

As Amended by House Committee

Session of 2012

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.

3
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 **recognition** act.

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

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

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

16 Sec. 2. As used in this act:

17 (a) "Case manager" means an employee of, or contracted by, a
18 community mental health center who, at the direction of the mental health
19 diversion supervisor, administers, monitors and oversees a defendant's
20 participation in a mental health diversion program. **If the case manager is**
21 **contracted by the community mental health center, such case manager**
22 **shall be licensed to practice in Kansas as a licensed psychologist, social**
23 **worker, marriage and family therapist, professional counselor, master**
24 **level psychologist or clinical psychotherapist.**

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

28 (c) "Mental health diversion" means referral of a defendant charged
29 with a crime to a supervised mental health rehabilitation and performance
30 program implemented by a community mental health center, prior to
31 adjudication.

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

35 (e) "Mental health diversion coordinator" means an employee of, or
36 contracted by, the office of a county or district attorney to administer the

1 mental health diversion program of each such county or district attorney.

2 (f) “Mental health diversion supervisor” means a qualified mental
3 health professional designated to administer the mental health diversion
4 program of a community mental health center.

5 (g) “Qualified mental health professional” has the same meaning as
6 defined in subsection (j) of K.S.A. 59-2946, and amendments thereto.

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

13 (2) The diagnosis of “serious mental illness” is subject to any
14 additional or varying criteria adopted by a community mental health center
15 that is within the standards of a qualified mental health professional.

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

20 (2) Such policies and guidelines shall provide for the appointment of
21 a mental health diversion coordinator for each county or district attorney's
22 office and procedures for a defendant with ~~severe~~ **serious** mental illness to
23 enter into a treatment and diversion program in lieu of further criminal
24 proceedings.

25 (b) (1) If the county or district attorney elects to establish a mental
26 health diversion program, each community mental health center in such
27 county or district attorney’s jurisdiction, in coordination with such county
28 or district attorney, shall adopt written guidelines and policies for the
29 implementation of such program, subject to the provisions of this act.

30 (2) Such guidelines and policies shall provide for the appointment of
31 a diversion supervisor who shall oversee the mental health diversion
32 program of the community mental health center and coordinate such
33 program with the county or district attorney mental health diversion
34 coordinators.

35 Sec. 4. (a) After a complaint has been filed charging a defendant with
36 commission of a crime and prior to conviction thereof, **or prior to the**
37 **filing of such complaint**, such defendant may apply to the county or
38 district attorney for a mental health diversion.

39 (b) No mental health diversion shall be granted to a defendant
40 charged with an offgrid felony, a severity level 1, 2, 3, ~~4, 5 or 6 person or 4~~
41 ~~felony, a severity level 1, 2, 3 or 4 nonperson~~ felony, a violation of K.S.A.
42 8-1567; **or** subsection (a)(1) of K.S.A. 2011 Supp. 21-5807, and
43 amendments thereto, ~~or the provisions of article 57 of chapter 21 of the~~

1 ~~Kansas Statutes Annotated, and amendments thereto.~~

2 (c) In determining whether mental health diversion of a defendant is
3 in the interests of justice and of benefit to the defendant and the
4 community, the county or district attorney ~~shall~~ **may** consider ~~at least~~ the
5 following factors among all factors considered:

6 (1) The nature of the crime charged and the circumstances
7 surrounding it;

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

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

11 ~~(4)~~ (3) whether there is a probability that the defendant will cooperate
12 with and benefit from mental health diversion;

13 ~~(5)~~ (4) whether the available mental health diversion program is
14 appropriate to the needs of the defendant;

15 ~~(6)~~ (5) the impact of the mental health diversion of the defendant
16 upon the community;

17 ~~(7)~~ (6) recommendations, if any, of the involved law enforcement
18 agency;

19 ~~(8)~~ (7) recommendations, if any, of the victim;

20 ~~(9)~~ (8) provisions for restitution;

21 ~~(10)~~ (9) any mitigating circumstances; and

22 ~~(11)~~ (10) whether the defendant's mental health issues were a
23 contributing factor to the crime charged.

