

As Amended by House Committee

Session of 2022

HOUSE BILL No. 2517

By Committee on Corrections and Juvenile Justice

1-20

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, **21-6825** and 75-52,144 and
5 repealing the existing sections.
6

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 (1) A drug abuse assessment which shall include a clinical interview
2 with a mental health professional and a recommendation concerning drug
3 abuse treatment for the offender; and

4 (2) a criminal risk-need assessment. The criminal risk-need
5 assessment shall assign a risk status to the offender.

6 (c) If the offender is assigned a risk status as determined by the drug
7 abuse assessment performed pursuant to subsection (b)(1) and a risk status
8 as determined by the criminal risk-need assessment performed pursuant to
9 subsection (b)(2) that meets the criteria for participation in a drug abuse
10 treatment program as determined by the Kansas sentencing commission,
11 the sentencing court shall commit the offender to treatment in a drug abuse
12 treatment program until the court determines the offender is suitable for
13 discharge by the court. The term of treatment shall not exceed 18 months.
14 The court may extend the term of probation, pursuant to K.S.A. 2021
15 Supp. 21-6608(c)(3), and amendments thereto. The term of treatment may
16 not exceed the term of probation.

17 (d) (1) Offenders who are committed to a drug abuse treatment
18 program pursuant to subsection (c) shall be supervised by community
19 correctional services.

20 (2) Offenders who are not committed to a drug abuse treatment
21 program pursuant to subsection (c) shall be supervised by community
22 correctional services or court services based on the result of the criminal
23 risk assessment.

24 (3) If the offender is permitted to go from the judicial district of the
25 sentencing court, the court may, pursuant to K.S.A. 2021 Supp. 21-6610,
26 and amendments thereto:

27 (A) Transfer supervision of the offender from that judicial district to
28 another; and

29 (B) either transfer or retain jurisdiction of the offender.

30 (e) Placement of offenders under subsection (a)(2) shall be subject to
31 the departure sentencing statutes of the revised Kansas sentencing
32 guidelines act.

33 (f) (1) Offenders in drug abuse treatment programs shall be
34 discharged from such program if the offender:

35 (A) Is convicted of a new felony; or

36 (B) has a pattern of intentional conduct that demonstrates the
37 offender's refusal to comply with or participate in the treatment program,
38 as established by judicial finding.

39 (2) Offenders who are discharged from such program shall be subject
40 to the revocation provisions of K.S.A. 2021 Supp. 21-6604(n), and
41 amendments thereto.

42 (g) As used in this section, "mental health professional" includes
43 licensed social workers, persons licensed to practice medicine and surgery,

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. 21-6825 is hereby amended to read as**
24 **follows: 21-6825. (a) There is hereby established a certified drug abuse**
25 **treatment program for certain persons who enter into a diversion**
26 **agreement in lieu of further criminal proceedings on and after July 1,**
27 **2021. Placement of divertees in a certified drug abuse treatment**
28 **program pursuant to a diversion agreement shall be limited to**
29 **placement of adults, on a complaint alleging a felony violation of**
30 **K.S.A. 2021 Supp. 21-5706, and amendments thereto, whose offense is**
31 **classified in grid blocks 5-C, 5-D, 5-E, 5-F, 5-G, 5-H or 5-I of the**
32 **sentencing guidelines grid for drug crimes who have no felony**
33 **conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-4164,**
34 **prior to their repeal, K.S.A. 2010 Supp. 21-36a03, 21-36a05 or 21-**
35 **36a16, prior to their transfer, or K.S.A. 2021 Supp. 21-5703, 21-5705**
36 **or 21-5716, and amendments thereto, or any substantially similar**
37 **offense from another jurisdiction.**

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

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

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

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

7 **(d) Divertees who are committed to a certified drug abuse**
8 **treatment program pursuant to subsection (c) may be supervised by**
9 **community correctional services or court services pursuant to a**
10 **memorandum of understanding entered into pursuant to K.S.A. 22-**
11 **2907, and amendments thereto.**

12 **(e) (1) Divertees in a certified drug abuse treatment program**
13 **shall be discharged from the program if the divertee:**

14 **(A) Is convicted of a new felony; or**

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

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

21 **(f) For the purposes of this section:**

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

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

31 **Sec. 2-3. K.S.A. 2021 Supp. 75-52,144 is hereby amended to read as**
32 **follows: 75-52,144. (a) Drug abuse treatment programs certified in**
33 **accordance with subsection (b) shall provide:**

