



State of Kansas

Office of Judicial Administration

Kansas Judicial Center
301 SW 10th
Topeka, Kansas 66612-1507

(785) 296-2256

House Corrections and Juvenile Justice

Honorable Representative J. Russell Jennings, Chair

**Neutral Testimony on HB 2087
Drug Abuse Treatment Programs
Chris Mechler, Court Services Specialist**

February 7, 2017

Chairman Jennings and committee, I appreciate the opportunity to provide neutral testimony regarding HB 2087. HB 2087 would allow defendants who are placed on diversion by the prosecutor to receive substance abuse treatment through the Kansas Sentencing Commission SB 123 Treatment Program. Additionally, the bill would place defendants who are not committed to the drug treatment program on supervision to either community corrections or court services based on the result of the criminal risk assessment.

This could place additional defendants on supervision to both probation entities. The Office of Judicial Administration proposes the attached amendment which would impose a supervision fee on defendants placed on supervision. The amendment would allow the state to recoup costs associated with the supervision of the diverted defendants.

Thank you for your consideration.

HOUSE BILL No. 2087

By Committee on Corrections and Juvenile Justice

1-18

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to certified drug abuse treatment programs; diversion agreements;
3 amending K.S.A. 2016 Supp. 21-6824 and repealing the existing
4 section.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2016 Supp. 21-6824 is hereby amended to read as
8 follows: 21-6824. (a) (1) There is hereby established a nonprison sanction
9 of certified drug abuse treatment programs for certain offenders who are
10 sentenced on or after November 1, 2003. Placement of offenders in
11 certified drug abuse treatment programs by the court shall be limited to
12 placement of adult offenders, convicted of a felony violation of ~~K.S.A. 65-~~
13 ~~4160 or 65-4162, prior to their repeal, K.S.A. 2010 Supp. 21-36a06, prior~~
14 ~~to its transfer, or K.S.A. 2016 Supp. 21-5706, and amendments thereto,~~
15 *whose offense is classified in grid blocks:*

16 (1)(A) ~~Whose offense is classified in grid blocks 5-C, 5-D, 5-E, 5-F,~~
17 ~~5-G, 5-H or 5-I of the sentencing guidelines grid for drug crimes and such~~
18 ~~offender has no felony conviction of K.S.A. 65-4142, 65-4159, 65-4161,~~
19 ~~65-4163 or 65-4164, prior to their repeal, K.S.A. 2010 Supp. 21-36a03,~~
20 ~~21-36a05 or 21-36a16, prior to their transfer, or K.S.A. 2016 Supp. 21-~~
21 ~~5703, 21-5705 or 21-5716, and amendments thereto, or any substantially~~
22 ~~similar offense from another jurisdiction; or~~

23 (2)(B) ~~whose offense is classified in grid blocks 5-A or 5-B of the~~
24 ~~sentencing guidelines grid for drug crimes, such offender has no felony~~
25 ~~conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-4164,~~
26 ~~prior to their repeal, K.S.A. 2010 Supp. 21-36a03, 21-36a05 or 21-36a16,~~
27 ~~prior to their transfer, or K.S.A. 2016 Supp. 21-5703, 21-5705 or 21-5716,~~
28 ~~and amendments thereto, or any substantially similar offense from another~~
29 ~~jurisdiction, if the person felonies in the offender's criminal history were~~
30 ~~severity level 8, 9 or 10 or nongrid offenses of the sentencing guidelines~~
31 ~~grid for nondrug crimes, and the court finds and sets forth with~~
32 ~~particularity the reasons for finding that the safety of the members of the~~
33 ~~public will not be jeopardized by such placement in a drug abuse treatment~~
34 ~~program.~~

35 (2) *There is hereby established a certified drug abuse treatment*
36 *program for certain persons who enter into a diversion agreement in lieu*

1 *of further criminal proceedings on or after July 1, 2017. Placement of*
2 *divertees in certified drug abuse treatment programs pursuant to a*
3 *diversion agreement shall be limited to placement of adults, on a*
4 *complaint alleging a felony violation of K.S.A. 2016 Supp. 21-5706, and*
5 *amendments thereto, whose offense is classified in grid blocks 5-C, 5-D, 5-*
6 *E, 5-F, 5-G, 5-H or 5-I of the sentencing guidelines grid for drug crimes*
7 *and such divertee has no felony conviction of K.S.A. 65-4142, 65-4159,*
8 *65-4161, 65-4163 or 65-4164, prior to their repeal, K.S.A. 2010 Supp. 21-*
9 *36a03, 21-36a05 or 21-36a16, prior to their transfer, or K.S.A. 2016*
10 *Supp. 21-5703, 21-5705 or 21-5716, and amendments thereto, or any*
11 *substantially similar offense from another jurisdiction.*

