



STATE FUNDED SUBSTANCE ABUSE TREATMENT: WHO IS ELIGIBLE?

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SB 123 Program



Senate Bill 123 was approved during the 2003 Legislative session and implemented in fiscal year 2004, **with the goal of treating non-violent drug offenders and reserving prison sentences for those offenders who commit serious, violent crimes.** The program provides funding to eligible offenders for community-based substance abuse treatment for up to their 18-month term of probation.

WHAT IS SB 123?

Who is eligible for SB 123 treatment?

Offenders convicted of a felony violation of K.S.A. 21-5705 or 21-5706, and amendments thereto, whose offense is classified in grid blocks:

- ▶ (A) 5-C-5-I of the sentencing guidelines grid for drug crimes and
- ▶ 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. 21-5703, 21-5705 or 21-5716, and amendments thereto, or any substantially similar offense from another jurisdiction; or....

See K.S.A. 2023 Supp. 21-6824(a)(1)

SB 123 Eligibility Continued

Offenders convicted of a felony violation of K.S.A. 21-5705 or 21-5706, and amendments thereto, whose offense is classified in grid blocks:

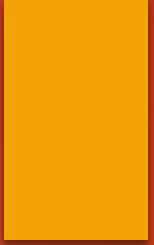
- ▶ 5-A, 5-B, 4-E, 4-F, 4-G, 4-H or 4-I of the sentencing guidelines grid for drug crimes and:
- ▶ offender has no felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-4164, prior to their repeal, K.S.A. 2010 Supp. 21-36a03, 21-36a05 or 21-36a16, prior to their transfer, or K.S.A. 21-5703, 21-5705 or 21-5716, and amendments thereto, or any substantially similar offense from another jurisdiction;
- ▶ (ii) 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
- ▶ (iii) 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.

See K.S.A. 2023 Supp. 21-6824(a)(1)(B).

Offender is NOT eligible if....

- ▶ Offender is a resident of another state and is returning to such state pursuant to the interstate corrections compact or the interstate compact for adult offender supervision; or
- ▶ offender is not lawfully present in the United States and being detained for deportation; or
- ▶ offender does not meet the risk assessment levels provided in subsection (c).
 - ▶ Females: WRNA score of medium to high risk (22 and above)
 - ▶ Males: LSCMI score of high to very high risk (20 and above)
 - ▶ High on SASSI-4 for both males and females

See K.S.A. 2023 Supp. 21-6824(h)(1)



SB 123 is mandatory for offenders who qualify. See *State v. Andelt*, 289 Kan. 763, 765, 217 P.3d 976 (2009).

State v. Worley

- ▶ Possession of meth, sentenced to prison
- ▶ Defendant was on bond at the time of the current offense
- ▶ Court ordered PSI in December 2014, Defendant did not report to Court Services and failed to show up to appointments for drug abuse assessment or criminal risk-needs assessment, BW ordered
- ▶ Defendant arrested on BW April 2015
- ▶ See *State v. Worley*, No. 114,899, 2016 WL 6024584 at *1 (Kan. App. 2016) (unpublished opinion).

State v. Worley

- ▶ At hearing, judge ordered PSI again, but did not order SB 123 assessments
- ▶ At sentencing, defense counsel requests SB 123 treatment; argues mandatory under *Andelt*
- ▶ Judge sentences Worley to upward dispositional departure
- ▶ The judge believed that *Andelt* did not apply to cases where the defendant poses a risk to the public
- ▶ See *State v. Worley*, No. 114,899, 2016 WL 6024584 at *1 (Kan. App. 2016) (unpublished opinion).

“Fundamentally, it just boils down to the fact that Mr. Worley is 54 years old. We live in a society of limited resources. I understand the point of the legislature in mandating treatment, but I also believe that our resources should only go to those individuals that are going to try on probation; that are going to try to kick their addiction habit; and that are going to work with their probation officer in ensuring that they're not a risk to the public. Nothing about Mr. Worley's behavior, current or past, would indicate to the Court that he's going to do any of that. So that's why the Court departed.” *State v. Worley*, No. 114,899, 2016 WL 6024584 at *2 (Kan. App. 2016) (unpublished opinion).

- ▶ “...the issue here is whether the case should be remanded to order the assessments, not whether this court should impose the mandatory drug abuse treatment...”
- ▶ “We can understand the district court's frustration in dealing with a defendant like Worley who does not cooperate with bond conditions and report as directed. In some situations it may be necessary to have the statutory assessments conducted while the defendant is confined in the event of such noncooperation. But we hold that it is clear error to proceed to a sentencing hearing in the absence of such assessments when the defendant is found to be qualified to have them conducted under S.B. 123.”

State v. Worley, No. 114,899, 2016 WL 6024584 at *3 (Kan. App. 2016) (unpublished opinion).

Is an offender convicted of an attempted drug charge eligible?

No.

Offenders convicted of attempted possession are not eligible for SB 123. See *State v. Perry-Coutcher*, 45 Kan. App. 2d 911, 254 P.3d 566 (2011). Likewise, offenders convicted of conspiracy and solicitation to commit drug possession will not be eligible for SB 123 treatment.



Do special rules
trump the mandatory
SB 123 treatment?

IT DEPENDS.

Special Rule 9

In *State v. Andelt*, where the defendant committed a crime while on felony parole, the Court found that he should have been sentenced to SB 123 instead of prison because SB 123 is mandatory for qualifying offenders whereas K.S.A. 21-4603d(f)(1) gives district courts discretion to impose a prison sanction when probation is presumed if an offender commits a new crime while on felony bond. See *State v. Andelt*, 289 Kan. 763, 772, 217 P.3d 976 (2009).

