PART OF THE DETERMINATION OF GUILTY;

(B) A FULL DESCRIPTION OF ANY PRIOR CRIMINAL RECORD OF THE OFFENDER;

(C) A DESCRIPTION OF THE EDUCATIONAL BACKGROUND OF THE OFFENDER;

(D) A DESCRIPTION OF THE EMPLOYMENT BACKGROUND OF THE OFFENDER, INCLUDING ANY MILITARY RECORD AND INCLUDING HIS PRESENT EMPLOYMENT STATUS AND CAPABILITIES;

(E) THE SOCIAL HISTORY OF THE OFFENDER, INCLUDING FAMILY RELATIONSHIPS, MARITAL STATUS, INTERESTS AND ACTIVITIES, RESIDENCE HISTORY, AND RELIGIOUS AFFILIATIONS;

(F) THE OFFENDER'S MEDICAL HISTORY AND, IF DESIRABLE, A PSYCHOLOGICAL OR PSYCHIATRIC REPORT;

(G) INFORMATION ABOUT ENVIRONMENTS TO WHICH THE OFFENDER MIGHT RETURN OR TO WHICH HE COULD BE SENT SHOULD PROBATION BE GRANTED;

(H) SUPPLEMENTARY REPORTS FROM CLINICS, INSTITUTIONS AND OTHER SOCIAL AGENCIES WITH WHICH THE OFFENDER HAS BEEN INVOLVED;

(I) INFORMATION ABOUT SPECIAL RESOURCES WHICH MIGHT BE AVAILABLE TO ASSIST THE OFFENDER, SUCH AS TREATMENT CENTERS, RESIDENTIAL FACILITIES, VOCATIONAL TRAINING SERVICES, SPECIAL EDUCATIONAL FACILITIES, REHABILITATIVE PROGRAMS OF VARIOUS INSTITUTIONS TO WHICH THE OFFENDER MIGHT BE COMMITTED, SPECIAL PROGRAMS IN THE PROBATION DEPARTMENT, AND OTHER SIMILAR PROGRAMS WHICH ARE PARTICULARLY RELEVANT TO THE OFFENDER'S SITUATION;

(J) A SUMMARY OF THE MOST SIGNIFICANT ASPECTS OF THE REPORT INCLUDING SPECIFIC RECOMMENDATIONS AS TO THE SENTENCE IF THE SENTENCING COURT HAS SO REQUESTED.

A SPECIAL EFFORT SHOULD BE MADE IN THE PREPARATION OF PRESENTENCE REPORTS NOT TO BURDEN THE COURT WITH IRRELEVANT AND UNCONNECTED DETAILS.

KANSAS CODE

See K.S.A. 1971 Supp. 21-4604 cited supra at 2.1.

COMMENT

The Kansas code follows in a somewhat limited fashion the broad scope of the Standard, but the Kansas statute, as implemented by administrative directives, probably effects the same result as to the thoroughness of the presentence report.

ABA STANDARD

2.4 WHEN PREPARED.

(a) EXCEPT AS AUTHORIZED IN SUBSECTION (b), THE PRESENTENCE INVESTIGATION SHOULD NOT BE INITIATED UNTIL THERE HAS BEEN AN ADJUDICATION OF GUILT.

(b) IT IS APPROPRIATE TO COMMENCE THE PRESENTENCE INVESTIGATION PRIOR TO AN ADJUDICATION OF GUILT ONLY IF:

(i) THE DEFENDANT, WITH THE ADVICE OF COUNSEL IF HE SO DESIRES, HAS CONSENTED TO SUCH ACTION; AND

(ii) ADEQUATE PRECAUTIONS ARE TAKEN TO ASSURE THAT NOTHING DISCLOSED BY THE PRESENTENCE INVESTIGATION COMES TO THE ATTENTION OF THE PROSECUTION, THE COURT, OR THE JURY PRIOR TO AN ADJUDICATION OF GUILT. THE COURT SHOULD BE AUTHORIZED, HOWEVER, TO EXAMINE THE REPORT PRIOR TO THE ENTRY OF A PLEA ON REQUEST OF THE DEFENSE AND PROSECUTION.

KANSAS CODE

See K.S.A. 1971 Supp. 21-4604 cited at 2.1 supra.

COMMENT

The Kansas code conforms with the Standard.

ABA STANDARD

2.5 AVAILABILITY OF REPORT; CHALLENGE OF ITS CONTENTS.

STANDARDS DEALING WITH THE DISCLOSURE OF THE PRESENTENCE REPORT AND THE RESOLUTION OF CONTROVERSY AS TO ITS ACCURACY ARE DEVELOPED IN THE SEPARATE REPORT OF THIS ADVISORY COMMITTEE ON SENTENCING ALTERNATIVES AND PROCEDURES.

