

SENATE BILL No. 351

By Joint Committee on Corrections and Juvenile Justice Oversight

1-11

10 AN ACT concerning crimes, punishment and criminal procedure; relat-
11 ing to the drug abuse assessment for certain offenders; relating to
12 sentencing; amending K.S.A. 2005 Supp. 21-4714, 21-4729 and 75-
13 52,144 and repealing the existing sections.

14
15 *Be it enacted by the Legislature of the State of Kansas:*

16 Section 1. K.S.A. 2005 Supp. 21-4714 is hereby amended to read as
17 follows: 21-4714. (a) The court shall order the preparation of the pre-
18 sentence investigation report by the court services officer as soon as possi-
19 ble after conviction of the defendant.

20 (b) Each presentence report prepared for an offender to be sen-
21 tenced for one or more felonies committed on or after July 1, 1993, shall
22 be limited to the following information:

23 (1) A summary of the factual circumstances of the crime or crimes
24 of conviction.

25 (2) If the defendant desires to do so, a summary of the defendant's
26 version of the crime.

27 (3) When there is an identifiable victim, a victim report. The person
28 preparing the victim report shall submit the report to the victim and
29 request that the information be returned to be submitted as a part of the
30 presentence investigation. To the extent possible, the report shall include
31 a complete listing of restitution for damages suffered by the victim.

32 (4) An appropriate classification of each crime of conviction on the
33 crime severity scale.

34 (5) A listing of prior adult convictions or juvenile adjudications for
35 felony or misdemeanor crimes or violations of county resolutions or city
36 ordinances comparable to any misdemeanor defined by state law. Such
37 listing shall include an assessment of the appropriate classification of the
38 criminal history on the criminal history scale and the source of informa-
39 tion regarding each listed prior conviction and any available source of
40 journal entries or other documents through which the listed convictions
41 may be verified. If any such journal entries or other documents are ob-
42 tained by the court services officer, they shall be attached to the pre-
43 sentence investigation report. Any prior criminal history worksheets of

1 the defendant shall also be attached.

2 (6) A proposed grid block classification for each crime, or crimes of
3 conviction and the presumptive sentence for each crime, or crimes of
4 conviction.

5 (7) If the proposed grid block classification is a grid block which pre-
6 sumes imprisonment, the presumptive prison term range and the pre-
7 sumptive duration of postprison supervision as it relates to the crime
8 severity scale.

9 (8) If the proposed grid block classification does not presume prison,
10 the presumptive prison term range and the presumptive duration of the
11 nonprison sanction as it relates to the crime severity scale and the court
12 services officer's professional assessment as to recommendations for con-
13 ditions to be mandated as part of the nonprison sanction.

14 (9) For defendants who are being sentenced for a conviction of a
15 felony violation of K.S.A. 65-4160 or 65-4162, and amendments thereto,
16 and meet the requirements of K.S.A. 2005 Supp. 21-4729, and amend-
17 ments thereto, the drug and alcohol assessment as provided in K.S.A.
18 2005 Supp. 21-4729, and amendments thereto, *if the court so orders such*
19 *assessment as a part of the presentence investigation.*

20 (c) The presentence report will become part of the court record and
21 shall be accessible to the public, except that the official version, defend-
22 ant's version and the victim's statement, any psychological reports and
23 drug and alcohol reports and assessments shall be accessible only to the
24 parties, the sentencing judge, the department of corrections, and if re-
25 quested, the Kansas sentencing commission. If the offender is committed
26 to the custody of the secretary of corrections, the report shall be sent to
27 the secretary and, in accordance with K.S.A. 75-5220 and amendments
28 thereto to the warden of the state correctional institution to which the
29 defendant is conveyed.

30 (d) The criminal history worksheet will not substitute as a present-
31 ence report.

32 (e) The presentence report will not include optional report compo-
33 nents, which would be subject to the discretion of the sentencing court
34 in each district except for psychological reports and drug and alcohol
35 reports.

36 (f) The court can take judicial notice in a subsequent felony proceed-
37 ing of an earlier presentence report criminal history worksheet prepared
38 for a prior sentencing of the defendant for a felony committed on or after
39 July 1, 1993.

40 (g) All presentence reports in any case in which the defendant has
41 been convicted of a felony shall be on a form approved by the Kansas
42 sentencing commission.

43 Sec. 2. K.S.A. 2005 Supp. 21-4729 is hereby amended to read as

1 follows: 21-4729. On and after November 1, 2003: (a) There is hereby
2 established a nonprison sanction of certified drug abuse treatment pro-
3 grams for certain offenders who are sentenced on or after November 1,
4 2003. Placement of offenders in certified drug abuse treatment programs
5 by the court shall be limited to placement of adult offenders, convicted
6 of a felony violation of K.S.A. 65-4160 or 65-4162, and amendments
7 thereto:

8 (1) Whose offense is classified in grid blocks 4-E, 4-F, 4-G, 4-H or
9 4-I of the sentencing guidelines grid for drug crimes and such offender
10 has no felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163
11 or 65-4164, and amendments thereto or any substantially similar offense
12 from another jurisdiction; or

13 (2) whose offense is classified in grid blocks 4-A, 4-B, 4-C or 4-D of
14 the sentencing guidelines grid for drug crimes and such offender has no
15 felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-
16 4164, and amendments thereto, or any substantially similar offense from
17 another jurisdiction, if such person felonies committed by the offender
18 were severity level 8, 9 or 10 or nongrid offenses of the sentencing guide-
19 lines grid for nondrug crimes and the court finds and sets forth with
20 particularity the reasons for finding that the safety of the members of the
21 public will not be jeopardized by such placement in a drug abuse treat-
22 ment program.

