

HOUSE BILL No. 2026

By Joint Committee on Corrections and Juvenile Justice Oversight

12-31

Proposed Amendments to
House Bill No. 2026
Senate Committee on Judiciary
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Office of Revisor of Statutes

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to diversion agreements; creating a certified drug abuse treatment
3 program for people on diversion; providing for supervision by court
4 services or community corrections; amending K.S.A. 22-2907, 75-5291
5 and 75-52,144 and K.S.A. 2020 Supp. 22-2909 and repealing the
6 existing sections.
7

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

9 New Section 1. (a) There is hereby established a certified drug abuse
10 treatment program for certain persons who enter into a diversion
11 agreement in lieu of further criminal proceedings on and after July 1,
12 2021. Placement of divertees in a certified drug abuse treatment program
13 pursuant to a diversion agreement shall be limited to placement of adults,
14 on a complaint alleging a felony violation of K.S.A. 2020 Supp. 21-5706,
15 and amendments thereto, whose offense is classified in grid blocks 5-C, 5-
16 D, 5-E, 5-F, 5-G, 5-H or 5-I of the sentencing guidelines grid for drug
17 crimes who have no felony conviction of K.S.A. 65-4142, 65-4159, 65-
18 4161, 65-4163 or 65-4164, prior to their repeal, K.S.A. 2010 Supp. 21-
19 36a03, 21-36a05 or 21-36a16, prior to their transfer, or K.S.A. 2020 Supp.
20 21-5703, 21-5705 or 21-5716, and amendments thereto, or any
21 substantially similar offense from another jurisdiction.

22 (b) As part of the consideration of whether or not to allow diversion
23 to the defendant, a divertee who meets the requirements of subsection (a)
24 shall be subject to:

25 (1) A drug abuse assessment that shall include a clinical interview
26 with a mental health professional and a recommendation concerning drug
27 abuse treatment for the divertee; and

28 (2) a standardized criminal risk-need assessment specified by the
29 Kansas sentencing commission.

30 (c) The diversion agreement shall require the divertee to comply with
31 and participate in a certified drug abuse treatment program if the divertee
32 meets the assessment criteria set by the Kansas sentencing commission.
33 The term of treatment shall not exceed 18 months.

34 (d) Divertees who are committed to a certified drug abuse treatment
35 program pursuant to subsection (c) may be supervised by community
36 correctional services or court services pursuant to a memorandum of

1 understanding entered into pursuant to K.S.A. 22-2907, and amendments
2 thereto.

3 (e) (1) Divertees in a certified drug abuse treatment program shall be
4 discharged from the program if the divertee:

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

6 (B) has a pattern of intentional conduct that demonstrates the
7 divertee's refusal to comply with or participate in the treatment program in
8 the opinion of the county or district attorney.

9 (2) Divertees who are discharged from such program pursuant to
10 paragraph (1) shall be subject to the revocation provisions of the divertee's
11 diversion agreement.

12 (f) For the purposes of this section:

13 (1) "Mental health professional" includes licensed social workers,
14 persons licensed to practice medicine and surgery, licensed psychologists,
15 licensed professional counselors or registered alcohol and other drug abuse
16 counselors licensed or certified as addiction counselors who have been
17 certified by the secretary of corrections to treat persons pursuant to K.S.A.
18 2020 Supp. 75-52,144, and amendments thereto.

19 (2) "Divertee" means a person who has entered into a diversion
20 agreement pursuant to K.S.A. 22-2909, and amendments thereto.

21 Sec. 2. K.S.A. 22-2907 is hereby amended to read as follows: 22-
22 2907. ~~(1)~~(a) After a complaint has been filed charging a defendant with
23 commission of a crime and prior to conviction thereof, and after the
24 district attorney has considered the factors listed in K.S.A. 22-2908, if it
25 appears to the district attorney that diversion of the defendant would be in
26 the interests of justice and of benefit to the defendant and the community,
27 the district attorney may propose a diversion agreement to the defendant.
28 The terms of each diversion agreement shall be established by the district
29 attorney in accordance with K.S.A. 22-2909, *and amendments thereto*.

