

HOUSE BILL No. 2498

By Committee on Corrections and Juvenile Justice

1-20

1 AN ACT concerning crimes, criminal procedure and punishment; relating
2 to mental health diversions for certain defendants.

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

5 Section 1. (a) This act shall be known as the mental health diversion
6 program authorization act.

7 (b) There is hereby authorized a mental health diversion program for
8 certain offenders who are charged with a crime on or after July 1, 2012.

9 (c) Any county or district attorney, in coordination with a community
10 mental health center in such county or district attorney's jurisdiction, who
11 elects to establish a mental health diversion program, shall establish such
12 program pursuant to this act.

13 (d) This act shall be a part of and supplemental to the Kansas code for
14 criminal procedure.

15 Sec. 2. As used in this act:

16 (a) "Case manager" means an employee of, or contracted by, a
17 community mental health center who, at the direction of the mental health
18 diversion supervisor, administers, monitors and oversees a defendant's
19 participation in a mental health diversion program.

20 (b) "Community mental health center" means a community mental
21 health center organized pursuant to the provisions of K.S.A. 19-4001
22 through 19-4015, and amendments thereto.

23 (c) "Mental health diversion" means referral of a defendant charged
24 with a crime to a supervised mental health rehabilitation and performance
25 program implemented by a community mental health center, prior to
26 adjudication.

27 (d) "Mental health diversion agreement" means the specification of
28 formal terms and conditions which a defendant must fulfill in order to
29 have the criminal charges against them dismissed.

30 (e) "Mental health diversion coordinator" means an employee of, or
31 contracted by, the office of a county or district attorney to administer the
32 mental health diversion program of each such county or district attorney.

33 (f) "Mental health diversion supervisor" means a qualified mental
34 health professional designated to administer the mental health diversion
35 program of a community mental health center.

36 (g) "Qualified mental health professional" has the same meaning as

1 defined in subsection (j) of K.S.A. 59-2946, and amendments thereto.

2 (h) (1) "Serious mental illness" means a defendant suffers from a
3 diagnosable mental, behavioral or emotional disorder as specified in the
4 diagnostic and statistical manual of mental disorders, fourth edition, text
5 revision, that has caused functional impairment which has substantially
6 interfered with or limited one or more major life activities within a year of
7 the conduct giving rise to the complaint.

8 (2) The diagnosis of "serious mental illness" is subject to any
9 additional or varying criteria adopted by a community mental health center
10 that is within the standards of a qualified mental health professional.

11 Sec. 3. (a) (1) Each county or district attorney who elects to establish
12 a mental health diversion program shall adopt written policies and
13 guidelines for the implementation of such program, subject to the
14 provisions of this act.

15 (2) Such policies and guidelines shall provide for the appointment of
16 a mental health diversion coordinator for each county or district attorney's
17 office and procedures for a defendant with severe mental illness to enter
18 into a treatment and diversion program in lieu of further criminal
19 proceedings.

20 (b) (1) If the county or district attorney elects to establish a mental
21 health diversion program, each community mental health center in such
22 county or district attorney's jurisdiction, in coordination with such county
23 or district attorney, shall adopt written guidelines and policies for the
24 implementation of such program, subject to the provisions of this act.

25 (2) Such guidelines and policies shall provide for the appointment of
26 a diversion supervisor who shall oversee the mental health diversion
27 program of the community mental health center and coordinate such
28 program with the county or district attorney mental health diversion
29 coordinators.

30 Sec. 4. (a) After a complaint has been filed charging a defendant with
31 commission of a crime and prior to conviction thereof, such defendant
32 may apply to the county or district attorney for a mental health diversion.

33 (b) No mental health diversion shall be granted to a defendant
34 charged with an offgrid felony, a severity level 1, 2, 3, 4, 5 or 6 person
35 felony, a severity level 1, 2, 3 or 4 nonperson felony, a violation of K.S.A.
36 8-1567, subsection (a)(1) of K.S.A. 2011 Supp. 21-5807, and amendments
37 thereto, or the provisions of article 57 of chapter 21 of the Kansas Statutes
38 Annotated, and amendments thereto.

39 (c) In determining whether mental health diversion of a defendant is
40 in the interests of justice and of benefit to the defendant and the
41 community, the county or district attorney shall consider at least the
42 following factors among all factors considered:

43 (1) The nature of the crime charged and the circumstances

1 surrounding it;

2 (2) any special characteristics or circumstances of the defendant;

3 (3) whether the defendant is a first-time offender and if the defendant
4 has previously participated in diversion;

5 (4) whether there is a probability that the defendant will cooperate
6 with and benefit from mental health diversion;

7 (5) whether the available mental health diversion program is
8 appropriate to the needs of the defendant;

9 (6) the impact of the mental health diversion of the defendant upon
10 the community;

11 (7) recommendations, if any, of the involved law enforcement
12 agency;

13 (8) recommendations, if any, of the victim;

14 (9) provisions for restitution;

15 (10) any mitigating circumstances; and

16 (11) whether the defendant's mental health issues were a contributing
17 factor to the crime charged.

18 Sec. 5. (a) If the county or district attorney elects to offer diversion,
19 the mental health coordinator shall consult with the community mental
20 health diversion supervisor in the jurisdiction in which the defendant is
21 charged, or at the request of the defendant, may consult with the diversion
22 supervisor of the community mental health center most conducive to a
23 defendant's continued rehabilitation and success in a diversion program, or
24 any other diversion supervisor of a community mental health center as
25 requested by the defendant for good cause shown.

26 (b) The community mental health diversion supervisor shall assess
27 the mental health of the defendant and provide a written report to the
28 county or district attorney diversion coordinator. Such report shall
29 include:

30 (1) A statement that such defendant is or is not suffering from severe
31 mental illness;

32 (2) a statement that such defendant may or may not benefit from
33 mental health diversion; and

34 (3) if applicable, the detailed requirements and provisions of the
35 specialized mental health diversion program.