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

32 (b) The community mental health diversion supervisor shall assess
33 the mental health of the defendant and provide a written report to the
34 county or district attorney diversion coordinator. Such report shall
35 include:

36 (1) A statement that such defendant is or is not suffering from ~~severe~~
37 **serious** mental illness;

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

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

42 (c) If the community mental health diversion supervisor determines
43 that such defendant is suffering from ~~severe and persistent~~ **serious** mental

1 illness and is likely to benefit from participation in a mental health
2 diversion program, such diversion supervisor shall develop a specialized
3 mental health diversion program for such defendant. Such program shall
4 require the defendant to comply with the provisions of the program for a
5 period of no less than 12 months and no more than 36 months, unless such
6 diversion supervisor determines a program of no less than six months will
7 benefit such defendant.

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

- 10 (1) Residence in a specified facility;
- 11 (2) maintenance of gainful employment;
- 12 (3) continuation of prescribed medication or psychiatric or
13 psychological treatment; and
- 14 (4) participation in programs offering medical, educational,
15 vocational, social and psychological services, corrective and preventative
16 guidance and other rehabilitative services.

17 Sec. 6. (a) If the community mental health diversion supervisor
18 recommends mental health diversion pursuant to subsection (c) of section
19 5, and amendments thereto, the county or district attorney diversion
20 coordinator shall prepare a mental health diversion agreement, and may as
21 part of such agreement, require the defendant to pay any court costs,
22 restitution or fees as determined by the office of the county or district
23 attorney.

24 (b) The diversion coordinator or county or district attorney shall
25 present such diversion agreement to the defendant and the defendant's
26 attorney, if the defendant is represented by an attorney, at a diversion
27 conference.

28 (c) No defendant shall be required to enter any plea **or admit to any**
29 **facts relating** to a criminal charge as a condition for diversion. No
30 statements made by the defendant or counsel in any mental health
31 diversion conference or in any other discussion of a proposed mental
32 health diversion agreement shall be admissible as evidence in any criminal
33 proceeding on crimes charged or facts alleged in the complaint.

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

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

- 41 (1) The defendant's name, sex, race and date of birth;
- 42 (2) the date the complaint was filed and all crimes with which the
43 defendant is charged **or if no complaint has been filed, the date of the**

1 **occurrence prompting the agreement;**

2 (3) the district court in which the agreement is to be filed **or if no**
3 **complaint has been filed, such agreement shall be maintained by the**
4 **county or district attorney;**

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

9 (5) the waiver of all rights under the law or the constitution of Kansas
10 or of the United States to a speedy arraignment, preliminary examinations
11 and hearings, a speedy trial, counsel and trial by jury;

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

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

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

21 (f) (1) If the defendant agrees to the mental health diversion
22 agreement, the diversion coordinator shall file such agreement in the
23 district court and forward a copy to the appropriate community mental
24 health diversion supervisor and the Kansas bureau of investigation. A copy
25 of the agreement shall be made available upon request to the attorney
26 general, any county, district or city attorney or any court.

27 (2) If the defendant does not agree to such agreement, the criminal
28 proceedings against such defendant shall continue. This shall not preclude
29 the county or district attorney from offering, or the defendant from
30 entering, a mental health diversion agreement at a later date prior to
31 conviction of the criminal charges.

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

35 (b) The community mental health diversion supervisor may appoint a
36 case manager to oversee and administer the diversion agreement and
37 report to such diversion supervisor.

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

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

43 (2) notify the county or district attorney diversion coordinator, who

1 shall inform the county or district attorney. The county or district attorney
2 may file a motion to revoke the mental health diversion. The district court,
3 upon finding that the defendant has failed to fulfill the terms of the mental
4 health diversion agreement at a hearing, shall resume the criminal
5 proceedings on the complaint.

6 (d) If the community mental health diversion supervisor determines
7 that such defendant has complied with the terms of the mental health
8 diversion agreement, such community mental health diversion supervisor
9 shall notify the county or district attorney diversion coordinator, who shall
10 act to have the criminal charges against the defendant dismissed with
11 prejudice.

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

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

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