KANSAS CODE

See K.S.A. 1971 Supp. 21-4605 at 2.1 supra.

COMMENT

See Sentencing Alternatives and Procedures.

ABA STANDARD

PART III. CONDITIONS OF PROBATION

3.1 IMPOSITION AND IMPLEMENTATION OF CONDITIONS.

(a) ALL CONDITIONS OF PROBATION SHOULD BE PRESCRIBED BY THE SENTENCING COURT AND PRESENTED TO THE PROBATIONER IN WRITING. THEIR PURPOSE AND SCOPE AND THE POSSIBLE CONSEQUENCE OF ANY VIOLATIONS SHOULD BE EXPLAINED TO HIM BY THE SENTENCING COURT OR AT AN EARLY CONFERENCE WITH A PROBATION OFFICER.

(b) PROBATION OFFICERS MUST HAVE AUTHORITY TO IMPLEMENT JUDICIALLY PRESCRIBED CONDITIONS: BUT THE CONDITIONS SHOULD BE SUFFICIENTLY PRECISE SO THAT PROBATION OFFICERS DO NOT IN FACT ESTABLISH THEM.

(c) THE PROBATIONER SHOULD HAVE THE RIGHT TO APPLY TO THE SENTENCING COURT FOR A CLARIFICATION OR CHANGE OF CONDITIONS.

KANSAS CODE

The Kansas adult authority may adopt general rules or regulations concerning the conditions of probation or suspension of sentence. The conditions shall apply in the absence of any inconsistent conditions imposed by the court. Nothing herein contained shall limit the authority of the court to impose or modify any general or specific conditions of probation or suspension of sentence.

The probation officer may recommend and by order duly entered by the court may impose and at any time may modify any conditions of probation or suspension of sentence. Due notice shall be given to the probation officer before any such conditions are modified and he shall be given an opportunity to be heard thereon. The court shall cause a copy of any such order to be delivered to the probation officer and the probationer.

The court may include among the conditions of probation the following and any other that it deems proper:

The defendant shall

- (a) Avoid injurious or vicious habits;
- (b) Avoid persons or places of disreputable or harmful character;
- (c) Report to the probation officer as directed;
- (d) Permit the probation officer to visit him at his home or elsewhere;
- (e) Work faithfully at suitable employment insofar as possible;
- (f) Remain within a specified area;
- (g) Pay a fine or costs, applicable to the offense, in one or several sums as directed by the court;
- (h) Make reparation or restitution to the aggrieved party for the damage or loss caused by his offense in an amount to be determined by the court;
- (i) Support his dependents;

- (j) Obey the laws of the United States, the state of Kansas or any other jurisdiction to whose laws he may be subject. (K.S.A. 21-4610 (1974)).

Probation and parole officers shall investigate all persons referred to them for investigation by the secretary or by any court in which they are authorized to serve. They shall furnish to each person released under their supervision a written statement of the conditions of probation or parole and shall instruct him regarding these conditions. They shall keep informed of his conduct and condition and use all suitable methods to aid and encourage him and to bring about improvement in his conduct and condition. Probation and parole officers shall keep detailed records of their work; and shall make such reports in writing and perform such other duties as may be incidental to those above enumerated as the court or secretary may require. They shall coordinate their work with that of social welfare agencies. (K.S.A. 1974 Supp. 75-5216).

COMMENT

The Kansas code complies substantially with the Standard.

ABA STANDARD

3.2 NATURE AND DETERMINATION OF CONDITIONS.

(a) IT SHOULD BE A CONDITION OF EVERY SENTENCE TO PROBATION THAT THE PROBATIONER LEAD A LAW-ABIDING LIFE DURING THE PERIOD OF HIS PROBATION. NO OTHER CONDITIONS SHOULD BE REQUIRED BY STATUTE; BUT THE SENTENCING COURT SHOULD BE AUTHORIZED TO PRESCRIBE ADDITIONAL CONDITIONS TO FIT THE CIRCUMSTANCES OF EACH CASE. DEVELOPMENT OF STANDARD CONDITIONS AS A GUIDE TO SENTENCING COURTS IS APPROPRIATE SO LONG AS SUCH CONDITIONS ARE NOT ROUTINELY IMPOSED.

