

HOUSE BILL No. 2517

By Committee on Corrections and Juvenile Justice

1-20

Proposed Amendments to HB 2517 - diversion
House Corrections and Juvenile Justice
Prepared by the Office of Revisor of Statutes
February 7, 2022

1 AN ACT concerning the certified drug abuse treatment program; relating
2 to program qualifications; transferring certification duties from the
3 department of corrections to the Kansas sentencing commission,
4 amending K.S.A. 2021 Supp. 21-6824 and 75-52,144 and repealing the
5 existing sections.
6

, 21-6825

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

8 Section 1. K.S.A. 2021 Supp. 21-6824 is hereby amended to read as
9 follows: 21-6824. (a) There is hereby established a nonprison sanction of
10 certified drug abuse treatment programs for certain offenders who are
11 sentenced on or after November 1, 2003. Placement of offenders in
12 certified drug abuse treatment programs by the court shall be limited to
13 placement of adult offenders, convicted of a felony violation of K.S.A.
14 2021 Supp. 21-5705 or 21-5706, and amendments thereto, whose offense
15 is classified in grid blocks:

16 (1) 5-C, 5-D, 5-E, 5-F, 5-G, 5-H or 5-I of the sentencing guidelines
17 grid for drug crimes and such offender has no felony conviction of K.S.A.
18 65-4142, 65-4159, 65-4161, 65-4163 or 65-4164, prior to their repeal,
19 K.S.A. 2010 Supp. 21-36a03, 21-36a05 or 21-36a16, prior to their transfer,
20 or K.S.A. 2021 Supp. 21-5703, 21-5705 or 21-5716, and amendments
21 thereto, or any substantially similar offense from another jurisdiction; or

22 (2) 5-A, 5-B, 4-E, 4-F, 4-G, 4-H or 4-I of the sentencing guidelines
23 grid for drug crimes, such offender has no felony conviction of K.S.A. 65-
24 4142, 65-4159, 65-4161, 65-4163 or 65-4164, prior to their repeal, K.S.A.
25 2010 Supp. 21-36a03, 21-36a05 or 21-36a16, prior to their transfer, or
26 K.S.A. 2021 Supp. 21-5703, 21-5705 or 21-5716, and amendments
27 thereto, or any substantially similar offense from another jurisdiction, if
28 the person felonies in the offender's criminal history were severity level 8,
29 9 or 10 or nongrid offenses of the sentencing guidelines grid for nondrug
30 crimes, and the court finds and sets forth with particularity the reasons for
31 finding that the safety of the members of the public will not be jeopardized
32 by such placement in a drug abuse treatment program.

33 (b) As a part of the presentence investigation pursuant to K.S.A. 2021
34 Supp. 21-6813, and amendments thereto, offenders who meet the
35 requirements of subsection (a), unless otherwise specifically ordered by
36 the court, shall be subject to:

1 licensed psychologists, licensed professional counselors or registered
2 alcohol and other drug abuse counselors licensed or certified as addiction
3 counselors who have been certified by the ~~secretary of corrections~~ *Kansas*
4 *sentencing commission* to treat offenders pursuant to K.S.A. 75-52,144,
5 and amendments thereto.

6 (h) (1) Offenders who meet the requirements of subsection (a) shall
7 not be subject to the provisions of this section and shall be sentenced as
8 otherwise provided by law, if such offenders:

9 (A) Are residents of another state and are returning to such state
10 pursuant to the interstate corrections compact or the interstate compact for
11 adult offender supervision; or

12 (B) are not lawfully present in the United States and being detained
13 for deportation; or

14 (C) do not meet the risk assessment levels provided in subsection (c).

15 (2) Such sentence shall not be considered a departure and shall not be
16 subject to appeal.

17 (i) The court may order an offender who otherwise does not meet the
18 requirements of subsection (c) to undergo one additional drug abuse
19 assessment while such offender is on probation. Such offender may be
20 ordered to undergo drug abuse treatment pursuant to subsection (a) if such
21 offender is determined to meet the requirements of subsection (c). ~~The cost~~
22 ~~of such assessment shall be paid by such offender.~~

23 Sec. 2. K.S.A. 2021 Supp. 75-52,144 is hereby amended to read as
24 follows: 75-52,144. (a) Drug abuse treatment programs certified in
25 accordance with subsection (b) shall provide:

26 (1) Drug abuse assessments of any person who is convicted of or
27 being considered for a diversion agreement in lieu of further criminal
28 proceedings for a felony violation of K.S.A. 65-4160 or 65-4162, prior to
29 such section's repeal, K.S.A. 2010 Supp. 21-36a06, prior to its transfer, or
30 K.S.A. 2021 Supp. 21-5706, and amendments thereto, and meets the
31 requirements of K.S.A. 21-4729, prior to its repeal, K.S.A. 2021 Supp. 21-
32 6824(a) or 21-6825, and amendments thereto;

