

CONFERENCE COMMITTEE REPORT

MR. PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 408** submits the following report:

The House recedes from all of its amendments to the bill, and your committee on conference further agrees to amend the bill as introduced, as follows:

On page 2, following line 26, by inserting:

"Sec. 2. K.S.A. 2021 Supp. 21-5807 is hereby amended to read as follows: 21-5807. (a) Burglary is, without authority, entering into or remaining within any:

(1) (A) Dwelling, with intent to commit a felony, theft or sexually motivated crime therein; or

(B) locked or secured portion of any dwelling, with intent to commit a felony, theft or sexually motivated crime therein;

(2) (A) building, manufactured home, mobile home, tent or other structure which is not a dwelling, with intent to commit a felony, theft or sexually motivated crime therein; or

(B) locked or secured portion of any building, manufactured home, mobile home, tent or other structure which is not a dwelling, with intent to commit a felony, theft or sexually motivated crime therein; or

(3) vehicle, aircraft, watercraft, railroad car or other means of conveyance of persons or property, with intent to commit a felony, theft or sexually motivated crime therein.

(b) Aggravated burglary is, without authority, entering into or remaining within any:

(1) (A) Dwelling in which there is a human being, with intent to commit a felony, theft or sexually motivated crime therein; or

(B) locked or secured portion of any dwelling in which there is a human being, with intent to commit a felony, theft or sexually motivated crime therein;

(2) (A) building, manufactured home, mobile home, tent or other structure which is not a dwelling in which there is a human being, with intent to commit a felony, theft or sexually motivated crime therein; or

(B) locked or secured portion of any building, manufactured home, mobile home, tent or other structure which is not a dwelling in which there is a human being, with intent to commit a felony, theft or sexually motivated crime therein; or

(3) vehicle, aircraft, watercraft, railroad car or other means of conveyance of persons or property in which there is a human being, with intent to commit a felony, theft or sexually motivated crime therein.

(c) (1) Burglary as defined in:

(A) (i) Subsection (a)(1) is a severity level 7, person felony, except as provided in subsection (c)(1)(B);

(ii) subsection (a)(2) is a severity level 7, nonperson felony, except as provided in subsection (c)(1)(B); and

(iii) subsection (a)(3) is a severity level 9, nonperson felony, except as provided in subsection (c)(1)(B); and

(B) (i) subsection (a)(1), with intent to commit the theft of a firearm, is a severity level 5, person felony; and

(ii) subsection (a)(2) or (a)(3), with intent to commit the theft of a firearm, is a severity level 5, nonperson felony.

(2) Aggravated burglary as defined in:

(A) Subsection (b)(1) is a severity level 4, person felony; and

(B) subsection (b)(2) or (b)(3) is a severity level 5, person felony.

(d) As used in this section, "sexually motivated" means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant's sexual gratification.

(e) This section shall not apply to any person entering into or remaining in a retail or commercial premises at any time that it is open to the public after having received a personal communication from the owner or manager of such premises not to enter such premises pursuant to K.S.A. 2021 Supp. 21-5808, and amendments thereto, except when such person is entering into or remaining in such premises with the intent to commit a person felony or sexually motivated crime therein.

Sec. 3. K.S.A. 2021 Supp. 21-6610 is hereby amended to read as follows: 21-6610. (a) When a defendant is placed on parole by the district court, on probation, assigned to a community correctional services program by a district court or under suspended sentence and such defendant is permitted to go from the judicial district of that court, supervision over the defendant may be transferred from that judicial district to another with the concurrence of the receiving chief court services officer, or if in a community corrections services program, by the concurrence of the director of the receiving program.

~~(b) The district court from which the defendant is on parole, probation, community correctional services program or suspended sentence may retain jurisdiction of the defendant.~~

~~(e)~~ When a defendant described in subsection (a) is sentenced pursuant to K.S.A. 2021 Supp. 21-6824, and amendments thereto, the district court from which the defendant is on parole, on probation, assigned to a community correctional services program or under suspended

sentence may transfer jurisdiction of the defendant with the concurrence of the receiving district court and all parties.

(c) (1) When a defendant described in subsection (a) is being sentenced and is already being supervised on parole, probation, assignment to a community correctional services program or under suspended sentence, the district court by which the defendant is currently being supervised may use the guidelines provided in this subsection to determine whether it is appropriate to transfer jurisdiction of the defendant to a different district court.