(b) CONDITIONS IMPOSED BY THE COURT SHOULD BE DESIGNED TO ASSIST THE PROBATIONER IN LEADING A LAW-ABIDING LIFE. THEY SHOULD BE REASONABLY RELATED TO HIS REHABILITATION AND NOT UNDULY RESTRICTIVE OF HIS LIBERTY OR INCOMPATIBLE WITH HIS FREEDOM OF RELIGION. THEY SHOULD NOT BE SO VAGUE OR AMBIGUOUS AS TO GIVE NO REAL GUIDANCE.

(c) CONDITIONS MAY APPROPRIATELY DEAL WITH MATTERS SUCH AS THE FOLLOWING:

- (i) COOPERATING WITH A PROGRAM OF SUPERVISION;
- (ii) MEETING FAMILY RESPONSIBILITIES;
- (iii) MAINTAINING STEADY EMPLOYMENT OR ENGAGING OR REFRAINING FROM ENGAGING IN A SPECIFIC EMPLOYMENT OR OCCUPATION;
- (iv) PURSUING PRESCRIBED EDUCATIONAL OR VOCATIONAL TRAINING;
- (v) UNDERGOING AVAILABLE MEDICAL OR PSYCHIATRIC TREATMENT;
- (vi) MAINTAINING RESIDENCE IN A PRESCRIBED AREA OR IN A SPECIAL FACILITY ESTABLISHED FOR OR AVAILABLE TO PERSONS ON PROBATION;

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(vii) REFRAINING FROM CONSORTING WITH CERTAIN TYPES OF PEOPLE OR FREQUENTING CERTAIN TYPES OF PLACES;

(viii) MAKING RESTITUTION OF THE FRUITS OF THE CRIME OR REPARATION FOR LOSS OR DAMAGE CAUSED THEREBY.

(d) CONDITIONS REQUIRING PAYMENT OF FINES, RESTITUTION, REPARATION OR FAMILY SUPPORT SHOULD NOT GO BEYOND THE PROBATIONER'S ABILITY TO PAY.

(e) THE PERFORMANCE BOND NOW AUTHORIZED IN SOME JURISDICTIONS SHOULD NOT BE EMPLOYED AS A CONDITION OF PROBATION.

(f) PROBATIONERS SHOULD NOT BE REQUIRED TO PAY THE COSTS OF PROBATION.

KANSAS CODE

See K.S.A. 1971 Supp. 21-4610 cites at 3.1 supra.

COMMENT

Kansas fully complies with the Standard

ABA STANDARD

3.3 MODIFICATION AND TERMINATION OF CONDITIONS.

CONDITIONS SHOULD BE SUBJECT TO MODIFICATION OR TERMINATION BY THE COURT. ALL CHANGES IN CONDITIONS SHOULD BE PRESENTED TO THE PROBATIONER IN THE MANNER PRESCRIBED IN SECTION 3.1 OF THIS REPORT WHERE THE PROPOSED MODIFICATIONS WOULD RESULT IN A FORM OF CONFINEMENT AS A CONDITION OF CONTINUED PROBATION, THE PROBATIONER SHOULD BE AFFORDED THE PROCEDURAL RIGHTS SET FORTH IN PART V OF THIS REPORT.

KANSAS CODE

...The probation officer may recommend and by order duly entered the court may impose and at any time may modify any conditions of probation or suspension of sentence. Due notice shall be given to the probation officer before any such conditions are modified and he shall be given an opportunity to be heard thereon... (K.S.A. 1971 Supp. 21-4610).

COMMENT

Kansas complies with the Standard.

ABA STANDARD

PART IV. TERMINATION

4.1 SATISFACTORY COMPLETION OF PROBATION TERM.

IT SHOULD BE PROVIDED THAT PROBATION AUTOMATICALLY TERMINATES UPON THE SUCCESSFUL COMPLETION OF THE TERM SET BY THE COURT AT THE TIME OF SENTENCING. IT IS NEVERTHELESS DESIRABLE THAT THE FACT OF TERMINATION BE RECORDED IN AN ORDER OF THE COURT, A COPY OF WHICH SHOULD BE FURNISHED TO THE PROBATIONER.

KANSAS CODE

...Probation or suspension of sentence may be terminated by the court at any time and upon such termination or upon termination by expiration of the term of probation or suspension of sentence, an order to this effect shall be entered by the court...(K.S.A. 1971 Supp. 21-4611).

COMMENT

The Kansas code is in conformity with the Standard.

ABA STANDARD

4.2 EARLY TERMINATION.

THE SENTENCING COURT SHOULD HAVE THE AUTHORITY TO TERMINATE PROBATION AT ANY TIME. SUCH AUTHORITY SHOULD BE EXERCISED PRIOR TO THE TERM FIXED IN THE ORIGINAL SENTENCE IF IT APPEARS THAT THE OFFENDER HAS MADE A GOOD ADJUSTMENT AND THAT FURTHER SUPERVISION OR ENFORCED COMPLIANCE WITH OTHER CONDITIONS IS NO LONGER NECESSARY.

