

House Corrections and Juvenile Justice Committee
House Bill 2472
February 6, 2020

Kansas Association of Criminal Defense Lawyers
Neutral

Chairman Jennings and Members of the Committee:

The Kansas Association of Criminal Defense Lawyers is supportive of the idea of using the certified drug abuse treatment program for diversion cases; however, we have concerns about the current version of the bill.

House Bill 2472 would allow certified drug abuse treatment funds to be used to provide treatment for divertees on qualifying drug cases. However, before a divertee can qualify, they must obtain a risk-need assessment and have a qualifying score. In a case where a person is convicted of a qualifying offense, these risk-need assessments are normally completed by court services or community corrections. We are concerned that this bill does not create a mechanism for obtaining this assessment in the diversion context.

Another concern is that the bill does not create a supervision program for divertees. In many districts, a diversion is not supervised like a probation. Diversions are run by the county or district attorney and divertees are expected to adhere to the terms of the diversion and complete all the requirements without assistance. This is a difficult proposition for individuals suffering from drug addictions. The ability to get a diversion and avoid a felony conviction can be a life-changing opportunity for a divertee, but for someone struggling with addiction, simply making funds available for treatment does not necessarily guarantee success.

HB 2472 also allows a county or district attorney to make a unilateral determination that in that attorney's opinion, a divertee has refused to comply with or participate in the treatment program. This finding could preclude the divertee from being eligible for certified drug abuse treatment program funding in the future. In the criminal context, many probationers who receive treatment pursuant to this program fail to complete treatment. However, this does not always result in a judicial finding that the probationer refused to comply with or participate in the treatment program. This finding is more than just a failure to complete treatment; it is reserved for those who express an unwillingness to

engage in treatment, and this finding makes them ineligible for future treatment with this funding. Allowing a district or county attorney to unilaterally make this finding, especially in the context of a person who has not had the benefit of supervision and assistance during the diversion process, would preclude divertees who failed to succeed in the diversion context from ever getting assistance in the future, even after a criminal conviction.

It is our understanding that another bill with some different suggestions on this same issue is set for a hearing in the House Judiciary Committee (HB 2292). We do think that both bills are trying to meet a diversion need and are worthy of further exploration. KACDL would like to be one of the stakeholders involved in working on these bills to try to reach a consensus that would meet the needs of diversion-eligible individuals who need the assistance of drug abuse treatment programs.

We urge this Committee to consider the issues raised above and offer our assistance in working the bills to find a more refined solution to this problem.

Thank you for your consideration,

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