(2) If the new sentence would place the defendant under the supervision of two supervision entities or agencies, the court may consider:

(A) Granting jurisdiction to the court with jurisdiction over the offense that has the longest underlying sentence of imprisonment; and

(B) whether the severity of the new offense requires a higher level of supervision. If a higher level of supervision is not required, there may be a preference for maintaining supervision of the defendant by the current supervising entity or agency for the duration of supervision. If a higher level of supervision is required, there may be a preference for transferring supervision responsibility of the defendant to the appropriate supervision entity or agency for the duration of supervision.

(3) If two or more supervision entities or agencies are supervising the defendant for sentences that are equal, the court may consider:

(A) The residency of the defendant;

(B) the ability of the defendant to travel to the supervision office from the defendant's residence, place of employment and school;

(C) resources for residential and nonresidential sanctions or rehabilitative treatment available from each supervision entity or agency; and

(D) the level of supervision available to the defendant by each supervision entity or agency.

(d) The district court from which the defendant is on parole, probation, assignment to a community correctional services program or suspended sentence may retain jurisdiction of the defendant. If the court retains jurisdiction, the defendant shall be supervised by one supervision entity or agency. The department of corrections and the office of judicial administration shall enter into a memorandum of understanding providing that a defendant on parole, probation, assignment to a community correctional services program or suspended sentence shall be supervised by one supervision entity or agency. Such memorandum of understanding shall include, but not be limited to, provisions related to:

(1) The criteria for determining the most appropriate supervision entity or agency;

(2) how the financial obligations of supervision will be managed;

(3) conditions of supervision;

(4) sanctions for violation of supervision;

(5) standards for seeking revocation of parole, probation, assignment to a community correctional services program or suspended sentence;

(6) termination of supervision; and

(7) information sharing between supervision entities or agencies.

Sec. 4. K.S.A. 2021 Supp. 21-6814 is hereby amended to read as follows: 21-6814.

(a) The offender's criminal history shall be admitted in open court by the offender or determined

by a preponderance of the evidence at the sentencing hearing by the sentencing judge.

(b) Except to the extent disputed in accordance with subsection (c), the summary of the offender's criminal history prepared for the court by the state shall satisfy the state's burden of proof regarding an offender's criminal history.

(c) Upon receipt of the criminal history worksheet prepared for the court, the offender shall immediately notify the district attorney and the court with written notice of any error in the proposed criminal history worksheet. Such notice shall specify the exact nature of the alleged error. The state shall have the burden of proving the disputed portion of the offender's criminal history. The sentencing judge shall allow the state reasonable time to produce evidence to establish its burden of proof. If the offender later challenges such offender's criminal history, which has been previously established, the burden of proof shall shift to the offender to prove such offender's criminal history by a preponderance of the evidence.

(d) If an offender raises a challenge to the offender's criminal history for the first time on appeal, the offender shall have the burden of designating a record that shows prejudicial error. If the offender fails to provide such record, the appellate court shall dismiss the claim. In designating a record that shows prejudicial error, the offender may provide the appellate court with journal entries of the challenged criminal history that were not originally attached to the criminal history worksheet, and the state may provide the appellate court with journal entries establishing a lack of prejudicial error. The court may take judicial notice of such journal entries, complaints, plea agreements, jury instructions and verdict forms for Kansas convictions when determining whether prejudicial error exists. The court may remand the case if there is a reasonable question as to whether prejudicial error exists.

Sec. 5. K.S.A. 2021 Supp. 21-6820 is hereby amended to read as follows: 21-6820. (a) A departure sentence or a ruling on a motion filed pursuant to K.S.A. 22-3504, and amendments thereto, is subject to appeal by the defendant or the state. The appeal shall be to the appellate courts in accordance with rules adopted by the supreme court.

(b) Pending review of the sentence, the sentencing court or the appellate court may order the defendant confined or placed on conditional release, including bond.

(c) On appeal from a judgment of conviction entered for a felony committed on or after July 1, 1993, the appellate court shall not review:

(1) Any sentence that is within the presumptive sentence for the crime; or

(2) any sentence resulting from an agreement between the state and the defendant which the sentencing court approves on the record.

(d) In any appeal from a judgment of conviction imposing a sentence that departs from the presumptive sentence prescribed by the sentencing grid for a crime, sentence review shall be limited to whether the sentencing court's findings of fact and reasons justifying a departure:

(1) Are supported by the evidence in the record; and

(2) constitute substantial and compelling reasons for departure.

(e) In any appeal from a judgment of conviction, the appellate court may review a claim that:

(1) A sentence that departs from the presumptive sentence resulted from partiality, prejudice, oppression or corrupt motive;

(2) the sentencing court erred in either including or excluding recognition of a prior conviction or juvenile adjudication for criminal history scoring purposes; or

(3) the sentencing court erred in ranking the crime severity level of the current crime or in determining the appropriate classification of a prior conviction or juvenile adjudication for criminal history purposes.