KANSAS CODE

See K.S.A. 1971 Supp. 21-4611 cited at 4.1 supra.

COMMENT

Kansas is in compliance with the Standard.

ABA STANDARD

4.3 CRIMINAL RECORD.

EVERY JURISDICTION SHOULD HAVE A METHOD BY WHICH THE COLLATERAL EFFECTS OF A CRIMINAL RECORD CAN BE AVOIDED OR MITIGATED FOLLOWING THE SUCCESSFUL COMPLETION OF A TERM ON PROBATION AND DURING ITS SERVICE.

KANSAS CODE

Every defendant who had not attained the age of twenty-one (21) years at the time of the commission of the crime for which he was convicted, and who has served the sentence imposed or who has fulfilled the conditions of his probation or suspension of sentence for the entire period thereof, or who shall have been discharged from probation prior to the termination of the period thereof, may at any time thereafter be permitted by the court to withdraw his plea of guilty and enter a plea of not guilty; or if he has been convicted after a plea of not guilty, the court may set aside the verdict of guilty; and in either case, the court shall thereupon dismiss the complaint, information or indictment against such defendant, who shall thereafter be released from all penalties and disabilities resulting from the crime of which he has been convicted, and he shall in all respects be treated as not having been convicted, except that upon conviction of any subsequent crime such conviction may be considered as a prior conviction in determining the sentence to be imposed. The defendant shall be informed of this privilege when he is placed on probation or suspended sentence.

In any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose conviction of crime has been annulled under this statute may state that he has never been convicted of such crime. (K.S.A. 1971 Supp. 21-4616).

COMMENT

At the present time Kansas is in conformity only as to defendants under twenty-one (21) years of age. However, under Chapter 317 of the

1972 Session Laws, effective July 1, 1974, the privilege of having his record expunged applies to every defendant ten years after the end of his sentence if he has exhibited good moral character and has not been convicted of a felony.

ABA STANDARD

PART V. REVOCATION OF PROBATION AND OTHER SANCTIONS

5.1 GROUNDS FOR AND ALTERNATIVES TO PROBATION REVOCATION.

(a) VIOLATION OF A CONDITION IS BOTH A NECESSARY AND A SUFFICIENT GROUND FOR THE REVOCATION OF PROBATION. REVOCATION FOLLOWED BY IMPRISONMENT SHOULD NOT BE THE DISPOSITION, HOWEVER, UNLESS THE COURT FINDS ON THE BASIS OF THE ORIGINAL OFFENSE AND THE INTERVENING CONDUCT OF THE OFFENDER THAT:

(i) CONFINEMENT IS NECESSARY TO PROTECT THE PUBLIC FROM FURTHER CRIMINAL ACTIVITY BY THE OFFENDER; OR

(ii) THE OFFENDER IS IN NEED OF CORRECTIONAL TREATMENT WHICH CAN MOST EFFECTIVELY BE PROVIDED IF HE IS CONFINED; OR

(iii) IT WOULD UNDULY DEPRECIATE THE SERIOUSNESS OF THE VIOLATION IF PROBATION WERE NOT REVOKED.

(b) IT WOULD BE APPROPRIATE FOR STANDARDS TO BE FORMULATED AS A GUIDE TO PROBATION DEPARTMENTS AND COURTS IN PROCESSING THE VIOLATION OF CONDITIONS. IN ANY EVENT, THE FOLLOWING INTERMEDIATE STEPS SHOULD BE CONSIDERED IN EVERY CASE AS POSSIBLE ALTERNATIVES TO REVOCATION:

(i) A REVIEW OF THE CONDITIONS, FOLLOWED BY CHANGES WHERE NECESSARY OR DESIRABLE;

(ii) A FORMAL OR INFORMAL CONFERENCE WITH THE PROBATIONER TO REEMPHASIZE THE NECESSITY OF COMPLIANCE WITH THE CONDITIONS;

(iii) A FORMAL OR INFORMAL WARNING THAT FURTHER VIOLATIONS COULD RESULT IN REVOCATION.