34 **(1) Drug abuse assessments of any person who is convicted of or**
35 **being considered for a diversion agreement in lieu of further criminal**
36 **proceedings for a felony violation of K.S.A. 65-4160 or 65-4162, prior to**
37 **such section's repeal, K.S.A. 2010 Supp. 21-36a06, prior to its transfer, or**
38 **K.S.A. 2021 Supp. 21-5706, and amendments thereto, and meets the**
39 **requirements of K.S.A. 21-4729, prior to its repeal, K.S.A. 2021 Supp. 21-**
40 **6824(a) or 21-6825, and amendments thereto;**

41 **(2) treatment of all persons who are convicted of or entered into a**
42 **diversion agreement in lieu of further criminal proceedings for a felony**
43 **violation of K.S.A. 65-4160 or 65-4162, prior to such section's repeal,**

1 K.S.A. 2010 Supp. 21-36a06, prior to its transfer, or K.S.A. 2021 Supp.
2 21-5706, and amendments thereto, meet the requirements of K.S.A. 21-
3 4729, prior to its repeal, K.S.A. 2021 Supp. 21-6824 or 21-6825, and
4 amendments thereto, and whose sentence requires completion of a
5 certified drug abuse treatment program, as provided in this section;

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

9 (4) treatment options to incorporate family and auxiliary support
10 services; and

11 (5) treatment options for alcohol abuse when indicated by the
12 assessment of the offender or required by the court.

13 (b) The criminal risk-need assessment shall be conducted by a court
14 services officer ~~or a community corrections officer~~. The drug abuse
15 treatment program placement assessment shall be conducted by a drug
16 abuse treatment program certified in accordance with the provisions of this
17 subsection to provide assessment and treatment services. A drug abuse
18 treatment program shall be certified by the ~~secretary of corrections~~ *Kansas*
19 *sentencing commission*. The ~~secretary~~ *commission* may establish
20 qualifications for the certification of programs, which may include
21 requirements for supervision and monitoring of clients, fee reimbursement
22 procedures, handling of conflicts of interest, delivery of services to clients
23 unable to pay and other matters relating to quality and delivery of services
24 by the program. Drug abuse treatment may include community based and
25 faith based programs. The certification shall be for a four-year period. *The*
26 *commission may establish a process for revoking certification of programs*
27 *that do not meet the commission's qualifications for certification.*
28 Recertification of a program shall be by the ~~secretary~~ *commission*. To be
29 eligible for certification *or recertification* under this subsection, the
30 ~~secretary~~ *commission* shall determine that a drug abuse treatment program:

31 (1) Meets the qualifications established by the ~~secretary~~ *commission*;

32 (2) is capable of providing the assessments, supervision and
33 monitoring required under subsection (a);

34 (3) has employed or contracted with certified treatment providers;
35 and

36 (4) meets any other functions and duties specified by law.

37 (c) Any treatment provider who is employed or has contracted with a
38 certified drug abuse treatment program who provides services to offenders
39 shall be certified by the ~~secretary of corrections~~ *Kansas sentencing*
40 *commission*. The ~~secretary~~ *commission* shall require education and training
41 that shall include, but not be limited to, case management and cognitive
42 behavior training. The duties of providers who prepare the presentence
43 drug abuse assessment may also include appearing at sentencing and

1 probation hearings in accordance with the orders of the court, monitoring
2 offenders in the treatment programs, notifying the probation department
3 and the court of any offender failing to meet the conditions of probation or
4 referrals to treatment, appearing at revocation hearings as may be required
5 and providing assistance and data reporting and program evaluation.

6 (d) (1) The cost for all drug abuse assessments performed pursuant to
7 subsection (a)(1), and the cost for all certified drug abuse treatment
8 programs for any person who meets the requirements of K.S.A. 2021
9 Supp. 21-6824 or 21-6825, and amendments thereto, shall be paid by the
10 Kansas sentencing commission from funds appropriated for such purpose.
11 The Kansas sentencing commission shall contract for payment for such
12 services with the supervising agency.

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

19 (3) If the person has entered into a diversion agreement in lieu of
20 further criminal proceedings, the county or district attorney shall
21 determine the extent, if any, that such person is able to pay for such
22 assessment and treatment. Such payments shall be used by the supervising
23 agency to offset costs to the state or county. If such financial obligations
24 are not met or cannot be met, the county or district attorney shall be
25 notified for the purpose of collection or review and further action on the
26 person's diversion agreement.

27 (e) The community corrections staff shall work with the substance
28 abuse treatment staff to ensure effective supervision and monitoring of the
29 offender.

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

33 ~~Sec.-3-~~ **4.** K.S.A. 2021 Supp. 21-6824, **21-6825** and 75-52,144 are
34 hereby repealed.

35 ~~Sec.-4-~~ **5.** This act shall take effect and be in force from and after its
36 publication in the statute book.