(f) The appellate court may reverse or affirm the sentence. If the appellate court concludes that the trial court's factual findings are not supported by evidence in the record or do not establish substantial and compelling reasons for a departure, it shall remand the case to the trial court for resentencing.

(g) The appellate court shall issue a written opinion whenever the judgment of the sentencing court is reversed. The court may issue a written opinion in any other case when it is believed that a written opinion will provide guidance to sentencing judges and others in implementing the sentencing guidelines adopted by the Kansas sentencing commission. The appellate courts may provide by rule for summary disposition of cases arising under this section when no substantial question is presented by the appeal.

(h) A review under summary disposition shall be made solely upon the record that was before the sentencing court. Written briefs shall not be required unless ordered by the appellate court and the review and decision shall be made in an expedited manner according to rules adopted by the supreme court.

(i) The sentencing court shall retain authority irrespective of any ~~notice of appeal for 90 days after entry of judgment of conviction to modify its judgment and sentence to correct any arithmetic or clerical errors~~ to correct an illegal sentence or clerical error pursuant to K.S.A. 22-3504, and amendments thereto. Notwithstanding the provisions of K.S.A. 22-3504, and amendments thereto, if a motion to correct an illegal sentence is filed while a direct appeal is

pending, any change in the law that occurs during the pending direct appeal shall apply.

(j) The amendments made to this section by ~~this act~~ section 14 of chapter 59 of the 2019 Session Laws of Kansas are procedural in nature and shall be construed and applied retroactively.

Sec. 6. K.S.A. 2021 Supp. 21-6824 is hereby amended to read as follows: 21-6824. (a) There is hereby established a nonprison sanction of certified drug abuse treatment programs for certain offenders who are sentenced on or after November 1, 2003. Placement of offenders in certified drug abuse treatment programs by the court shall be limited to placement of adult offenders, convicted of a felony violation of K.S.A. 2021 Supp. 21-5705 or 21-5706, and amendments thereto, whose offense is classified in grid blocks:

(1) 5-C, 5-D, 5-E, 5-F, 5-G, 5-H or 5-I of the sentencing guidelines grid for drug crimes and such offender has no felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-4164, prior to their repeal, K.S.A. 2010 Supp. 21-36a03, 21-36a05 or 21-36a16, prior to their transfer, or K.S.A. 2021 Supp. 21-5703, 21-5705 or 21-5716, and amendments thereto, or any substantially similar offense from another jurisdiction; or

(2) 5-A, 5-B, 4-E, 4-F, 4-G, 4-H or 4-I of the sentencing guidelines grid for drug crimes, such offender has no felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-4164, prior to their repeal, K.S.A. 2010 Supp. 21-36a03, 21-36a05 or 21-36a16, prior to their transfer, or K.S.A. 2021 Supp. 21-5703, 21-5705 or 21-5716, and amendments thereto, or any substantially similar offense from another jurisdiction, if the person felonies in the offender's criminal history were severity level 8, 9 or 10 or nongrid offenses of the sentencing guidelines grid for nondrug crimes, and the court finds and sets forth with particularity the reasons for

finding that the safety of the members of the public will not be jeopardized by such placement in a drug abuse treatment program.

(b) As a part of the presentence investigation pursuant to K.S.A. 2021 Supp. 21-6813, and amendments thereto, offenders who meet the requirements of subsection (a), unless otherwise specifically ordered by the court, shall be subject to:

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

(2) a criminal risk-need assessment. The criminal risk-need assessment shall assign a risk status to the offender.

(c) If the offender is assigned a risk status as determined by the drug abuse assessment performed pursuant to subsection (b)(1) and a risk status as determined by the criminal risk-need assessment performed pursuant to subsection (b)(2) that meets the criteria for participation in a drug abuse treatment program as determined by the Kansas sentencing commission, the sentencing court shall commit the offender to treatment in a drug abuse treatment program until the court determines the offender is suitable for discharge by the court. The term of treatment shall not exceed 18 months. The court may extend the term of probation, pursuant to K.S.A. 2021 Supp. 21-6608(c)(3), and amendments thereto. The term of treatment may not exceed the term of probation.

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

(2) Offenders who are not committed to a drug abuse treatment program pursuant to subsection (c) shall be supervised by community correctional services or court services based on

the result of the criminal risk assessment.