Special Rule 26

A sentencing court need not impose probation with drug treatment when the three strikes rule applies. *State v. Daniels*, No. 119,946, 2019 WL 4725329, at *3 (Kan.App.2019) (unpublished opinion).

Border Box

Even if the offender's criminal history places them in a border box on the drug grid, SB 123 treatment is mandatory if the offender meets the criteria outlined in K.S.A. 2018 Supp. 21-6824. See *State v. Swazey*, 51 Kan. App. 2d 999, 1004, 357 P.3d 893 (2015).



The court may order an offender who otherwise does not meet the assessment score 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.** K.S.A. 2023 Supp. 21-6824(i).

What if an offender does not meet eligibility requirements at the time of sentencing?

Discharge from SB 123/SB 123+

- ▶ K.S.A. 21-6824(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.

RAFT Diversion Program

What is the
RAFT
Program?

A certified drug abuse
treatment program for certain
people who have entered
diversion

Found in K.S.A. 2023 Supp. 21-
6825

How did the
RAFT
Program
become
law?

2021 HB
2026

Bipartisan
support

RAFT Program Eligibility

Limited to offenders charged with felony unlawful possession of controlled substances (K.S.A. 21-5706) at this time

whose offense is classified in grid blocks 5-C-5-I

Cannot have **any** prior felony convictions 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. 2023 Supp. 21-5703, 21-5705 or 21-5716, and amendments thereto, **or any substantially similar offense from another jurisdiction.**

See K.S.A. 2023 Supp. 21-6825(a)

RAFT Program Eligibility Cont'd.

- ▶ 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.


K.S.A. 2023 Supp. 21-6825(b)

Risk/Needs Thresholds

1. Offenders assessed for risk with the Level of Service/Case Management Inventory (LS/CMI) must score in the mid-range of medium to very high risk categories with a threshold score of 15 or greater.

2. For female offenders assessed with the Women's Risk Needs Assessment (WRNA), they must meet the mid-range of moderate to high risk threshold score of 15 or greater; and

2. All offenders must meet the key eligibility criteria of the program with a high probability score on the Substance Abuse Subtle Screening Inventory (SASSI-4th Edition).



Once the eligibility criteria is met, the offender is eligible for all services currently offered under the SB 123 program through KSSC.

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. K.S.A. 2023 Supp. 21-6825(c).

Divertees can be supervised by either Community Corrections or Court Services. See K.S.A. 2023 Supp. 21-6825(d).

Discharge from the RAFT Program

- ▶ K.S.A. 2023 Supp. 21-6825(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.

Can an
offender
qualify for SB
123
treatment
after being
revoked
from RAFT?

Nothing in case law....yet



However, since the offender will fall into grid blocks 5-C, 5-D, 5-E, 5-F, 5-G, 5-H or 5-I of the sentencing guidelines grid because of the diversion requirements, then the plain language of K.S.A. 21-6824 mandates SB123 drug treatment.

SB 123+

Program

SB 123+ Drug Abuse Treatment Program

K.S.A. 21-6824. Nonprison sanction; certified drug abuse treatment programs; assessment; supervision by community corrections or court services; discharge from program; exceptions to placement in program; transfer of supervision. (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 who meet the requirements of this subsection.

(2) Offenders convicted of a nonperson felony whose offense is classified in grid blocks:

(A) 10-C, 10-D, 10-E, 10-F, 10-G, 10-H, 10-I, 9-C, 9-D, 9-E, 9-F, 9-G, 9-H, 9-I, 8-C, 8-D, 8-E, 8-F, 8-G, 8-H, 8-I, 7-C, 7-D, 7-E, 7-F, 7-G, 7-H or 7-I of the sentencing guidelines grid for nondrug 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. 21-5703, 21-5705 or 21-5716, and amendments thereto, or any substantially similar offense from another jurisdiction; or

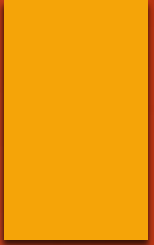
(B) 10-A, 10-B, 9-A, 9-B, 8-A, 8-B, 7-A or 7-B of the sentencing guidelines grid for nondrug crimes and:

(i) 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. 21-5703, 21-5705 or 21-5716, and amendments thereto, or any substantially similar offense from another jurisdiction;

(ii) 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

(iii) 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.

See K.S.A. 2023 Supp. 21-6824(a)(2)



What is the process for determining eligibility for SB123+ for non-drug crimes where drug use was the underlying issue?

Recently Asked Questions



Do Special Rules 27
& 29 trump SB 123+?



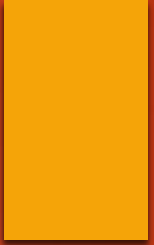
How do prior juvenile
adjudications affect SB
123 and SB 123+ eligibility?

Does the primary count have to be the SB 123 or SB 123+ offense?

Please see *State v. Sims*, Nos. 104,406, 104,407, 2011 WL 3891878 (Kan. Ct. App. 2011) (unpublished opinion) for more guidance.



Can these programs be used by defendants from municipal courts or just district courts?



If someone has three prior felony possession convictions, then gets convicted of distribution, are they still eligible for SB123?

How many times can
an offender receive SB
123/SB 123+ treatment?

KSSC RESOURCES

Questions

- Francis.givens@ks.gov
- KSSCAttorney@ks.gov

SB 123 Training

- <https://sentencing.ks.gov/sb-123/training>