



SUPREME COURT OF KANSAS

KANSAS JUDICIAL CENTER

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SENATE JUDICIARY COMMITTEE

Honorable Senator Tim Owens, Chair

Senate Bill 7 - DUI

Written Testimony in Support of KDOC Amendment and Amendment Request

February 8, 2011

Mr. Chairman, and committee members, after having the opportunity to review the KDOC amendment, we would generally agree in principle and would ask that the committee consider making the following slight changes:

Page 57, offenders would not be on a "release" supervision, but merely placed on supervision by the court. This amendment would strike the term "release" throughout the page, strike the phrase "in the custody of" on line 32 and, also in line 32, add the phrase "on supervision to" to "community correctional services or court services as determined by the court".

Page 31 of the bill relates to the alcohol and drug evaluation and when that should be done. The amendment would add K. S. A. 8-1567 to the list of third or subsequent convictions for which an alcohol and drug evaluation would not be done presentence. The reason is that the offender convicted of a third DUI will be sent to treatment and the assessment will be done as part of the treatment process. The offender convicted of a fourth and subsequent DUI will be going to prison, where assessment will take place. Either way, it is unnecessary to spend time and money doing an assessment presentence that will not be used.

Thank you for your consideration of these amendments and I'd be happy to answer questions that you may have.

Senate Judiciary
3-15-11
Attachment 4

SENATE JUDICIARY
COMMITTEE

Judicial Branch
Proposed Amendment

February 8, 2011

SB 7

57

1 of the 2010 Session Laws of Kansas, and amendments thereto. The person
2 shall remain imprisoned at the state facility only while participating in the
3 substance abuse treatment program designated by the secretary and shall
4 be returned to the custody of the sheriff for execution of the balance of
5 the term of imprisonment upon completion of or the person's discharge
6 from the substance abuse treatment program. Custody of the person shall
7 be returned to the sheriff for execution of the sentence imposed in the
8 event the secretary of corrections determines: (A) (i) That substance
9 abuse treatment resources or the capacity of the facility designated by the
10 secretary for the incarceration and treatment of the person is not
11 available; (B) (ii) the person fails to meaningfully participate in the
12 treatment program of the designated facility; (C) (iii) the person is
13 disruptive to the security or operation of the designated facility; or (D)
14 (iv) the medical or mental health condition of the person renders the
15 person unsuitable for confinement at the designated facility. The
16 determination by the secretary that the person either is not to be admitted
17 into the designated facility or is to be transferred from the designated
18 facility is not subject to review. The sheriff shall be responsible for all
19 transportation expenses to and from the state correctional facility.

20 At the time of the filing of the judgment form or journal entry as
21 required by K.S.A. 21-4620 or 22-3426 or section 280 of chapter 136 of
22 the 2010 Session Laws of Kansas, and amendments thereto, the court
23 shall cause a certified copy to be sent to the officer having the offender in
24 charge. The law enforcement agency maintaining custody and control of a
25 defendant for imprisonment shall cause a certified copy of the judgment
26 form or journal entry to be sent to the secretary of corrections within
27 three business days of receipt of the judgment form or journal entry from
28 the court and notify the secretary of corrections when the term of
29 imprisonment expires and upon expiration of the term of imprisonment
30 shall deliver the defendant to a location designated by the secretary. After
31 the term of imprisonment imposed by the court, the person shall be
32 placed in the custody of the secretary of corrections for a mandatory one-
33 year period of postrelease supervision, which such period of postrelease
34 supervision shall not be reduced. During such postrelease supervision, the
35 person shall be required to participate in an inpatient or outpatient
36 program for alcohol and drug abuse, including, but not limited to, an
37 approved aftercare plan or mental health counseling, as determined by the
38 secretary and satisfy conditions imposed by the Kansas parole board as
39 provided by K.S.A. 22-3717, and amendments thereto. Any violation of
40 the conditions of such postrelease supervision may subject such person to
41 revocation of postrelease supervision pursuant to K.S.A. 75-5217 of sec.,
42 and amendments thereto and as otherwise provided by law.

43 (E) (1) On the fourth or subsequent conviction of a violation of this

The court shall determine whether the offender upon release from imprisonment shall be supervised by community correctional services or court services based upon the risk and needs of the offender.

supervision office designated by the court

that officer

community correctional services or court services as determined by the court

Add:

on supervision to

STRIKE "release" throughout.

the supervision office designated by the court

supervision officer or court.

release

and imprisonment in jail for the remainder of the period of imprisonment, the remainder of the [release] supervision period, or any combination or portion thereof.

8-1567,

~~1 violation of K.S.A. 8-2,144 or section 2, and amendments thereto, or a
2 fourth or subsequent conviction of a violation of K.S.A. 8-1567, and
3 amendments thereto.~~

4 (d) An alcohol and drug evaluation shall be conducted on any person
5 whom the prosecutor considers for eligibility or finds eligible to enter a
6 diversion agreement in lieu of further criminal proceedings on a
7 complaint alleging a violation of K.S.A. 8-1567 or section 2, and
8 amendments thereto, or the ordinance of a city or resolution of a county
9 in this state which prohibits the acts prohibited by that statute those
10 statutes . The alcohol and drug evaluation report shall be made available
11 to the prosecuting attorney and shall be considered by the prosecuting
12 attorney. The alcohol and drug evaluation report shall contain a history of
13 the person's prior traffic record, characteristics and alcohol or drug
14 problems, or both, and a recommendation concerning the amenability of
15 the person to education and rehabilitation. The alcohol and drug
16 evaluation report shall include a recommendation concerning the alcohol
17 and drug driving safety education and treatment for the person. The
18 alcohol and drug evaluation report shall be prepared by a program which
19 has demonstrated practical experience in the diagnosis of alcohol and
20 drug abuse. The duties of persons who prepare the alcohol and drug
21 evaluation report may also include monitoring persons in the treatment
22 programs, notifying the prosecutor and the court of any person failing to
23 meet the conditions of diversion or referrals to treatment, and providing
24 assistance and data reporting and program evaluation meet the standards
25 of assessment as set forth by the secretary of social and rehabilitation
26 services. The cost of any alcohol and drug education, rehabilitation and
27 treatment programs evaluation for any person shall be paid by such
28 person, and such costs shall include, but not be limited to, the
29 assessments required by subsection (c) to the provider at the time of
30 service, and shall not exceed \$150.

31 (e) In addition to any fines, fees, penalties or costs levied against a
32 person who is convicted of a violation of K.S.A. 8-1567, and
33 amendments thereto, or the ordinance of a city in this state which
34 prohibits the acts prohibited by that statute, or who enters a diversion
35 agreement in lieu of further criminal proceedings on a complaint alleging
36 a violation of that statute or such an ordinance, \$150 shall be assessed
37 against the person by the sentencing court or under the diversion
38 agreement. The \$150 assessment may be waived by the court, in whole or
39 in part, or, in the case of diversion of criminal proceedings, by the
40 prosecuting attorney, if the court or prosecuting attorney finds that the
41 defendant is an indigent person. Except as otherwise provided in this
42 subsection, the clerk of the court shall deposit all assessments received
43 under this section in the alcohol and drug safety action fund of the court,

(Explanation: An offender convicted of a third DUI will be receiving an alcohol and drug evaluation as part of the third DUI treatment process. An offender convicted of a fourth or subsequent DUI will be going to prison, where assessment will be done. Requiring that an assessment be done presentence is unnecessary.)