(3) If the offender is permitted to go from the judicial district of the sentencing court, the court may, pursuant to K.S.A. 2021 Supp. 21-6610, and amendments thereto:

- (A) Transfer supervision of the offender from that judicial district to another; and
- (B) either transfer or retain jurisdiction of the offender.

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

(f) (1) Offenders in drug abuse treatment programs shall be discharged from such program if the offender:

- (A) Is convicted of a new felony; or
- (B) has a pattern of intentional conduct that demonstrates the offender's refusal to comply with or participate in the treatment program, as established by judicial finding.

(2) Offenders who are discharged from such program shall be subject to the revocation provisions of K.S.A. 2021 Supp. 21-6604(n), and amendments thereto.

(g) As used in this section, "mental health professional" includes 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~~ Kansas Sentencing Commission to treat offenders pursuant to K.S.A. 75-52,144, and amendments thereto.

(h) (1) Offenders who meet the requirements of subsection (a) shall not be subject to the provisions of this section and shall be sentenced as otherwise provided by law, if such offenders:

(A) Are residents of another state and are returning to such state pursuant to the interstate corrections compact or the interstate compact for adult offender supervision;~~or~~

(B) are not lawfully present in the United States and being detained for deportation; or

(C) do not meet the risk assessment levels provided in subsection (c).

(2) Such sentence shall not be considered a departure and shall not be subject to appeal.

(i) The court may order an offender who otherwise does not meet the requirements of subsection (c) to undergo one additional drug abuse assessment while such offender is on probation. Such offender may be ordered to undergo drug abuse treatment pursuant to subsection (a) if such offender is determined to meet the requirements of subsection (c). The cost of such assessment shall be paid by such offender.

Sec. 7. K.S.A. 2021 Supp. 21-6825 is hereby amended to read as follows: 21-6825. (a) There is hereby established a certified drug abuse treatment program for certain persons who enter into a diversion agreement in lieu of further criminal proceedings on and after July 1, 2021. Placement of divertees in a certified drug abuse treatment program pursuant to a diversion agreement shall be limited to placement of adults, on a complaint alleging a felony violation of K.S.A. 2021 Supp. 21-5706, and amendments thereto, whose offense is classified in grid blocks 5-C, 5-D, 5-E, 5-F, 5-G, 5-H or 5-I of the sentencing guidelines grid for drug crimes who have no felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-4164, prior to their repeal, K.S.A. 2010 Supp. 21-36a03, 21-36a05 or 21-36a16, prior to their transfer, or K.S.A. 2021 Supp. 21-5703, 21-5705 or 21-5716, and amendments thereto, or any substantially similar offense from another jurisdiction.

(b) As part of the consideration of whether or not to allow diversion to the defendant, a

divertee who meets the requirements of subsection (a) shall be subject to:

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

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

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

(d) Divertees who are committed to a certified drug abuse treatment program pursuant to subsection (c) may be supervised by community correctional services or court services pursuant to a memorandum of understanding entered into pursuant to K.S.A. 22-2907, and amendments thereto.

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

(A) Is convicted of a new felony; or

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

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

(f) For the purposes of this section:

(1) "Mental health professional" includes 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~~ Kansas sentencing commission to treat persons pursuant to K.S.A. 2021 Supp. 75-52,144, and amendments thereto.

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

Sec. 8. K.S.A. 2021 Supp. 75-52,144 is hereby amended to read as follows: 75-52,144.

(a) Drug abuse treatment programs certified in accordance with subsection (b) shall provide:

(1) Drug abuse assessments of any person who is convicted of or being considered for a diversion agreement in lieu of further criminal proceedings for a felony violation of K.S.A. 65-4160 or 65-4162, prior to such section's repeal, K.S.A. 2010 Supp. 21-36a06, prior to its transfer, or K.S.A. 2021 Supp. 21-5706, and amendments thereto, and meets the requirements of K.S.A. 21-4729, prior to its repeal, K.S.A. 2021 Supp. 21-6824(a) or 21-6825, and amendments thereto;

(2) treatment of all persons who are convicted of or entered into a diversion agreement in lieu of further criminal proceedings for a felony violation of K.S.A. 65-4160 or 65-4162, prior to such section's repeal, K.S.A. 2010 Supp. 21-36a06, prior to its transfer, or K.S.A. 2021 Supp. 21-5706, and amendments thereto, meet the requirements of K.S.A. 21-4729, prior to its repeal, K.S.A. 2021 Supp. 21-6824 or 21-6825, and amendments thereto, and whose sentence requires completion of a certified drug abuse treatment program, as provided in this section;

(3) one or more treatment options in the continuum of services needed to reach recovery: Detoxification, rehabilitation, continuing care and aftercare, and relapse prevention;

(4) treatment options to incorporate family and auxiliary support services; and

(5) treatment options for alcohol abuse when indicated by the assessment of the offender or required by the court.

