

## HOUSE BILL No. 2135

By Committee on Judiciary

1-24

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AN ACT concerning alcohol and drug safety action programs; relating to the assessment fee; amending K.S.A. 2000 Supp. 8-1008 and repealing the existing section.

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

Section 1. K.S.A. 2000 Supp. 8-1008 is hereby amended to read as follows: 8-1008. (a) Community-based alcohol and drug safety action programs certified in accordance with subsection (b) shall provide:

(1) Presentence alcohol and drug evaluations of any person who is convicted of a violation of K.S.A. 8-1567 and amendments thereto, or the ordinance of a city in this state which prohibits the acts prohibited by that statute;

(2) supervision and monitoring of all persons who are convicted of a violation of K.S.A. 8-1567 and amendments thereto, or the ordinance of a city in this state which prohibits the acts prohibited by that statute, and whose sentences or terms of probation require completion of an alcohol and drug safety action program, as provided in this section, or an alcohol and drug abuse treatment program, as provided in this section;

(3) alcohol and drug evaluations of persons whom the prosecutor considers for eligibility or finds eligible to enter a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of K.S.A. 8-1567 and amendments thereto, or the ordinance of a city in this state which prohibits the acts prohibited by that statute;

(4) supervision and monitoring of persons required, under a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of K.S.A. 8-1567 and amendments thereto, or the ordinance of a city in this state which prohibits the acts prohibited by that statute, to complete an alcohol and drug safety action program, as provided in this section, or an alcohol and drug abuse treatment program, as provided in this section; or

(5) any combination of (1), (2), (3) and (4).

(b) The presentence alcohol and drug evaluation shall be conducted by a community-based alcohol and drug safety action program certified in accordance with the provisions of this subsection to provide evaluation and supervision services as described in subsections (c) and (d). A com-

1 munity-based alcohol and drug safety action program shall be certified  
2 either by the chief judge of the judicial district to be served by the pro-  
3 gram or by the secretary of social and rehabilitation services for judicial  
4 districts in which the chief judge declines to certify a program. In addition  
5 to any qualifications established by the secretary, the chief judge may  
6 establish qualifications for the certification of programs, which qualifi-  
7 cations may include requirements for training, education and certification  
8 of personnel; supervision and monitoring of clients; fee reimbursement  
9 procedures; handling of conflicts of interest; delivery of services to clients  
10 unable to pay; and other matters relating to quality and delivery of services  
11 by the program. In establishing the qualifications for programs, the chief  
12 judge or the secretary shall give preference to those programs which have  
13 had practical experience prior to July 1, 1982, in diagnosis and referral in  
14 alcohol and drug abuse. Certification of a program by the chief judge  
15 shall be done with consultation and approval of a majority of the judges  
16 of the district court of the district and municipal judges of cities lying in  
17 whole or in part within the district. If within 60 days after the effective  
18 date of this act the chief judge declines to certify any program for the  
19 judicial district, the judge shall notify the secretary of social and rehabil-  
20 itation services, and the secretary of social and rehabilitation services shall  
21 certify a community-based alcohol and drug safety action program for  
22 that judicial district. The certification shall be for a four-year period. Re-  
23 certification of a program or certification of a different program shall be  
24 by the chief judge, with consultation and approval of a majority of the  
25 judges of the district court of the district and municipal judges of cities  
26 lying in whole or in part within the district. If upon expiration of certifi-  
27 cation of a program there will be no certified program for the district and  
28 the chief judge declines to recertify or certify any program in the district,  
29 the judge shall notify the secretary of social and rehabilitation services, at  
30 least six months prior to the expiration of certification, that the judge  
31 declines to recertify or certify a program under this subsection. Upon  
32 receipt of the notice and prior to the expiration of certification, the sec-  
33 retary shall recertify or certify a community-based alcohol and drug safety  
34 action program for the judicial district for the next four-year period. To  
35 be eligible for certification under this subsection, the chief judge or the  
36 secretary of social and rehabilitation services shall determine that a com-  
37 munity-based alcohol and drug safety action program meets the qualifi-  
38 cations established by the judge or secretary and is capable of providing,  
39 within the judicial district: (1) The evaluations, supervision and monitor-  
40 ing required under subsection (a); (2) the alcohol and drug evaluation  
41 report required under subsection (c) or (d); (3) the follow-up duties spec-  
42 ified under subsection (c) or (d) for persons who prepare the alcohol and  
43 drug evaluation report; and (4) any other functions and duties specified

1 by law. Community-based alcohol and drug safety action programs per-  
2 forming services in any judicial district under this section prior to the  
3 effective date of this act may continue to perform those services until a  
4 community-based alcohol and drug safety action program is certified for  
5 that judicial district.

6 (c) A presentence alcohol and drug evaluation shall be conducted on  
7 any person who is convicted of a violation of K.S.A. 8-1567 and amend-  
8 ments thereto, or the ordinance of a city in this state which prohibits the  
9 acts prohibited by that statute. The presentence alcohol and drug evalua-  
10 tion report shall be made available to and shall be considered by the  
11 court prior to sentencing. The presentence alcohol and drug evaluation  
12 report shall contain a history of the defendant's prior traffic record, char-  
13 acteristics and alcohol or drug problems, or both, and a recommendation  
14 concerning the amenability of the defendant to education and rehabili-  
15 tation. The presentence alcohol and drug evaluation report shall include  
16 a recommendation concerning the alcohol and drug driving safety edu-  
17 cation and treatment for the defendant. The presentence alcohol and  
18 drug evaluation report shall be prepared by a program which has dem-  
19 onstrated practical experience in the diagnosis of alcohol and drug abuse.  
20 The duties of persons who prepare the presentence alcohol and drug  
21 evaluation report may also include appearing at sentencing and probation  
22 hearings in accordance with the orders of the court, monitoring defen-  
23 dants in the treatment programs, notifying the probation department and  
24 the court of any defendant failing to meet the conditions of probation or  
25 referrals to treatment, appearing at revocation hearings as may be re-  
26 quired and providing assistance and data reporting and program evalua-  
27 tion. The cost of any alcohol and drug education, rehabilitation and treat-  
28 ment programs for any person shall be paid by such person, and such  
29 costs shall include, but not be limited to, the assessments required by  
30 subsection (e). If financial obligations are not met or cannot be met, the  
31 sentencing court shall be notified for the purpose of collection or review  
32 and further action on the defendant's sentence.

