

2021 LEGISLATIVE CHANGES TO THE KSGA AND RELATED CRIMINAL LAW REGARDING HB 2026

HB 2026

Certified Drug Abuse Treatment Program—Divertees; Jurisdiction and Supervision for 2003 SB 123 Program; Community Corrections Services Program; Amendments to Corrections-related Crimes

HB 2026 establishes a certified drug abuse treatment program for certain persons who have entered into a diversion agreement pursuant to a memorandum of understanding and amends law related to supervision of offenders and the administration of certified drug abuse treatment programs. It also amends law to change penalties for crimes involving riot in a correctional facility and unlawfully tampering with an electronic monitoring device.

Certified Drug Abuse Treatment Program—Divertees

The bill establishes a certified drug abuse treatment program (program) for certain persons who enter into a diversion agreement (divertees) pursuant to a memorandum of understanding (MOU).

The bill allows eligibility for participation in a program for offenders who enter 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 felony and at least one nonperson felony.]

The bill also provides 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:

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

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

Supervision

The bill provides that divertees who are committed to a program could be supervised by community correctional services or court services pursuant to an MOU. A divertee will be discharged from the program if the divertee:

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

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

Definitions

The bill defines "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 to treat persons pursuant to continuing law.

The bill defines "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 amends law related to diversion agreements by adding provisions related to an MOU.

The bill allows 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 will retain authority over whether a particular defendant may enter into a diversion agreement or whether such agreement will be revoked.

The bill requires an MOU to include provisions related to:

- Determining the level of supervision needed for a defendant;
- Use of a criminal risk and needs assessment;
- Payment of costs for supervision; and
- Waiver of the supervision fee established by the bill.

The bill authorizes the Office of Judicial Administration 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 amends law regarding the contents of diversion agreements to specify that such agreements may include provisions related to the MOU.

Supervision Fees

The bill provides that divertees who are supervised pursuant to an MOU will 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 allows a county or district attorney, in accordance with an MOU, to reduce or waive the supervision fee.

The bill requires 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 also requires 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 must be remitted to the county treasurer for deposit in the county general fund, and the cost of such testing can be reduced or waived by the county or district attorney.

The bill further requires county or district attorneys to determine the extent, if any, that a divertee is able to pay for assessment and treatment, and the bill requires 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 must be notified for the purpose of collection or review and further action on the diversion agreement.

Jurisdiction and Supervision for 2003 SB 123 Program

The bill amends law related to jurisdiction of, supervision of participants in, and eligibility for the nonprison sanction of placement in a certified drug abuse treatment program (2003 SB 123 Program).

Jurisdiction and Supervision

The bill provides that, when a defendant is sentenced to the nonprison sanction of placement in a certified drug abuse treatment program, the district court from which the defendant is on parole, on probation, assigned to a community correctional services program, or under a suspended sentence, may transfer jurisdiction of the defendant with the concurrence of the receiving district court and all parties.

The bill specifies that, if an offender is permitted to leave the judicial district of the sentencing court, the court may:

- Transfer supervision over the offender from that judicial district to another; and
- Either transfer or retain jurisdiction of the offender.

Eligibility

The bill amends a provision related to the assignment of a risk status by a criminal risk and needs assessment to remove a requirement that the assessment assigns either a high or low risk status.

The bill also removes a requirement that an offender be assigned a high risk status on the drug abuse assessment and a moderate or high risk status on the criminal risk and needs assessment to participate in the 2003 SB 123 Program. The bill requires the Commission to determine the criteria for participation in the 2003 SB 123 Program.

Community Corrections Services Program

Continuing law allows for assessment of certain felony offenders by a standardized risk assessment tool specified by the Commission, and for placement of certain felony offenders in a community corrections services program that provides supervision, treatment, and other services to offenders.

The bill allows the Commission to determine an appropriate risk level for placement in the program, and it removes the requirement that offenders be assigned certain risk levels to participate.

Riot and Incitement to Riot in a Correctional Facility

The bill increases the criminal penalties for riot and incitement to riot when the crime occurs in a correctional facility. The bill defines “correctional facility” for this purpose as a jail or a correctional institution as defined by continuing law.

Riot

Continuing law defines “riot” to mean five or more persons acting together and without lawful authority engaging in any:

- Use of force or violence that produces a breach of the public peace; or
- Threat to use such force or violence against any person or property if accompanied by power, or apparent power, of immediate execution.

The bill increases the penalty for riot, when it occurs in a correctional facility, from a class A misdemeanor to a severity level 8 person felony.

Incitement to Riot

Continuing law defines “incitement to riot” to mean, by words or conduct, knowingly urging others to engage in a riot, under circumstances that produce a clear and present danger of injury to persons or property or a breach of the public peace.

The bill increases the penalty for incitement to riot, when it occurs in a correctional facility, from a severity level 8 person felony to a severity level 6 person felony.

Unlawfully Tampering with Electronic Monitoring Equipment

The bill lowers the criminal penalty for unlawfully tampering with electronic monitoring equipment from a severity level 6 nonperson felony to a severity level 8 nonperson felony when the equipment is used for court-ordered supervision, postrelease supervision, or parole in relation to a felony.

The bill also lowers the criminal penalty for unlawfully tampering with electronic monitoring equipment from a severity level 6 nonperson felony to a class A nonperson misdemeanor when the equipment is used for court-ordered supervision, postrelease supervision, or parole in relation to a misdemeanor or for court-ordered supervision in a civil case.