KANSAS CODE

(1) At any time during probation or suspension of sentence the court may issue a warrant for the arrest of a defendant for violation of any of the conditions of release, or a notice to appear to answer to a charge of violation. Such notice shall be personally served upon the defendant. The warrant shall authorize all officers named therein to return the defendant to the custody of the court or to any suitable detention facility designated by the court. Any probation officer may arrest such defendant without a warrant, or may deputize any other officer with power to arrest to do so by giving him a written

statement setting forth that the defendant has, in the judgment of the probation officer, violated the conditions of his release. The written statement delivered with the defendant by the arresting officer to the official in charge of a county jail or other place of detention shall be sufficient warrant for the detention of the defendant. After making an arrest the probation officer shall present to the detaining authorities a similar statement of the circumstances of violation. Provisions regarding release on bail of persons charged with crime shall be applicable to the defendants arrested under these provisions.

(2) Upon such arrest and detention, the probation officer shall immediately notify the court and shall submit in writing a report showing in what manner the defendant has violated the conditions of release. Thereupon, or upon an arrest by warrant as herein provided, the court shall cause the defendant to be brought before it without unnecessary delay for a hearing on the violation charged. The hearing shall be in open court and the state shall have the burden of establishing the violation. The defendant shall have the right to be represented by counsel and he shall be informed by the judge that if he is financially unable to obtain counsel, an attorney will be appointed to represent him. The defendant shall have the right to present the testimony of witnesses and other evidence on his behalf. Relevant written statements made under oath shall be admitted and considered by the court along with other evidence presented at the hearing. If the violation is established, the court may continue or revoke the probation or suspension of sentence, and may require the defendant to serve the sentence imposed, or any lesser sentence, and, if imposition of sentence was suspended, may impose any sentence which might originally have been imposed.

(3) A probationer or defendant under suspension of sentence for whose return a warrant has been issued by the court shall, if it is found that the warrant cannot be served, be deemed to be a fugitive from justice. If it shall appear that he has violated the provisions of his release, the court shall determine whether the time from the issuing of the warrant to the date of his arrest, or any part of it, shall be counted as time served on probation or suspended sentence. (K.S.A. 1971 Supp. 22-3716).

COMMENT

The Kansas provision includes a broad outline of procedure initiated by the arrest of the probationer and appears to comply with the Standard.

ABA STANDARD

5.2 ARREST OF PROBATIONERS.

(a) FORMAL ARRESTS OF PROBATIONERS FOR THE ALLEGED VIOLATION OF CONDITIONS OF THEIR PROBATION SHOULD BE PRECEDED BY THE ISSUANCE OF AN ARREST WARRANT BASED UPON PROBABLE CAUSE THAT A VIOLATION HAS OCCURRED. ARRESTS WITHOUT A WARRANT SHOULD BE PERMITTED ONLY WHEN THE VIOLATION INVOLVES THE COMMISSION OF ANOTHER CRIME AND WHEN THE NORMAL STANDARDS FOR ARRESTS WITHOUT A WARRANT HAVE OTHERWISE BEEN MET.

(b) PROBATION OFFICERS SHOULD NOT BE AUTHORIZED TO ARREST PROBATIONERS.

KANSAS CODE

See K.S.A. 1971 Supp. 22-3716 (1) cited
supra at 5.1.

COMMENT

The Kansas code is not in conformity with this Standard.

ABA STANDARD

5.3 PROCEEDINGS FOLLOWING COMMISSION OF ANOTHER CRIME.

A REVOCATION PROCEEDING BASED SOLELY UPON COMMISSION OF ANOTHER CRIME ORDINARILY SHOULD NOT BE INITIATED PRIOR TO THE DISPOSITION OF THAT CHARGE. HOWEVER, UPON A SHOWING OF PROBABLE CAUSE THAT ANOTHER CRIME HAS BEEN COMMITTED BY THE PROBATIONER, THE PROBATION COURT SHOULD HAVE DISCRETIONARY AUTHORITY TO DETAIN THE PROBATIONER WITHOUT BAIL PENDING A DETERMINATION OF THE NEW CRIMINAL CHARGE.

KANSAS CODE

No comparable code provision.

COMMENT

The Kansas code does not conform to the Standard. The procedures may vary according to local practice for revocation proceedings. However, Kansas has no provision for detaining persons without bail.

ABA STANDARD

5.4 NATURE OF REVOCATION PROCEEDINGS.

(a) THE COURT SHOULD NOT REVOKE PROBATION WITHOUT AN OPEN COURT PROCEEDING ATTENDED BY THE FOLLOWING INCIDENTS:

- (i) A PRIOR WRITTEN NOTICE OF THE ALLEGED VIOLATION;
- (ii) REPRESENTATION BY RETAINED OR APPOINTED COUNSEL; AND
- (iii) WHERE THE VIOLATION IS CONTESTED, ESTABLISHMENT OF THE VIOLATION BY THE GOVERNMENT BY A PREPONDERANCE OF THE EVIDENCE. SENTENCE SHOULD BE IMPOSED FOLLOWING A REVOCATION ACCORDING TO THE SAME PROCEDURES AS ARE APPLICABLE TO ORIGINAL SENTENCING PROCEEDINGS.