12 (b) As a part of the presentence investigation pursuant to K.S.A. 2016
13 Supp. 21-6813, and amendments thereto, *or as a part of considering*
14 *whether or not to allow diversion to a defendant, offenders or divertees*
15 *who meet the requirements of subsection (a), unless otherwise specifically*
16 *ordered by the court, shall be subject to:*

17 (1) A drug abuse assessment which shall include a clinical interview
18 with a mental health professional and a recommendation concerning drug
19 abuse treatment for the offender *or divertee*; and

20 (2) a criminal risk-need assessment. The criminal risk-need
21 assessment shall assign a high or low risk status to the offender *or*
22 *divertee.*

23 (c) (1) If the offender is assigned a high risk status as determined by
24 the drug abuse assessment performed pursuant to subsection (b)(1) and a
25 moderate or high risk status as determined by the criminal risk-need
26 assessment performed pursuant to subsection (b)(2), the sentencing court
27 shall commit the offender to treatment in a drug abuse treatment program
28 until the court determines the offender is suitable for discharge by the
29 court. The term of treatment shall not exceed 18 months. The court may
30 extend the term of probation, pursuant to ~~subsection (c)(3) of~~ K.S.A. 2016
31 Supp. 21-6608(c)(3), and amendments thereto. The term of treatment may
32 not exceed the term of probation.

33 (2) *If the defendant being considered for a diversion agreement is*
34 *assigned a high risk status as determined by the drug abuse assessment*
35 *performed pursuant to subsection (b)(1) and a moderate or high risk*
36 *status as determined by the criminal risk-need assessment performed*
37 *pursuant to subsection (b)(2), the diversion agreement shall require the*
38 *divertee to comply with and participate in a drug abuse treatment*
39 *program. The term of treatment shall not exceed 18 months.*

40 (d) (1) Offenders *or divertees* who are committed to a drug abuse
41 treatment program pursuant to subsection (c) shall be supervised by
42 community correctional services.

43 (2) Offenders *or divertees* who are not committed to a drug abuse

(3) When a diveree is supervised by court services or community correctional services under this subsection, a felony correctional supervision fee in the amount prescribed by K.S.A. 21-6607(c)(3)(A), and amendments thereto, shall be charged and collected by the district court. The clerk of the district court shall remit all revenues received under this paragraph to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of such remittance, the state treasurer shall deposit the entire amount in accordance with K.S.A. 21-6607(c)(3)(B), and amendments thereto.

1 treatment program pursuant to subsection (c) shall be supervised by
2 community correctional services or court services based on the result of
3 the criminal risk assessment.

4 (e) Placement of offenders under subsection ~~(a)(2)~~ (a)(1)(B) shall be
5 subject to the departure sentencing statutes of the revised Kansas
6 sentencing guidelines act.

7 (f) (1) Offenders *or divertees* in drug abuse treatment programs shall
8 be discharged from such program if the offender *or diveree*:

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

10 (B) Has a pattern of intentional conduct that demonstrates the
11 offender's *or diveree's* refusal to comply with or participate in the
12 treatment program, as established by judicial finding.

13 (2) (A) Offenders who are discharged from such program *pursuant to*
14 *subsection (f)(1)* shall be subject to the revocation provisions of ~~subsection~~
15 ~~(a)~~ of K.S.A. 2016 Supp. 21-6604(n), and amendments thereto.

16 (B) *Divertees who are discharged from such program pursuant to (f)*
17 *(1) shall be subject to the provisions of such diversion agreement.*

18 (g) (m) As used in this section, "mental health professional" includes
19 licensed social workers, persons licensed to practice medicine and surgery,
20 licensed psychologists, licensed professional counselors or registered
21 alcohol and other drug abuse counselors licensed or certified as addiction
22 counselors who have been certified by the secretary of corrections to treat
23 offenders *persons* pursuant to K.S.A. 2016 Supp. 75-52,144, and
24 amendments thereto.

25 (h) (o) (1) Offenders *or divertees* who meet the requirements of
26 subsection (a) shall not be subject to the provisions of this section and
27 shall be sentenced as otherwise provided by law, if such offenders *or*
28 *divertees*:

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

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

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

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

37 (i) (p) The court may order an offender who otherwise does not meet the
38 requirements of subsection (c)(1) to undergo one additional drug abuse
39 assessment while such offender is on probation. Such offender may be
40 ordered to undergo drug abuse treatment pursuant to subsection (a)(1) if
41 such offender is determined to meet the requirements of subsection (c)(1).
42 The cost of such assessment shall be paid by such offender.

43 (j) (k) *For the purposes of this section, the term "diveree" means a*

(g) A diveree supervised under subsection (d) (2) who fails to uphold the obligations imposed by a diversion agreement executed under K.S.A. 22-2909 shall be discharged from supervision and referred to the appropriate attorney general or county or district attorney.

1 *person who has entered into a diversion agreement pursuant to K.S.A. 22-*
2 *2909.*

3 Sec. 2. K.S.A. 2016 Supp. 21-6824 is hereby repealed.

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