33 (2) treatment of all persons who are convicted of or entered into a
34 diversion agreement in lieu of further criminal proceedings for a felony
35 violation of K.S.A. 65-4160 or 65-4162, prior to such section's repeal,
36 K.S.A. 2010 Supp. 21-36a06, prior to its transfer, or K.S.A. 2021 Supp.
37 21-5706, and amendments thereto, meet the requirements of K.S.A. 21-
38 4729, prior to its repeal, K.S.A. 2021 Supp. 21-6824 or 21-6825, and
39 amendments thereto, and whose sentence requires completion of a
40 certified drug abuse treatment program, as provided in this section;

41 (3) one or more treatment options in the continuum of services
42 needed to reach recovery: Detoxification, rehabilitation, continuing care
43 and aftercare, and relapse prevention;

Sec. 2. K.S.A. 2021 Supp. 21-6825 is hereby amended to read as follows: see attachment

Renumber sections

1 Supp. 21-6824 or 21-6825, and amendments thereto, shall be paid by the
2 Kansas sentencing commission from funds appropriated for such purpose.
3 The Kansas sentencing commission shall contract for payment for such
4 services with the supervising agency.

5 (2) The sentencing court shall determine the extent, if any, that such
6 person is able to pay for such assessment and treatment. Such payments
7 shall be used by the supervising agency to offset costs to the state. If such
8 financial obligations are not met or cannot be met, the sentencing court
9 shall be notified for the purpose of collection or review and further action
10 on the offender's sentence.

11 (3) If the person has entered into a diversion agreement in lieu of
12 further criminal proceedings, the county or district attorney shall
13 determine the extent, if any, that such person is able to pay for such
14 assessment and treatment. Such payments shall be used by the supervising
15 agency to offset costs to the state or county. If such financial obligations
16 are not met or cannot be met, the county or district attorney shall be
17 notified for the purpose of collection or review and further action on the
18 person's diversion agreement.

19 (e) The community corrections staff shall work with the substance
20 abuse treatment staff to ensure effective supervision and monitoring of the
21 offender.

22 (f) ~~The secretary of corrections~~ *Kansas sentencing commission* is
23 hereby authorized to adopt rules and regulations to carry out the provisions
24 of this section.

25 Sec. 3. K.S.A. 2021 Supp. 21-6824 and 75-52,144 are hereby
26 repealed.

27 Sec. 4. This act shall take effect and be in force from and after its
28 publication in the statute book.

, 21-6825

(a) There is hereby established a certified drug abuse treatment program for certain persons who enter into a diversion agreement in lieu of further criminal proceedings on and after July 1, 2021. Placement of divertees in a certified drug abuse treatment program pursuant to a diversion agreement shall be limited to placement of adults, on a complaint alleging a felony violation of K.S.A. 2021 Supp. 21-5706, and amendments thereto, whose offense is classified in grid blocks 5-C, 5-D, 5-E, 5-F, 5-G, 5-H or 5-I of the sentencing guidelines grid for drug crimes who have no felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-4164, prior to their repeal, K.S.A. 2010 Supp. 21-36a03, 21-36a05 or 21-36a16, prior to their transfer, or K.S.A. 2021 Supp. 21-5703, 21-5705 or 21-5716, and amendments thereto, or any substantially similar offense from another jurisdiction.

(b) As part of the consideration of whether or not to allow diversion to the defendant, a divertree who meets the requirements of subsection (a) shall be subject to:

(1) A drug abuse assessment that shall include a clinical interview with a mental health professional and a recommendation concerning drug abuse treatment for the divertree; and

(2) a standardized criminal risk-need assessment specified by the Kansas sentencing commission.

(c) The diversion agreement shall require the divertree to comply with and participate in a certified drug abuse treatment program if the divertree meets the assessment criteria set by the Kansas sentencing commission. The term of treatment shall not exceed 18 months.

(d) Divertees who are committed to a certified drug abuse treatment program pursuant to subsection (c) may be supervised by community correctional services or court services pursuant to a memorandum of understanding entered into pursuant to K.S.A. 22-2907, and amendments thereto.

(e) (1) Divertees in a certified drug abuse treatment program shall be discharged from the program if the divertree:

(A) Is convicted of a new felony; or

(B) has a pattern of intentional conduct that demonstrates the divertree's refusal to comply with or participate in the treatment program in the opinion of the county or district attorney.

(2) Divertees who are discharged from such program pursuant to paragraph (1) shall be subject to the revocation provisions of the divertree's diversion agreement.

(f) For the purposes of this section:

(1) "Mental health professional" includes licensed social workers, persons licensed to practice medicine and surgery, licensed psychologists, licensed professional counselors or registered alcohol and other drug abuse counselors licensed or certified as addiction counselors who have been certified by the [secretary of corrections](#) [Kansas sentencing commission](#) to treat persons pursuant to K.S.A. 2021 Supp. 75-52,144, and amendments thereto.

(2) "Divertree" means a person who has entered into a diversion agreement pursuant to K.S.A. 22-2909, and amendments thereto.