(b) THE GOVERNMENT IS ENTITLED TO BE REPRESENTED BY COUNSEL IN A CONTESTED REVOCATION PROCEEDING.

(c) AS IN THE CASE OF ALL OTHER PROCEEDINGS IN OPEN COURT, A RECORD OF THE REVOCATION PROCEEDING SHOULD BE MADE AND PRESERVED IN SUCH A MANNER THAT IT CAN BE TRANSCRIBED AS NEEDED.

(d) AN ORDER REVOKING PROBATION SHOULD BE APPEALABLE AFTER THE OFFENDER HAS BEEN RESENTENCED.

KANSAS CODE

See K.S.A. 1971 Supp. 22-3716 (2)
supra at 5.1.

COMMENT

Kansas is in conformity with the Standard

ABA STANDARD

PART VI. PROBATION DEPARTMENT ADMINISTRATION, SERVICES AND PERSONNEL

6.1 LEGISLATIVE RESPONSIBILITY; ADMINISTRATIVE STRUCTURE.

(a) LEGISLATIVE BODIES SHOULD APPROPRIATE SUFFICIENT FUNDS SO THAT ALL TRIAL COURTS ADMINISTERING CRIMINAL JUSTICE WILL HAVE ADEQUATE PROBATION SERVICES AND PERSONNEL IN ORDER TO IMPLEMENT PROPERLY THE STANDARDS DEVELOPED IN THIS REPORT.

(b) IT IS APPROPRIATE FOR PROBATION SERVICES TO BE ADMINISTERED AT EITHER THE STATE OR LOCAL LEVEL, BUT IN NO EVENT SHOULD CONTROL BE VESTED IN AN AGENCY HAVING PROSECUTORIAL FUNCTIONS.

KANSAS CODE

The state board of probation and parole shall consist of three (3) members to be appointed by the governor with the advice and consent of the senate.

After March 31, 1971, no more than two (2) members of such board shall be members of the same political party. The term of office of the members of the board shall be four (4) years: In case of a vacancy in the membership of the board occurring before the expiration of the term of office a successor shall be appointed in the manner as original appointments are made, for the remainder of the unexpired term.

Members serving on the state board of probation and parole established by K.S.A. 62-2228 on the effective date of this act shall be the members of the state board of probation and parole created by this section and shall hold their respective offices until their terms expire and their respective successors are appointed and qualified or until a vacancy occurs.

The governor may not remove any member of the board except for disability, inefficiency, neglect of duty or malfeasance in office. Before such removal, he shall give the member a written copy of the charges against him and shall fix the time when he can be heard in his defense at a public hearing, which shall not be less than ten (10) days thereafter. Upon removal, the governor shall file in the office of the secretary of state a complete statement of all charges made against the member and the findings thereupon, with a complete record of the proceedings. (K.S.A. 22-3707 (1974)).

The secretary of corrections shall appoint probation and parole officers in a number sufficient to administer the provisions of this act. Such probation and parole officers shall be within the classified service of the Kansas civil service act. All probation and parole officers employed by the state director of probation and parole with the approval of the board of probation and parole under the provisions of K.S.A. 1972 Supp. 22-3713, immediately prior to the effective date of this act shall be employed in the same or comparable positions by the secretary of corrections and shall retain all rights and status acquired under the provisions of the Kansas civil service act. Nothing contained in this section shall be construed to alter or change the retirement plan or retirement status of the employees who under the provisions of this section are placed under the control of the secretary. Probation or parole officers shall have and exercise police powers to the same extent as other law enforcement officers and such powers may be exercised by them anywhere within the state. Probation and parole officers shall, in addition to their regular compensation, receive their actual and necessary traveling and other expenses incurred in the performance of their official duties. (K.S.A. 1974 Supp. 75-5214).

COMMENT

The Kansas code is in substantial conformity with the Standard. The sufficiency of funds is a matter of legislative determination. The entire structure of the present Kansas penal system has been extensively reorganized by Chapter 317 of the 1972 Session Laws, as amended by Chapter 339 of the 1973 Session Laws, effective July 1, 1974.

