

SESSION OF 2012

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2498

As Amended by House Committee on
Corrections and Juvenile Justice

Brief*

HB 2498 would enact the Mental Health Diversion Program Recognition Act and allow county and district attorneys, in coordination with community mental health centers (CMHCs), to establish a mental health diversion program, pursuant to the provisions of the Act. Each county or district attorney who elects to establish a mental health diversion program would be required to adopt written policies and guidelines for its implementation, including the appointment of a mental health diversion coordinator for each county or district attorney's office and procedures for a defendant with serious mental illness to enter into a treatment and diversion program in lieu of further criminal proceedings. Likewise, each CMHC would be required to adopt written guidelines and policies, including appointment of a diversion supervisor to oversee the mental health center's diversion program and to work with the county or district attorney mental health diversion coordinator.

Further, the bill would provide that after a complaint has been filed charging a defendant with commission of a crime or before filing of a complaint and prior to any conviction, the defendant could apply to the county or district attorney for a mental health diversion. No mental health diversion would be granted, however, to a defendant charged with an offgrid felony, a severity level 1, 2, 3, or 4 felony, a DUI, or burglary of a dwelling with the intent to commit a felony, theft, or sexual battery therein. The bill would also list factors for the county or district attorney to consider when determining

*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>

whether a mental health diversion of a defendant is in the interests of justice and of benefit to the defendant and the community.

If a mental diversion is recommended, the county or district attorney diversion coordinator would prepare a mental health diversion agreement and could require the defendant to pay any court costs, restitution, or fees. The defendant would not be required to enter any plea or admit to any facts with respect to a criminal charge as a condition of diversion. Similarly, no statements made by the defendant or counsel in any diversion conference or any other discussion of a diversion agreement would be admissible as evidence in any criminal proceeding on crimes charged or facts alleged in the complaint. The bill also lists information that should be included in the mental health diversion agreement and provides direction on filing the agreement and sharing it with others.

Further, if a defendant is offered a diversion, the mental health coordinator would consult with the community mental health diversion supervisor. If the community mental health diversion supervisor determines the defendant is suffering from a serious mental illness and is likely to benefit from participation in a mental health diversion program the supervisor would develop a specialized program for the defendant. The program would require compliance with its provisions for twelve to thirty six months, unless the supervisor determines a six to twelve month program would benefit the defendant. The bill would provide additional parameters for the program and require the supervisor to ensure compliance.

The community mental health diversion supervisor would provide a written report to the county or district attorney diversion coordinator including a statement about whether the defendant is suffering from a serious mental illness and would benefit from a mental health diversion and, if applicable, the detailed requirements and provisions of the specialized program.

If the defendant is not compliant with the diversion program, the community mental health diversion supervisor could amend its requirements or the county or district attorney could file a motion to revoke the diversion and, upon a finding that the defendant has failed to comply with the agreement, resume criminal proceedings. In that circumstance, the bill would make inadmissible as evidence in the proceeding participation in a diversion program, the facts of such participation, the diversion agreement, and any written application or statement made for the purposes of entering a diversion agreement. If the defendant is compliant, the criminal charges would be dismissed with prejudice. The district or county attorney coordinator would be required to report to the Kansas Bureau of Investigation whether the defendant fulfilled the terms of the diversion agreement.

Finally, the bill would define key terms and allow the Secretary of Social and Rehabilitation Services to adopt rules and regulations to implement and administer its provisions.

Background

In the House Committee on Corrections and Juvenile Justice, representatives of the Johnson County District Attorney's Office, the Wichita Municipal Court, the National Alliance on Mental Illness, the Kansas chapter of the National Association of Social Workers, and the Association of Community Mental Health Centers of Kansas, Inc. appeared in support of HB 2498. No opponents offered testimony. The Committee amended the bill by:

- Making mental health diversion programs optional, rather than mandatory;
- Amending the definition of "case manager";
- Clarifying that a defendant could apply for a mental health diversion before a complaint has been filed;

- Removing severity level 5 and 6 person felonies and drug crimes from the list of crimes that would disqualify a defendant from receiving a mental health diversion;
- Removing "whether the defendant is a first-time offender and if the defendant has previously participated in diversion" from the list of factors a county or district attorney could consider in deciding whether to grant a mental health diversion;
- Changing references to "severe mental illness" and "severe and persistent mental illness" to "serious mental illness";
- Clarifying that a defendant would not be required to admit any facts with respect to a criminal charge as a condition of diversion; and
- Listing additional information that should be included in the mental health diversion agreement.

The fiscal note indicates passage of HB 2498, as introduced, would require an additional \$2.2 million for community mental health centers (CMHCs). The Kansas Association of Counties reports that if no additional CMHC funding was provided through SRS, counties would either raise the mill levies related to CMHCs or stop providing services for other uninsured patients. The Office of Judicial Administration states that the diversions could decrease cases filed in the district courts, resulting in decreased court expenditures and reduced docket fees and criminal fines. The Kansas Sentencing Commission states that passage of the bill would not affect prison admissions or Commission workload.