

HOUSE BILL No. 2766

By Representative McCreary

2-6

9 AN ACT concerning crimes, punishment and criminal procedure; relat-
10 ing to the nonprison sanction of a certified drug abuse treatment
11 program.

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

14 Section 1. (a) Persons who were convicted of a felony violation of
15 K.S.A. 65-4160 or 65-4162, on or after July 1, 1994 but prior to July 1,
16 2003, may have their sentences modified according to the provisions of
17 this section. Persons who meet the requirements of K.S.A. 21-4729, and
18 amendments thereto, may have such person's sentence modified and be
19 subject to the mandatory drug abuse treatment programs.

20 (b) The department of corrections shall conduct a review and prepare
21 a report on each person who committed such crimes during such dates.
22 A copy of the report shall be transmitted to the inmate, the county or
23 district attorney for the county from which the inmate was sentenced,
24 and the sentencing court.

25 (1) The department of corrections shall complete and submit to the
26 appropriate parties the report on all imprisoned inmates who were con-
27 victed of a felony violation of K.S.A. 65-4160 or 65-4162, on or after July
28 1, 1994 but prior to July 1, 2003, and who have greater than 180 days to
29 serve on such inmates' sentences prior to such inmates' initial release
30 date. The department of corrections shall review inmates based on such
31 inmate's custody or security classification in the following order: mini-
32 mum, within 60 days of the effective date of this act; medium, within 90
33 days of the effective date of this act; and maximum, within 120 days of
34 the effective date of this act.

35 (2) The department of corrections shall complete and submit to the
36 appropriate parties the report on all inmates who were convicted of a
37 felony violation of K.S.A. 65-4160 or 65-4162, on or after July 1, 1994 but
38 prior to July 1, 2003, and who are condition probation violators within 90
39 days of the effective date of this act.

40 (3) The department of corrections shall complete and submit to the
41 appropriate parties the report on all inmates who were convicted of a
42 felony violation of K.S.A. 65-4160 or 65-4162, on or after July 1, 1994 but
43 prior to July 1, 2003, and who are condition parole violators or postrelease

- 1 supervision violators within 120 days of the effective date of this act.
- 2 (c) The reports on those inmates who would be eligible for a modi-
3 fication of sentence as determined by the department of corrections shall
4 be deemed to be correct unless objection thereto is filed by either the
5 person or the prosecution officer within the 60-day period provided to
6 request a hearing. If an objection is filed, the sentencing court shall de-
7 termine if the person is eligible for a modification of sentence. The bur-
8 den of proof shall be on the prosecution officer to prove that the person
9 is not eligible for such modification of sentence.
- 10 (d) (1) Within 60 days of the issuance of such report, the inmate shall
11 have the right to request a hearing by filing a motion with the sentencing
12 court, regarding the modification of the sentence under this section to
13 be held in the jurisdiction where the original criminal case was filed. The
14 secretary of corrections shall be provided written notice of any request
15 for a hearing. If a request for a hearing is not filed within 60 days of the
16 issuance of the report, the person is not eligible for such modification of
17 sentence.
- 18 (2) In the event a hearing is requested and held, the court shall de-
19 termine whether the safety of the members of the public will be jeop-
20 ardized by such modification of sentence.
- 21 (3) In the event a hearing is requested, the court shall schedule and
22 hold the hearing within 60 days after it was requested and shall rule on
23 the issues raised by the parties within 30 days after the hearing.
- 24 (4) Such offender shall be represented by appointed counsel pursu-
25 ant to the provisions of K.S.A. 22-4501 *et seq.*, and amendments thereto.
- 26 (5) Nothing contained in this section shall be construed as requiring
27 the appearance in person of the offender or creating such a right of ap-
28 pearance in person of the offender at the hearing provided in this section
29 regarding the modification of a sentence under this section.
- 30 (6) If the court determines that the safety of the members of the
31 public will not be jeopardized by such modification of sentence, the court
32 shall enter an order regarding the person's modification of sentence and
33 forward that order to the secretary of corrections who shall administer
34 the modification of sentence.
- 35 (7) If the court determines that the safety of the members of the
36 public will be jeopardized by such modification of sentence, the court
37 shall enter an order denying the person's modification of sentence and
38 the person shall remain in the custody of the department of corrections.
- 39 (e) All sentence modifications that result in an offender being re-
40 leased from a state correctional facility shall be placed under the super-
41 vision of community corrections.
- 42 Sec. 2. This act shall take effect and be in force from and after its
43 publication in the Kansas register.