ABA STANDARD

6.2 ESTABLISHING MINIMUM STANDARDS.

MINIMUM STANDARDS FOR PROBATION SERVICES SHOULD BE FORMULATED AND ENFORCED BY AN APPROPRIATE STATE AGENCY AND SHOULD BE APPLICABLE TO ALL PROBATION DEPARTMENTS WITHIN THE STATE. IN ADDITION TO THE STANDARDS RECOMMENDED IN THIS REPORT, THE FOLLOWING GENERAL PRINCIPLES ARE IMPORTANT IN DEVELOPING MINIMUM STANDARDS:

(i) SUPERVISION OF PROBATIONERS.

THERE SHOULD BE A SUFFICIENTLY LOW AVERAGE CASELOAD TO PROVIDE ADEQUATE SUPERVISION FOR PROBATIONERS AND TO ENCOURAGE THE DEVELOPMENT OF VARIABLE CASELOADS FOR DIFFERENT TYPES OF OFFENDERS AND ASSIGNMENT TECHNIQUES WHICH WILL MAXIMIZE THE BENEFIT OF OFFERED SUPERVISION. IN APPROPRIATE CASES, SUPERVISION SHOULD BE SUPPLEMENTED BY GROUP COUNSELING AND THERAPY PROGRAMS. WHERE FEASIBLE, BRANCH PROBATION OFFICES SHOULD BE LOCATED IN THE COMMUNITY IN WHICH PROBATIONERS LIVE SO AS TO MEET MORE EFFECTIVELY THE DEMANDS OF SUPERVISION. TO COMPLEMENT SUPERVISION, HELPING SERVICES SHOULD BE OBTAINED FROM COMMUNITY FACILITIES IN APPROPRIATE CASES AND, WHERE NECESSARY, PROBATION PERSONNEL SHOULD ACTIVELY INTERVENE WITH SUCH FACILITIES ON BEHALF OF THEIR PROBATIONERS;

(ii) RESEARCH AND STATISTICS.

ACCURATE AND UNIFORM RECORDS AND STATISTICS SHOULD BE AVAILABLE AS A FOUNDATION FOR RESEARCH INTO SENTENCING CRITERIA AND PROBATION DEPARTMENT PROGRAMS. CONTINUOUS RESEARCH AND EVALUATION, INVOLVING A COOPERATIVE EFFORT AMONG OPERATIONS AND RESEARCH PERSONNEL, SHOULD BE AN INTEGRAL PART OF PROBATION DEPARTMENTS;

(iii) WORKING CONDITIONS.

TO HELP ACHIEVE THE STANDARDS RECOMMENDED IN THIS REPORT, PROBATION PERSONNEL SHOULD HAVE ADEQUATE OFFICE SPACE, CLERICAL ASSISTANCE AND CONFERENCE FACILITIES.

KANSAS CODE

No comparable code provision.

COMMENT

Although Kansas has no specific statutory provision, in practice administrative directives are toward the achievement of the objective of the Standard.

ABA STANDARD

6.3 COLLATERAL SERVICES.

IN APPROPRIATE CASES, PROBATION DEPARTMENTS SHOULD BE PREPARED TO PROVIDE ADDITIONAL SERVICES WHICH MAY BE FOREIGN TO THE TRADITIONAL CONCEPTIONS OF PROVIDING PRESENTENCE REPORTS AND SUPERVISING CONVICTED OFFENDERS. EXAMPLES OF SUCH ADDITIONAL SERVICES INCLUDE THE PREPARATION OF REPORTS TO ASSIST COURTS IN MAKING PRETRIAL RELEASE DECISIONS AND ASSISTANCE TO PROSECUTORS IN DIVERTING SELECTED CHARGED INDIVIDUALS TO APPROPRIATE NONCRIMINAL ALTERNATIVES.

KANSAS CODE

No comparable code provision.

COMMENT

The Kansas code is not in compliance with this Standard.

ABA STANDARD

6.4 APPOINTMENT OF PROBATION PERSONNEL.

(a) RESPONSIBILITY FOR APPOINTING CHIEF PROBATION OFFICERS IN LOCAL PROBATION DEPARTMENT SHOULD RESIDE SOLELY IN THE CHIEF JUDGE OF THE COURT OR AN APPROPRIATE JUDICIAL BODY. CONSIDERATION SHOULD BE GIVEN TO THE CREATION OF AN AGENCY OR COMMITTEE TO ADVISE IN RECRUITING AND SCREENING CHIEF PROBATION OFFICERS. SUCH A COMMITTEE SHOULD CONSIST OF REPRESENTATIVES OF GOVERNMENT, THE JUDICIARY, THE BAR, AND THE COMMUNITY.

