

SESSION OF 2021

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2026

As Amended by Senate Committee on Judiciary

Brief*

HB 2026, as amended, would establish a certified drug treatment program (program) for certain persons who have entered into a diversion agreement (divertees) pursuant to a memorandum of understanding (MOU).

The bill would allow eligibility for participation in a program for offenders who have entered into a diversion agreement in lieu of further criminal proceedings on and after July 1, 2021, for persons who have been charged with felony possession of a controlled substance and whose criminal history score is C or lower with no prior felony drug convictions.

[*Note:* Under continuing law, Kansas' sentencing guidelines for drug crimes utilize a grid containing the crime severity level (1 to 5, 1 being the highest severity) and the offender's criminal history score (A to I, A being the highest criminal history score) to determine the presumptive sentence for an offense. Felony drug possession is currently classified as a drug severity level 5 felony. An offender is classified as criminal history C if the offender has one person and at least one nonperson felony.]

The bill would also provide that, as part of the consideration of whether to allow a person to enter into such a diversion agreement, a person who meets the criminal charge and history requirements shall be subject to:

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- A drug abuse assessment that would be required to include a clinical interview with a mental health professional and a recommendation concerning drug abuse treatment for the diveree; and
- A standardized criminal risk-need assessment specified by the Kansas Sentencing Commission (Commission).

The bill would further require the diversion agreement to include provisions that require the diveree to comply with and participate in a program if the diveree meets the assessment criteria set by the Commission, with a term of treatment not to exceed 18 months.

Supervision

The bill would provide that diverees who are committed to a program could be supervised by community correctional services or court services pursuant to an MOU. A diveree would be discharged from the program if the diveree:

- Is convicted of a new felony; or
- Has a pattern of intentional conduct that demonstrates the diveree's refusal to comply with or participate in the program, in the opinion of the county or district attorney.

If a diveree is discharged, such person would be subject to the revocation provisions of the respective diversion agreement.

Definitions

The bill would define "mental health professional" for this purpose to include:

- Licensed social workers;

- Persons licensed to practice medicine and surgery;
- Licensed psychologists;
- Licensed professional counselors; or
- Registered alcohol and other drug abuse counselors licensed or certified as addiction counselors who have been certified by the Secretary of Corrections (Secretary) to treat persons pursuant to continuing law.

The bill would define “divertee” to mean a person who has entered into a diversion agreement pursuant to continuing law and amendments made by the bill.

Memorandum of Understanding

The bill would amend law related to diversion agreements by adding provisions related to an MOU.

The bill would allow a county or district attorney to enter into an MOU with the chief judge of a judicial district or community correctional services to assist with the supervision and monitoring of persons who have entered into a diversion agreement. The county or district attorney would retain authority over whether a particular defendant may enter into a diversion agreement or whether such agreement would be revoked.

The bill would require an MOU to include provisions related to:

- Determining the level of supervision needed for a defendant;
- Use of a criminal-risk needs assessment;
- Payment of costs for supervision; and

- Waiver of the supervision fee established by the bill.

The bill would authorize the Office of Judicial Administration (OJA) to adopt guidelines regarding the content of an MOU between a county or district attorney and the chief judge of a judicial district and the administration of a supervision program operating pursuant to such MOU.

The bill would amend law regarding the contents of diversion agreements to specify that such agreements may include provisions related to the MOU.

Supervision Fees

The bill would provide that divertees who are supervised pursuant to an MOU would be required to pay a supervision fee in the amount established in continuing law for misdemeanor or felony post-conviction supervision, as appropriate for the crime charged. The bill would allow a county or district attorney, in accordance with an MOU, to reduce or waive the supervision fee.

The bill would require the county or district attorney to collect supervision fees, with the moneys collected to be paid into the county general fund and used to fund the costs of diversion supervision performed pursuant to the MOU.

The bill would also require divertees who are supervised pursuant to an MOU to pay the actual costs of urinalysis testing required as a term of supervision. Payments for such testing would be required to be remitted to the county treasurer for deposit in the county general fund, and the cost of such testing could be reduced or waived by the county or district attorney.