33 (d) An alcohol and drug evaluation shall be conducted on any person  
34 whom the prosecutor considers for eligibility or finds eligible to enter a  
35 diversion agreement in lieu of further criminal proceedings on a com-  
36 plaint alleging a violation of K.S.A. 8-1567 and amendments thereto, or  
37 the ordinance of a city in this state which prohibits the acts prohibited by  
38 that statute. The alcohol and drug evaluation report shall be made avail-  
39 able to the prosecuting attorney and shall be considered by the prose-  
40 cuting attorney. The alcohol and drug evaluation report shall contain a  
41 history of the person's prior traffic record, characteristics and alcohol or  
42 drug problems, or both, and a recommendation concerning the amena-  
43 bility of the person to education and rehabilitation. The alcohol and drug

1 evaluation report shall include a recommendation concerning the alcohol  
2 and drug driving safety education and treatment for the person. The al-  
3cohol and drug evaluation report shall be prepared by a program which  
4 has demonstrated practical experience in the diagnosis of alcohol and  
5 drug abuse. The duties of persons who prepare the alcohol and drug  
6 evaluation report may also include monitoring persons in the treatment  
7 programs, notifying the prosecutor and the court of any person failing to  
8 meet the conditions of diversion or referrals to treatment, and providing  
9 assistance and data reporting and program evaluation. The cost of any  
10 alcohol and drug education, rehabilitation and treatment programs for  
11 any person shall be paid by such person, and such costs shall include, but  
12 not be limited to, the assessments required by subsection (e).

13 (e) In addition to any fines, fees, penalties or costs levied against a  
14 person who is convicted of a violation of K.S.A. 8-1567 and amendments  
15 thereto, or the ordinance of a city in this state which prohibits the acts  
16 prohibited by that statute, or who enters a diversion agreement in lieu of  
17 further criminal proceedings on a complaint alleging a violation of that  
18 statute or such an ordinance, ~~\$125~~ \$150 shall be assessed against the  
19 person by the sentencing court or under the diversion agreement. The  
20 ~~\$125~~ \$150 assessment may be waived by the court or, in the case of  
21 diversion of criminal proceedings, by the prosecuting attorney, if the court  
22 or prosecuting attorney finds that the defendant is an indigent person.  
23 Except as otherwise provided in this subsection, the clerk of the court  
24 shall deposit all assessments received under this section in the alcohol  
25 and drug safety action fund of the court, which fund shall be subject to  
26 the administration of the judge having administrative authority over that  
27 court. If the secretary of social and rehabilitation services certifies the  
28 community-based alcohol and drug safety action program for the judicial  
29 district in which the court is located, the clerk of the court shall remit,  
30 during the four-year period for which the program is certified, 15% of all  
31 assessments received under this section to the secretary of social and  
32 rehabilitation services. Moneys credited to the alcohol and drug safety  
33 action fund shall be expended by the court, pursuant to vouchers signed  
34 by the judge having administrative authority over that court, only for costs  
35 of the services specified by subsection (a) or otherwise required or au-  
36 thorized by law and provided by community-based alcohol and drug safety  
37 action programs, except that not more than 10% of the money credited  
38 to the fund may be expended to cover the expenses of the court involved  
39 in administering the provisions of this section. In the provision of these  
40 services the court shall contract as may be necessary to carry out the  
41 provisions of this section. The district or municipal judge having admin-  
42 istrative authority over that court shall compile a report and send such  
43 report to the office of the state judicial administrator on or before January

1 20 of each year, beginning January 20, 1991. Such report shall include,  
2 but not be limited to:

3 (1) The balance of the alcohol and drug safety action fund of the court  
4 on December 31 of each year;

5 (2) the assessments deposited into the fund during the 12-month pe-  
6 riod ending the preceding December 31; and

7 (3) the dollar amounts expended from the fund during the 12-month  
8 period ending the preceding December 31.

9 The office of the state judicial administrator shall compile such reports  
10 into a statewide report and submit such statewide report to the legislature  
11 on or before March 1 of each year.

12 (f) The secretary of social and rehabilitation services shall remit all  
13 moneys received by the secretary under this section to the state treasurer  
14 at least monthly. Upon receipt of the remittance, the state treasurer shall  
15 deposit the entire amount in the state treasury and credit it to the certi-  
16 fication of community-based alcohol and drug safety action programs fee  
17 fund, which is hereby created. All expenditures from such fund shall be  
18 made in accordance with appropriation acts upon warrants issued pur-  
19 suant to vouchers approved by the secretary of social and rehabilitation  
20 services or a person designated by the secretary.

21 Sec. 2. K.S.A. 2000 Supp. 8-1008 is hereby repealed.

22 Sec. 3. This act shall take effect and be in force from and after its  
23 publication in the statute book.

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