(b) The criminal risk-need assessment shall be conducted by a court services officer ~~or a community corrections officer~~. The drug abuse treatment program placement assessment shall be conducted by a drug abuse treatment program certified in accordance with the provisions of this subsection to provide assessment and treatment services. A drug abuse treatment program shall be certified by the ~~secretary of corrections~~ Kansas sentencing commission. The ~~secretary commission~~ commission may establish qualifications for the certification of programs, which may include requirements for supervision and monitoring of clients, fee reimbursement procedures, handling of conflicts of interest, delivery of services to clients unable to pay and other matters relating to quality and delivery of services by the program. Drug abuse treatment may include community based and faith based programs. The certification shall be for a four-year period. The commission may establish a process for revoking certification of programs that do not meet the commission's qualifications for certification. Recertification of a program shall be by the ~~secretary commission~~ secretary commission. To be eligible for certification or recertification under this subsection, the ~~secretary commission~~ secretary commission shall determine that a drug abuse treatment program:

- (1) Meets the qualifications established by the ~~secretary commission~~ secretary commission;
 - (2) is capable of providing the assessments, supervision and monitoring required under subsection (a);
 - (3) has employed or contracted with certified treatment providers; and
 - (4) meets any other functions and duties specified by law.
- (c) Any treatment provider who is employed or has contracted with a certified drug

abuse treatment program who provides services to offenders shall be certified by the ~~secretary of corrections~~ Kansas sentencing commission. The ~~secretary~~ commission shall require education and training that shall include, but not be limited to, case management and cognitive behavior training. The duties of providers who prepare the presentence drug abuse assessment may also include appearing at sentencing and probation hearings in accordance with the orders of the court, monitoring offenders in the treatment programs, notifying the probation department and the court of any offender failing to meet the conditions of probation or referrals to treatment, appearing at revocation hearings as may be required and providing assistance and data reporting and program evaluation.

(d) (1) The cost for all drug abuse assessments performed pursuant to subsection (a)(1), and the cost for all certified drug abuse treatment programs for any person who meets the requirements of K.S.A. 2021 Supp. 21-6824 or 21-6825, and amendments thereto, shall be paid by the Kansas sentencing commission from funds appropriated for such purpose. The Kansas sentencing commission shall contract for payment for such services with the supervising agency.

(2) The sentencing court shall determine the extent, if any, that such person is able to pay for such assessment and treatment. Such payments shall be used by the supervising agency to offset costs to the state. If such financial obligations are not met or cannot be met, the sentencing court shall be notified for the purpose of collection or review and further action on the offender's sentence.

(3) If the person has entered into a diversion agreement in lieu of further criminal proceedings, the county or district attorney shall determine the extent, if any, that such person is able to pay for such assessment and treatment. Such payments shall 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 shall be notified for the purpose of collection or review and further action on the person's diversion agreement.

(e) The community corrections staff shall work with the substance abuse treatment staff to ensure effective supervision and monitoring of the offender.

(f) ~~The secretary of corrections~~ Kansas sentencing commission is hereby authorized to adopt rules and regulations to carry out the provisions of this section.";

Also on page 2, in line 27, by striking "is" and inserting ", 21-5807, 21-6610, 21-6814, 21-6820, 21-6824, 21-6825 and 75-52,144 are";

And by renumbering sections accordingly;

On page 1, in the title, in line 2, after the second semicolon by inserting "relating to burglary; including locked or secured portions of dwellings, buildings or other structures; relating to supervision of criminal offenders under supervision of both court services officers and the department of corrections; providing guidance for consolidation of supervision into one supervision entity or agency; requiring the department of corrections and the office of judicial administration to enter into a memorandum of understanding related to the supervision of such offenders; relating to sentencing guidelines; criminal history calculation; requiring an offender who raises error in calculation for the first time on appeal to show prejudicial error; authorizing jurisdiction of the court to correct an illegal sentence while a direct appeal is pending; relating to the certified drug abuse treatment program; program qualifications; transferring certification duties from the department of corrections to the Kansas sentencing commission;"; in line 3, after "21-5801" by inserting ", 21-5807, 21-6610, 21-6814, 21-6820, 21-6824, 21-6825 and 75-

52,144"; in line 4, by striking "section" and inserting "sections";

And your committee on conference recommends the adoption of this report.

Conferees on part of House

Conferees on part of Senate