The bill would further require county or district attorneys to determine the extent, if any, that a divertee is able to pay for assessment and treatment and the bill would require such

payments to be used by the supervising agency to offset costs to the State or county. If such financial obligations are not met or cannot be met, the county or district attorney would be required to be notified for the purpose of collection or review and further action on the diversion agreement.

Conforming and Technical Changes

The bill would make conforming amendments to statutes regarding community correctional services, certified drug abuse treatment programs, and diversion agreements to allow for implementation of the bill's provisions.

The bill would make technical amendments to ensure consistency in statutory phrasing and to remove outdated language related to a previously allowed supervision of certain adult offenders in Johnson County by court services or community corrections, which expired on July 1, 2013.

Background

SB 123 (2003) created a nonprison sanction of certified substance abuse treatment for certain drug offenders. Commonly referred to as the "Senate Bill 123 Program," this program is administered by the Kansas Sentencing Commission. This bill (HB 2026) would establish a similar treatment program for divertees.

This bill was prefiled for introduction on December 31, 2020, at the request of the Joint Committee on Corrections and Juvenile Justice Oversight.

[*Note: 2021 HB 2026 contains provisions similar to 2020 HB 2708, as recommended by the House Committee on Corrections and Juvenile Justice.*]

House Committee on Corrections and Juvenile Justice

In the House Committee hearing on January 20, 2021, **proponents** testifying in support of the bill included representatives of the Greater Kansas City Chamber of Commerce and Kansas Sentencing Commission. The proponents generally indicated the bill would expand the availability of drug abuse treatment options across the state for persons on diversion.

Written-only **proponent** testimony was provided by a representative of the Kansas Criminal Justice Reform Commission and by a representative of the Kansas Association of Chiefs of Police, the Kansas Peace Officers Association, and the Kansas Sheriffs Association.

Neutral testimony was provided by a representative of the Behavioral Health Association of Kansas, who expressed concern regarding the need for additional funding for drug abuse treatment programs, if the bill were enacted.

Written-only neutral testimony was provided by representatives of the American Civil Liberties Union of Kansas and the Kansas Department of Corrections.

No other testimony was provided.

Senate Committee on Judiciary

In the Senate Committee hearing on January 2, 2021, **proponents** testifying in support of the bill included representatives of the American Civil Liberties Union of Kansas, Greater Kansas City Chamber of Commerce, and the Kansas Sentencing Commission (Commission).

Written-only **proponent** testimony was provided by a representative of the Kansas Association of Chiefs of Police, the Kansas Peace Officers Association, and the Kansas Sheriffs Association.

Neutral testimony was provided by a representative of the Kansas Community Corrections Association, who suggested an amendment regarding proportional distribution of supervision fee funds across drug abuse treatment programs.

Written-only neutral testimony was provided by a representative of the Kansas Department of Corrections.

No other testimony was provided.

On February 26, 2021, the Senate Committee adopted an amendment based on the suggestion by the Kansas Community Corrections Association.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill as introduced, the Office of Judicial Administration (OJA) indicates enactment of the bill could have a fiscal effect on the Judicial Branch operations; however, OJA could not estimate how many district courts would enter into an MOU, or how many cases would occur. The Commission estimates enactment of the bill may result in additional prison admissions and beds; however, the Commission cannot determine the fiscal effect. The Commission further estimates, based on three different scenarios, enactment of the bill could increase the number of Senate Bill 123 Program drug treatment cases by either 25, 50, or 75 cases in FY 2022.

Because of the potential increase of Senate Bill 123 Program drug treatment offenders, the Commission estimates additional State General Fund expenditures of \$88,368, \$176,736, or \$265,104 in FY 2022, depending on which scenario occurs.

Any fiscal effect associated with the bill is not reflected in *The FY 2022 Governor's Budget Report*.

Diversion; drug abuse treatment; supervision