

HOUSE BILL No. 2472

By Committee on Corrections and Juvenile Justice

1-23

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to certified drug abuse treatment programs; diversion agreements;
3 amending K.S.A. 2019 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. 2019 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.
13 2019 Supp. 21-5705 or 21-5706, and amendments thereto, whose offense
14 is classified in grid blocks:

15 (A) 5-C, 5-D, 5-E, 5-F, 5-G, 5-H or 5-I of the sentencing
16 guidelines grid for drug crimes and such offender has no felony conviction
17 of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-4164, prior to their
18 repeal, K.S.A. 2010 Supp. 21-36a03, 21-36a05 or 21-36a16, prior to their
19 transfer, or K.S.A. 2019 Supp. 21-5703, 21-5705 or 21-5716, and
20 amendments thereto, or any substantially similar offense from another
21 jurisdiction; or

22 (B) 5-A, 5-B, 4-E, 4-F, 4-G, 4-H or 4-I of the sentencing
23 guidelines grid for drug crimes, such offender has no felony conviction of
24 K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-4164, prior to their
25 repeal, K.S.A. 2010 Supp. 21-36a03, 21-36a05 or 21-36a16, prior to their
26 transfer, or K.S.A. 2019 Supp. 21-5703, 21-5705 or 21-5716, and
27 amendments thereto, or any substantially similar offense from another
28 jurisdiction, if the person felonies in the offender's criminal history were
29 severity level 8, 9 or 10 or nongrid offenses of the sentencing guidelines
30 grid for nondrug crimes, and the court finds and sets forth with
31 particularity the reasons for finding that the safety of the members of the
32 public will not be jeopardized by such placement in a drug abuse treatment
33 program.

34 (2) *There is hereby established a certified drug abuse treatment*
35 *program for certain persons who enter into a diversion agreement in lieu*
36 *of further criminal proceedings on and after July 1, 2020. Placement of*

1 *divertees in certified drug abuse treatment programs pursuant to a*
2 *diversion agreement shall be limited to placement of adults, on a*
3 *complaint alleging a felony violation of K.S.A. 2019 Supp. 21-5706, and*
4 *amendments thereto, whose offense is classified in grid blocks 5-C, 5-D, 5-*
5 *E, 5-F, 5-G, 5-H or 5-I of the sentencing guidelines grid for drug crimes*
6 *and such divertree has no felony conviction of K.S.A. 65-4142, 65-4159,*
7 *65-4161, 65-4163 or 65-4164, prior to their repeal, K.S.A. 2010 Supp. 21-*
8 *36a03, 21-36a05 or 21-36a16, prior to their transfer, or K.S.A. 2019*
9 *Supp. 21-5703, 21-5705 or 21-5716, and amendments thereto, or any*
10 *substantially similar offense from another jurisdiction.*

11 (b) As a part of the presentence investigation pursuant to K.S.A. 2019
12 Supp. 21-6813, and amendments thereto, *or as a part of the consideration*
13 *of whether or not to allow diversion to a defendant, offenders or divertees*
14 *who meet the requirements of subsection (a), unless otherwise specifically*
15 *ordered by the court, shall be subject to:*

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

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

21 (c) (1) If the offender is assigned a high risk status as determined by
22 the drug abuse assessment performed pursuant to subsection (b)(1) and a
23 moderate or high risk status as determined by the criminal risk-need
24 assessment performed pursuant to subsection (b)(2), the sentencing court
25 shall commit the offender to treatment in a drug abuse treatment program
26 until the court determines the offender is suitable for discharge by the
27 court. The term of treatment shall not exceed 18 months. The court may
28 extend the term of probation, pursuant to K.S.A. 2019 Supp. 21-6608(c)
29 (3), and amendments thereto. The term of treatment may not exceed the
30 term of probation.

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

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

41 (2) Offenders *or divertees* who are not committed to a drug abuse
42 treatment program pursuant to subsection (c) shall be supervised by
43 community correctional services or court services based on the result of

1 the criminal risk assessment.

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

5 (f) (1) Offenders *or divertees* in drug abuse treatment programs shall
6 be discharged from such program if the offender *or divertee*:

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

8 (B) has a pattern of intentional conduct that demonstrates the
9 offender's *or divertee's* refusal to comply with or participate in the
10 treatment program, as established by judicial finding *in the case of an*
11 *offender, or in the opinion of the county or district attorney in the case of a*
12 *divertee.*

13 (2) (A) Offenders who are discharged from such program *pursuant to*
14 *subsection (f)(1)* shall be subject to the revocation provisions of K.S.A.
15 2019 Supp. 21-6604(n), and amendments thereto.

16 (B) *Divertees who are discharged from such program pursuant to*
17 *subsection (f)(2) shall be subject to the revocation provisions of such*
18 *diversion agreement.*

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

25 (h) (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) 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) *For the purposes of this section, the term "divertee" means a*

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

3 Sec. 2. K.S.A. 2019 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.