

As Amended by House Committee

Session of 2016

HOUSE BILL No. 2681

By Committee on Corrections and Juvenile Justice

2-10

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to diversion; Kansas sentencing commission; amending K.S.A. 22-
3 2907 and 22-2912 and K.S.A. 2015 Supp. 74-9101 and repealing the
4 existing sections.

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

7 Section 1. K.S.A. 22-2907 is hereby amended to read as follows: 22-
8 2907. ~~(1)~~(a) After a complaint has been filed charging a defendant with
9 commission of a crime and prior to conviction thereof, and after the
10 district attorney has considered the factors listed in K.S.A. 22-2908, *and*
11 *amendments thereto*, if it appears to the district attorney that diversion of
12 the defendant would be in the interests of justice and of benefit to the
13 defendant and the community, the district attorney may propose a
14 diversion agreement to the defendant. The terms of each diversion
15 agreement shall be established by the district attorney in accordance with
16 K.S.A. 22-2909, *and amendments thereto*.

17 *(b) After a complaint has been filed charging a defendant with*
18 *commission of a crime and prior to conviction thereof, a defendant who is*
19 *not ineligible for diversion under K.S.A. 22-2908(b), and amendments*
20 *thereto, may request a diversion agreement in writing on an application*
21 *created pursuant to K.S.A. 74-9101, and amendments thereto. If the*
22 *district attorney denies a defendant's request to enter into a diversion*
23 *agreement, the district attorney shall provide to the defendant a copy of*
24 *the diversion application with a written statement of reasons, specific to*
25 *the defendant, why the defendant's diversion is not in the interests of*
26 *justice or to the benefit of the defendant and the community.*

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

33 ~~(3)~~(d) Each defendant shall be informed in writing of the diversion
34 program and the policies and guidelines adopted by the district attorney.
35 The district attorney may require any defendant requesting diversion to
36 provide information regarding prior criminal charges, education, work

1 experience and training, family, residence in the community, medical
2 history, including any psychiatric or psychological treatment or
3 counseling, and other information relating to the diversion program. In all
4 cases, the defendant shall be present and shall have the right to be
5 represented by counsel at the diversion conference with the district
6 attorney.

7 **(e) For all diversion agreement applications submitted pursuant**
8 **to subsection (b), the district attorney shall forward a copy to the**
9 **Kansas sentencing commission within 30 days after a decision has**
10 **been made on the application.**

11 Sec. 2. K.S.A. 22-2912 is hereby amended to read as follows: 22-
12 2912. The provisions of this act shall not be applicable in judicial districts
13 that adopt district court rules pursuant to K.S.A. 20-342, *and amendments*
14 *thereto*, for the administration of diversion procedures by the district court,
15 *except that such procedures shall provide for an opportunity for a*
16 *defendant who is not ineligible for a diversion under the factors*
17 *enumerated in K.S.A. 22-2908(b), and amendments thereto, to request*
18 *diversion and, if a diversion agreement is not offered, provide for a written*
19 *statement of reasons, specific to the defendant, why the defendant's*
20 *diversion is not in the interests of justice or to the benefit of the defendant*
21 *and the community.* In judicial districts where the district court adopts such
22 rules for diversion procedures, the court in considering whether or not to
23 allow diversion to a defendant shall consider, but is not limited to, the
24 factors enumerated in K.S.A. 22-2908, *and amendments thereto*.

25 Sec. 3. K.S.A. 2015 Supp. 74-9101 is hereby amended to read as
26 follows: 74-9101. (a) There is hereby established the Kansas sentencing
27 commission.

28 (b) The commission shall:

29 (1) Develop a sentencing guideline model or grid based on fairness
30 and equity and shall provide a mechanism for linking justice and
31 corrections policies. The sentencing guideline model or grid shall establish
32 rational and consistent sentencing standards which reduce sentence
33 disparity, to include, but not be limited to, racial and regional biases which
34 may exist under current sentencing practices. The guidelines shall specify
35 the circumstances under which imprisonment of an offender is appropriate
36 and a presumed sentence for offenders for whom imprisonment is
37 appropriate, based on each appropriate combination of reasonable offense
38 and offender characteristics. In developing its recommended sentencing
39 guidelines, the commission shall take into substantial consideration current
40 sentencing and release practices and correctional resources, including, but
41 not limited to, the capacities of local and state correctional facilities. In its
42 report, the commission shall make recommendations regarding whether
43 there is a continued need for and what is the projected role of, if any, the

1 prisoner review board and whether the policy of allocating good time
2 credits for the purpose of determining an inmate's eligibility for parole or
3 conditional release should be continued;

4 (2) consult with and advise the legislature with reference to the
5 implementation, management, monitoring, maintenance and operations of
6 the sentencing guidelines system;

7 (3) direct implementation of the sentencing guidelines system;

8 (4) assist in the process of training judges, county and district
9 attorneys, court services officers, state parole officers, correctional
10 officers, law enforcement officials and other criminal justice groups. For
11 these purposes, the sentencing commission shall develop an
12 implementation policy and shall construct an implementation manual for
13 use in its training activities;

14 (5) receive presentence reports and journal entries for all persons who
15 are sentenced for crimes committed on or after July 1, 1993, to develop
16 post-implementation monitoring procedures and reporting methods to
17 evaluate guideline sentences. In developing the evaluative criteria, the
18 commission shall take into consideration rational and consistent
19 sentencing standards which reduce sentence disparity to include, but not be
20 limited to, racial and regional biases;

