

HOUSE BILL No. 2498

By Committee on Corrections and Juvenile Justice

1-20

1 AN ACT concerning crimes, criminal procedure and punishment; relating  
2 to mental health diversions for certain defendants.

3  
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. (a) This act shall be known as the mental health diversion  
6 program authorization act.

7 (b) ~~There is hereby authorized~~ a mental health diversion program for  
8 certain offenders who are charged with a crime ~~on or after July 1, 2012.~~

9 (c) Any county or district attorney, in coordination with a community  
10 mental health center in such county or district attorney's jurisdiction, who  
11 elects to establish a mental health diversion program, shall establish such  
12 program pursuant to this act.

13 (d) This act shall be a part of and supplemental to the Kansas code for  
14 criminal procedure.

15 Sec. 2. As used in this act:

16 (a) "Case manager" means an employee of, or contracted by, a  
17 community mental health center who, at the direction of the mental health  
18 diversion supervisor, administrators, monitors and oversees a defendant's  
19 participation in a mental health diversion program.

20 (b) "Community mental health center" means a community mental  
21 health center organized pursuant to the provisions of K.S.A. 19-4001  
22 through 19-4015, and amendments thereto.

23 (c) "Mental health diversion" means referral of a defendant charged  
24 with a crime to a supervised mental health rehabilitation and performance  
25 program implemented by a community mental health center, prior to  
26 adjudication.

27 (d) "Mental health diversion agreement" means the specification of  
28 formal terms and conditions which a defendant must fulfill in order to  
29 have the criminal charges against them dismissed.

30 (e) "Mental health diversion coordinator" means an employee of, or  
31 contracted by, the office of a county or district attorney to administer the  
32 mental health diversion program of each such county or district attorney.

33 (f) "Mental health diversion supervisor" means a qualified mental  
34 health professional designated to administer the mental health diversion  
35 program of a community mental health center.

36 (g) "Qualified mental health professional" has the same meaning as

recognition

This act recognizes

may

If the case manager is contracted by the community mental health center, such case manager shall be licensed to practice in Kansas as a licensed psychologist, social worker, marriage and family therapist, professional counselor, master level psychologist or clinical psychotherapist.

1 defined in subsection (j) of K.S.A. 59-2946, and amendments thereto.

2 (h) (1) "Serious mental illness" means a defendant suffers from a  
3 diagnosable mental, behavioral or emotional disorder as specified in the  
4 diagnostic and statistical manual of mental disorders, fourth edition, text  
5 revision, that has caused functional impairment which has substantially  
6 *interfered with or limited one or more major life activities within a year of*  
7 *the conduct giving rise to the complaint.*

8 (2) The diagnosis of "serious mental illness" is subject to any  
9 additional or varying criteria adopted by a community mental health center  
10 that is within the standards of a qualified mental health professional.

11 Sec. 3. (a) (1) Each county or district attorney who elects to establish  
12 a mental health diversion program shall adopt written policies and  
13 guidelines for the implementation of such program, subject to the  
14 provisions of this act.

15 (2) Such policies and guidelines shall provide for the appointment of  
16 a mental health diversion coordinator for each county or district attorney's  
17 office and procedures for a defendant with serious mental illness to enter  
18 into a treatment and diversion program in lieu of further criminal  
19 proceedings.

20 (b) (1) If the county or district attorney elects to establish a mental  
21 health diversion program, each community mental health center in such  
22 county or district attorney's jurisdiction, in coordination with such county  
23 or district attorney, shall adopt written guidelines and policies for the  
24 implementation of such program, subject to the provisions of this act.

25 (2) Such guidelines and policies shall provide for the appointment of  
26 a diversion supervisor who shall oversee the mental health diversion  
27 program of the community mental health center and coordinate such  
28 program with the county or district attorney mental health diversion  
29 coordinators.

30 Sec. 4. (a) After a complaint has been filed charging a defendant with  
31 commission of a crime and prior to conviction thereof, such defendant  
32 may apply to the county or district attorney for a mental health diversion.

33 (b) No mental health diversion shall be granted to a defendant  
34 charged with an offgrid felony, a severity level 1, 2, 3, ~~4, 5 or 6 person~~  
35 ~~felony, a severity level 1, 2, 3 or 4 nonperson felony, a violation of K.S.A.~~  
36 ~~8-1567, subsection (a)(1) of K.S.A. 2011. Supp. 21-5807, and amendments~~  
37 ~~thereto, or the provisions of article 57 of chapter 21 of the Kansas Statutes-~~  
38 ~~Annotations, and amendments thereto.~~

39 (c) In determining whether mental health diversion of a defendant is  
40 in the interests of justice and of benefit to the defendant and the  
41 community, the county or district attorney shall consider at least the  
42 following factors among all factors considered:

43 (1) The nature of the crime charged and the circumstances

serious

OR

OR

1 surrounding it;

2 (2) any special characteristics or circumstances of the defendant;

3 (3) whether the defendant is a first-time offender and if the defendant  
4 has previously participated in diversion;

5 (4) whether there is a probability that the defendant will cooperate  
6 with and benefit from mental health diversion;

7 (5) whether the available mental health diversion program is  
8 appropriate to the needs of the defendant;

9 (6) the impact of the mental health diversion of the defendant upon  
10 the community;

11 (7) recommendations, if any, of the involved law enforcement  
12 agency;

13 (8) recommendations, if any, of the victim;

14 (9) provisions for restitution;

15 (10) any mitigating circumstances; and

16 (11) whether the defendant's mental health issues were a contributing  
17 factor to the crime charged.

18 Sec. 5. (a) If the county or district attorney elects to offer diversion,  
19 the mental health coordinator shall consult with the community mental  
20 health diversion supervisor in the jurisdiction in which the defendant is  
21 charged, or at the request of the defendant, may consult with the diversion  
22 supervisor of the community mental health center most conducive to a  
23 defendant's continued rehabilitation and success in a diversion program, or  
24 any other diversion supervisor of a community mental health center as  
25 requested by the defendant for good cause shown.

26 (b) The community mental health diversion supervisor shall assess  
27 the mental health of the defendant and provide a written report to the  
28 county or district attorney diversion coordinator. Such report shall  
29 include:

30 (1) A statement that such defendant is or is not suffering from ~~severe~~  
31 mental illness;

32 (2) a statement that such defendant may or may not benefit from  
33 mental health diversion; and

34 (3) if applicable, the detailed requirements and provisions of the  
35 specialized mental health diversion program.

36 (c) If the community mental health diversion supervisor determines  
37 that such defendant is suffering from ~~severe and persistent~~ mental illness  
38 and is likely to benefit from participation in a mental health diversion  
39 program, such diversion supervisor shall develop a specialized mental  
40 health diversion program for such defendant. Such program shall require  
41 the defendant to comply with the provisions of the program for a period of  
42 no less than 12 months and no more than 36 months, unless such diversion  
43 supervisor determines a program of no less than six months will benefit

← serious

serious