30 ~~(2)~~(b) Each district attorney shall adopt written policies and
31 guidelines for the implementation of a diversion program in accordance
32 with this act. Such policies and guidelines shall provide for a diversion
33 conference and other procedures in those cases where the district attorney
34 elects to offer diversion in lieu of further criminal proceedings on the
35 complaint.

36 ~~(3)~~(c) Each defendant shall be informed in writing of the diversion
37 program and the policies and guidelines adopted by the district attorney.
38 The district attorney may require any defendant requesting diversion to
39 provide information regarding prior criminal charges, education, work
40 experience and training, family, residence in the community, medical
41 history, including any psychiatric or psychological treatment or
42 counseling, and other information relating to the diversion program. In all
43 cases, the defendant shall be present and shall have the right to be

1 represented by counsel at the diversion conference with the district
2 attorney.

3 (d) (1) A county or district attorney may enter into a memorandum of
4 understanding with the chief judge of a judicial district or community
5 correctional services to assist with supervision and monitoring of persons
6 who have entered into a diversion agreement. The county or district
7 attorney shall retain authority over whether a defendant is given the
8 option to enter into a diversion agreement and whether the defendant's
9 diversion agreement will be revoked.

10 (2) A memorandum of understanding shall include provisions related
11 to:

- 12 (A) Determining the level of supervision needed for a defendant;
- 13 (B) use of a criminal risk-need assessment; ~~and~~
- 14 (C) ~~payment of costs for supervision.~~

; and
(D) waiver of the supervision fee established
in this subsection

15 (3) ~~When a person who has entered into a diversion agreement is~~
16 ~~supervised pursuant to a memorandum of understanding under this~~
17 ~~subsection, the person shall pay a supervision fee in the amount~~
18 ~~established in K.S.A. 2020 Supp. 21-6607(c)(3)(A) for misdemeanor or~~
19 ~~felony post-conviction supervision, as appropriate for the crime charged.~~

(A)

20 ~~The diversion supervision fee imposed by this paragraph shall be charged~~
21 ~~and collected by the district court. The clerk of the district court shall~~
22 ~~remit all moneys received under this paragraph from diversion supervision~~
23 ~~fees to the state treasurer in accordance with the provisions of K.S.A. 75-~~
24 ~~4215, and amendments thereto. Upon receipt of each such remittance, the~~
25 ~~state treasurer shall deposit the entire amount in the state treasury and~~
26 ~~credit such amounts as follows: To the state general fund, a sum equal to~~
27 ~~41.67% of such remittance; and to the correctional supervision fund, a~~
28 ~~sum equal to 58.33% of such remittance. The diversion supervision fee~~
29 ~~specified by this paragraph may be reduced or waived by the supervision~~
30 ~~officer.~~

(B)

county or district attorney.
(C) All moneys collected by this section shall be
paid into the county general fund and used to fund
the costs of diversion supervision performed
pursuant to a memorandum of understanding under
this subsection.
(D)

31 (4) When a person who has entered into a diversion agreement is
32 supervised pursuant to a memorandum of understanding under this
33 subsection, the person shall pay the actual costs of any urinalysis testing
34 required as a term of supervision. Payments for urinalysis testing shall be
35 remitted to the county treasurer for deposit in the county general fund. The
36 costs of urinalysis testing may be reduced or waived by the county or
37 district attorney.

county or district attorney in accordance with a
memorandum of understanding under this subsection

38 (5) The office of judicial administration may develop guidelines
39 regarding the content of a memorandum of understanding between a
40 county or district attorney and the chief judge of a judicial district and the
41 administration of a supervision program operating pursuant to such
42 memorandum of understanding.

43 Sec. 3. K.S.A. 2020 Supp. 22-2909 is hereby amended to read as