21 (6) advise and consult with the secretary of corrections and members
22 of the legislature in developing a mechanism to link guidelines sentence
23 practices with correctional resources and policies, including, but not
24 limited to, the capacities of local and state correctional facilities. Such
25 linkage shall include a review and determination of the impact of the
26 sentencing guidelines on the state's prison population, review of
27 corrections programs and a study of ways to more effectively utilize
28 correction dollars and to reduce prison population;

29 (7) make recommendations relating to modification to the sentencing
30 guidelines as provided in K.S.A. 2015 Supp. 21-6822, and amendments
31 thereto;

32 (8) prepare and submit fiscal impact and correctional resource
33 statement as provided in K.S.A. 74-9106, and amendments thereto;

34 (9) make recommendations to those responsible for developing a
35 working philosophy of sentencing guideline consistency and rationality;

36 (10) develop prosecuting standards and guidelines to govern the
37 conduct of prosecutors when charging persons with crimes and when
38 engaging in plea bargaining;

39 (11) analyze problems in criminal justice, identify alternative
40 solutions and make recommendations for improvements in criminal law,
41 prosecution, community and correctional placement, programs, release
42 procedures and related matters including study and recommendations
43 concerning the statutory definition of crimes and criminal penalties and

1 review of proposed criminal law changes;

2 (12) perform such other criminal justice studies or tasks as may be
3 assigned by the governor or specifically requested by the legislature,
4 department of corrections, the chief justice or the attorney general;

5 (13) develop a program plan which includes involvement of business
6 and industry in the public or other social or fraternal organizations for
7 admitting back into the mainstream those offenders who demonstrate both
8 the desire and ability to reconstruct their lives during their incarceration or
9 during conditional release;

10 (14) appoint a task force to make recommendations concerning the
11 consolidation of probation, parole and community corrections services;

12 (15) produce official inmate population projections annually on or
13 before six weeks following the date of receipt of the data from the
14 department of corrections. When the commission's projections indicate
15 that the inmate population will exceed available prison capacity within two
16 years of the date of the projection, the commission shall identify and
17 analyze the impact of specific options for: (A) Reducing the number of
18 prison admissions; or (B) adjusting sentence lengths for specific groups of
19 offenders. Options for reducing the number of prison admissions shall
20 include, but not be limited to, possible modification of both sentencing
21 grids to include presumptive intermediate dispositions for certain
22 categories of offenders. Intermediate sanction dispositions shall include,
23 but not be limited to: Intensive supervision; short-term jail sentences;
24 halfway houses; community-based work release; electronic monitoring and
25 house arrest; substance abuse treatment; and pre-revocation incarceration.
26 Intermediate sanction options shall include, but not be limited to,
27 mechanisms to explicitly target offenders that would otherwise be placed
28 in prison. Analysis of each option shall include an assessment of such
29 option's impact on the overall size of the prison population, the effect on
30 public safety and costs. In preparing the assessment, the commission shall
31 review the experience of other states and shall review available research
32 regarding the effectiveness of such option. The commission's findings
33 relative to each sentencing policy option shall be presented to the governor
34 and the joint committee on corrections and juvenile justice oversight no
35 later than November 1;

36 (16) at the request of the governor or the joint committee on
37 corrections and juvenile justice oversight, initiate and complete an analysis
38 of other sentencing policy adjustments not otherwise evaluated by the
39 commission;

40 (17) develop information relating to the number of offenders on
41 postrelease supervision and subject to electronic monitoring for the
42 duration of the person's natural life;

43 (18) determine the effect the mandatory sentencing established in

1 K.S.A. 21-4642 and 21-4643, prior to their repeal, or K.S.A. 2015 Supp.
2 21-6626 and 21-6627, and amendments thereto, would have on the number
3 of offenders civilly committed to a treatment facility as a sexually violent
4 predator as provided pursuant to K.S.A. 59-29a01 et seq., and amendments
5 thereto;

6 (19) assume the designation and functions of the state statistical
7 analysis center. All criminal justice agencies, as defined in ~~subsection (e)~~
8 ~~of~~ K.S.A. 22-4701(c), and amendments thereto, and the juvenile justice
9 authority shall provide any data or information, including juvenile offender
10 information, requested by the commission to facilitate the function of the
11 state statistical analysis center;

12 (20) subject to the provisions of appropriation acts and the
13 availability of funds therefor, produce official juvenile correctional facility
14 population projections annually on or before November 1, not more than
15 six weeks following the receipt of the data from the juvenile justice
16 authority and develop bed impacts regarding legislation that may affect
17 juvenile correctional facility population;

18 (21) be authorized to make statewide supervision and placement
19 cutoff decisions based upon the risk levels and needs of the offender. The
20 commission shall periodically review data and make recommended
21 changes; ~~and~~

22 (22) determine the impact and effectiveness of supervision and
23 sanctions for felony offenders regarding recidivism and prison and
24 community-based supervision populations; *and*

25 (23) *develop an application for use by a defendant requesting a*
26 *diversion agreement pursuant to K.S.A. 22-2907, and amendments thereto.*
27 *Such application shall include a space for a district or county attorney to*
28 *provide a written statement of reasons in the event of a denied application.*
29 *The commission shall report annually to the legislature on the number and*
30 *outcomes of requests for diversion. Such report shall include, but not be*
31 *limited to, information on the demographics of applicants, charged*
32 *offenses and application outcomes, including the stated reasons for*
33 *denials.*

34 Sec. 4. K.S.A. 22-2907 and 22-2912 and K.S.A. 2015 Supp. 74-9101
35 are hereby repealed.

36 Sec. 5. This act shall take effect and be in force from and after
37 **January 1, 2017, and** its publication in the statute book.