(b) CHIEF PROBATION OFFICERS SHOULD MAKE ALL APPOINTMENTS OF PROBATION PERSONNEL IN ACCORDANCE WITH A MERIT SYSTEM. AFTER A PROBATIONARY PERIOD, TENURE SHOULD BE GRANTED AND REMOVAL PERMITTED ONLY AFTER A HEARING CONDUCTED BY A CIVIL SERVICE COMMISSION OR OTHER CAREER SERVICE ORGANIZATION.

KANSAS CODE

See K.S.A. 1974 Supp. 75-5214 cited in part under 6.1 supra.

COMMENT

Kansas law is not in conformity with the Standard on the state level. However, where local probation departments exist, they are under the supervision of the court.

ABA STANDARD

6.5 QUALIFICATIONS FOR PROBATION OFFICERS: OTHER PERSONNEL.

(a) THE EDUCATIONAL AND OCCUPATIONAL REQUIREMENTS FOR PROBATION OFFICERS SHOULD BE POSSESSION OF A BACHELOR'S DEGREE SUPPLEMENTED BY:

(i) A YEAR OF GRADUATE STUDY IN SOCIAL WORK, CORRECTIONS, COUNSELING, LAW, CRIMINOLOGY, PSYCHOLOGY, SOCIOLOGY, OR RELATED FIELDS; OR

(ii) A YEAR OF FULL-TIME CASEWORK, COUNSELING, COMMUNITY OR GROUP WORK EXPERIENCE IN A RECOGNIZED SOCIAL, COMMUNITY, CORRECTIONAL OR JUVENILE AGENCY DEALING WITH OFFENDERS OR DISADVANTAGED PERSONS, OR ITS EQUIVALENT AS DETERMINED BY THE HIRING AGENCY.

(b) A SIGNIFICANT NUMBER OF PROBATION OFFICERS IN A DEPARTMENT SHOULD HAVE GRADUATE DEGREES IN ONE OF THE SUBJECTS ENUMERATED IN THIS SECTION.

(c) WHILE THE CORE OF ANY PROBATION DEPARTMENT SHOULD BE PROFESSIONALLY EDUCATED AND TRAINED PERSONNEL, IT IS DESIRABLE THAT THE STAFF INCLUDE INDIVIDUALS WHO MAY LACK SUCH PROFESSIONAL QUALIFICATIONS BUT HAVE BACKGROUNDS SIMILAR TO THOSE OF THE PROBATIONERS THEMSELVES. IN ADDITION, IN APPROPRIATE CASES CITIZEN VOLUNTEERS SHOULD BE USED TO ASSIST PROBATION OFFICER.

KANSAS CODE

No comparable code provision.

COMMENT

Kansas is not in conformity with this Standard.

ABA STANDARD

6.6 EDUCATION AND TRAINING.

(a) FELLOWSHIPS FOR GRADUATE STUDY SHOULD BE MADE AVAILABLE TO PROBATION OFFICERS AND COLLEGE GRADUATES INTERESTED IN PROBATION. IN ADDITION, PROBATION OFFICER TRAINEE PROGRAMS COMBINING WORK AND EDUCATION SHOULD BE ESTABLISHED FOR HIGH SCHOOL GRADUATES AND COLLEGE STUDENTS.

(b) IN-SERVICE EDUCATION AND TRAINING PROGRAMS SHOULD BE JOINTLY PLANNED AND DEVELOPED BY APPROPRIATE STATE AGENCIES, UNIVERSITIES, AND LOCAL PROBATION DEPARTMENTS. IN STATE AND LARGER LOCAL PROBATION DEPARTMENTS, IMPLEMENTATION OF THESE PROGRAMS SHOULD BE MADE A FULL-TIME RESPONSIBILITY.

KANSAS CODE

No comparable code provision.

COMMENT

The Kansas code is not in conformity with the Standard.

ABA STANDARD

6.7 SALARIES OF PROBATION PERSONNEL.

(a) ENTRY SALARIES SHOULD BE COMPETITIVE WITH ENTRY SALARIES OFFERED IN RELATED FIELDS SUCH AS WELFARE, EDUCATION, AND COMMUNITY ACTION PROGRAMS.

(b) SALARIES SHOULD BE STRUCTURED SO THAT PROMOTION TO AN ADMINISTRATIVE OR SUPERVISORY JOB IS NOT THE ONLY MEANS OF OBTAINING A HIGHER SALARY. MERIT PAY INCREASES SHOULD BE AVAILABLE FOR OUTSTANDING JOB PERFORMANCE, ADVANCED ACADEMIC ACHIEVEMENT, OR COMPLETION OF SPECIAL IN-SERVICE TRAINING.

KANSAS CODE

No comparable code provision.

COMMENT

Kansas practice is in conformity with the Standard as the salaries for probation personnel are competitive and consistent with other states salaried positions.