36 (c) If the community mental health diversion supervisor determines
37 that such defendant is suffering from severe and persistent mental illness
38 and is likely to benefit from participation in a mental health diversion
39 program, such diversion supervisor shall develop a specialized mental
40 health diversion program for such defendant. Such program shall require
41 the defendant to comply with the provisions of the program for a period of
42 no less than 12 months and no more than 36 months, unless such diversion
43 supervisor determines a program of no less than six months will benefit

1 such defendant.

2 (d) Such program may include, but is not limited to, provisions
3 concerning:

4 (1) Residence in a specified facility;

5 (2) maintenance of gainful employment;

6 (3) continuation of prescribed medication or psychiatric or
7 psychological treatment; and

8 (4) participation in programs offering medical, educational,
9 vocational, social and psychological services, corrective and preventative
10 guidance and other rehabilitative services.

11 Sec. 6. (a) If the community mental health diversion supervisor
12 recommends mental health diversion pursuant to subsection (c) of section
13 5, and amendments thereto, the county or district attorney diversion
14 coordinator shall prepare a mental health diversion agreement, and may as
15 part of such agreement, require the defendant to pay any court costs,
16 restitution or fees as determined by the office of the county or district
17 attorney.

18 (b) The diversion coordinator or county or district attorney shall
19 present such diversion agreement to the defendant and the defendant's
20 attorney, if the defendant is represented by an attorney, at a diversion
21 conference.

22 (c) No defendant shall be required to enter any plea to a criminal
23 charge as a condition for diversion. No statements made by the defendant
24 or counsel in any mental health diversion conference or in any other
25 discussion of a proposed mental health diversion agreement shall be
26 admissible as evidence in any criminal proceeding on crimes charged or
27 facts alleged in the complaint.

28 (d) Except for sentencing proceedings, the following shall not be
29 admissible as evidence in criminal proceedings which are resumed
30 pursuant to subsection (c)(2) of section 7, and amendments thereto: (1)
31 Participation in a diversion program; (2) the facts of such participation; (3)
32 the diversion agreement entered into; or (4) any written application or
33 statement made for the purpose of entering into a diversion agreement.

34 (e) The mental health diversion agreement shall include:

35 (1) The defendant's name, sex, race and date of birth;

36 (2) the date the complaint was filed and all crimes with which the
37 defendant is charged;

38 (3) the district court in which the agreement is to be filed;

39 (4) a statement that if the defendant fulfills the obligations of such
40 program, as reported by the community mental health diversion supervisor
41 and determined by the county or district attorney, all further criminal
42 charges shall be dismissed with prejudice;

43 (5) the waiver of all rights under the law or the constitution of Kansas

1 or of the United States to a speedy arraignment, preliminary examinations
2 and hearings, a speedy trial, counsel and trial by jury;

3 (6) the requirements such defendant must comply with in order to
4 successfully complete the mental health diversion program;

5 (7) any required fees, restitution or court costs such defendant must
6 pay in order to participate in such program; and

7 (8) a statement, agreed to by the defendant, acknowledging that the
8 requirements of the mental health diversion agreement are subject to
9 change at any time based on the assessment of the community mental
10 health diversion supervisor and the mental health needs and performance
11 of the defendant in such program.

12 (f) (1) If the defendant agrees to the mental health diversion
13 agreement, the diversion coordinator shall file such agreement in the
14 district court and forward a copy to the appropriate community mental
15 health diversion supervisor and the Kansas bureau of investigation. A copy
16 of the agreement shall be made available upon request to the attorney
17 general, any county, district or city attorney or any court.

18 (2) If the defendant does not agree to such agreement, the criminal
19 proceedings against such defendant shall continue. This shall not preclude
20 the county or district attorney from offering, or the defendant from
21 entering, a mental health diversion agreement at a later date prior to
22 conviction of the criminal charges.

23 Sec. 7. (a) The community mental health diversion supervisor shall
24 ensure that the defendant is in compliance with the requirements of the
25 mental health diversion program as described in the diversion agreement.

26 (b) The community mental health diversion supervisor may appoint a
27 case manager to oversee and administer the diversion agreement and
28 report to such diversion supervisor.

29 (c) If the community mental health diversion supervisor determines at
30 any time that the defendant is unable to comply or has not made a good
31 faith effort to comply with the terms of the diversion agreement, such
32 diversion supervisor may:

33 (1) Amend the requirements of the diversion program; or

34 (2) notify the county or district attorney diversion coordinator, who
35 shall inform the county or district attorney. The county or district attorney
36 may file a motion to revoke the mental health diversion. The district court,
37 upon finding that the defendant has failed to fulfill the terms of the mental
38 health diversion agreement at a hearing, shall resume the criminal
39 proceedings on the complaint.

40 (d) If the community mental health diversion supervisor determines
41 that such defendant has complied with the terms of the mental health
42 diversion agreement, such community mental health diversion supervisor
43 shall notify the county or district attorney diversion coordinator, who shall

1 act to have the criminal charges against the defendant dismissed with
2 prejudice.

3 (e) The county or district attorney mental health diversion coordinator
4 shall forward to the Kansas bureau of investigation a record of the fact that
5 the defendant did or did not fulfill the terms of the mental health diversion
6 agreement. Such record shall be made available upon request to the
7 attorney general, any county, district or city attorney or any court.

8 Sec. 8. The secretary of social and rehabilitation services is hereby
9 authorized to adopt rules and regulations to implement and administer the
10 provisions of this act.

11 Sec. 9. This act shall take effect and be in force from and after its
12 publication in the statute book.

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