23 (b) (1) ~~As a part of the presentence investigation pursuant to K.S.A.~~
24 ~~21-4714, and amendments thereto,~~ Offenders who meet the require-
25 ments of subsection (a) shall be subject to a drug abuse assessment. *Unless*
26 *otherwise specifically ordered by the court, such assessment shall occur*
27 *after the sentence is imposed.*

28 (2) The drug abuse assessment shall include a statewide, mandatory,
29 standardized risk assessment tool and an instrument validated for drug
30 abuse treatment program placements and shall include a clinical interview
31 with a mental health professional. Such assessment shall assign a high or
32 low risk status to the offender and include a recommendation concerning
33 drug abuse treatment for the offender.

34 (c) The sentencing court shall commit the offender to treatment in a
35 drug abuse treatment program until determined suitable for discharge by
36 the court but the term of treatment shall not exceed 18 months.

37 (d) Offenders shall be supervised by community correctional services.

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

41 (f) (1) Offenders in drug abuse treatment programs shall be dis-
42 charged from such program if the offender:

43 (A) Is convicted of a new felony, other than a felony conviction of

1 ~~K.S.A. 65-4160 or 65-4162, and amendments thereto; or~~
2 (B) has a pattern of intentional conduct that demonstrates the of-
3 fender's refusal to comply with or participate in the treatment program,
4 as established by judicial finding.
5 (2) Offenders who are discharged from such program shall be subject
6 to the revocation provisions of subsection (n) of K.S.A. 21-4603d, and
7 amendments thereto.
8 (g) As used in this section, "mental health professional" includes li-
9 censed social workers, licensed psychiatrists, licensed psychologists, li-
10 censed professional counselors or registered alcohol and other drug abuse
11 counselors licensed or certified as addiction counselors who have been
12 certified by the secretary of corrections to treat offenders pursuant to
13 K.S.A. 2005 Supp. 75-52,144, and amendments thereto.
14 (h) (1) *The following offenders who meet the requirements of sub-*
15 *section (a) shall not be subject to the provisions of this section and shall*
16 *be sentenced as otherwise provided by law:*
17 (A) *Offenders who are residents of another state and are returning to*
18 *such state pursuant to the interstate corrections compact or the interstate*
19 *compact for adult offender supervision; or*
20 (B) *offenders who are not lawfully present in the United States and*
21 *being detained for deportation.*
22 (2) *Such sentence shall not be considered a departure and shall not*
23 *be subject to appeal.*
24 Sec. 3. K.S.A. 2005 Supp. 75-52,144 is hereby amended to read as
25 follows: 75-52,144. (a) Drug abuse treatment programs certified in ac-
26 cordance with subsection (b) shall provide:
27 (1) ~~Presentence~~ Drug abuse assessments of any person who is con-
28 victed of a felony violation of K.S.A. 65-4160 or 65-4162, and amendments
29 thereto, and meets the requirements of K.S.A. 2005 Supp. 21-4729, and
30 amendments thereto;
31 (2) treatment of all persons who are convicted of a felony violation
32 of K.S.A. 65-4160 or 65-4162, and amendments thereto, and meet the
33 requirements of K.S.A. 2005 Supp. 21-4729, and amendments thereto,
34 and whose sentence requires completion of a certified drug abuse treat-
35 ment program, as provided in this section;
36 (3) one or more treatment options in the continuum of services
37 needed to reach recovery: Detoxification, rehabilitation, continuing care
38 and aftercare, and relapse prevention;
39 (4) treatment options to incorporate family and auxiliary support serv-
40 ices; and
41 (5) treatment options for alcohol abuse when indicated by the as-
42 sessment of the offender or required by the court.
43 (b) The ~~presentence~~ criminal risk-need assessment shall be con-

1 ducted by a court services officer or a community corrections officer. The
2 ~~presentence~~ drug abuse treatment program placement assessment shall
3 be conducted by a drug abuse treatment program certified in accordance
4 with the provisions of this subsection to provide assessment and treatment
5 services. A drug abuse treatment program shall be certified by the sec-
6 retary of corrections. The secretary may establish qualifications for the
7 certification of programs, which may include requirements for supervi-
8 sion and monitoring of clients; fee reimbursement procedures; handling
9 of conflicts of interest; delivery of services to clients unable to pay; and
10 other matters relating to quality and delivery of services by the program.
11 Drug abuse treatment may include community based and faith based
12 programs. The certification shall be for a four-year period. Recertification
13 of a program shall be by the secretary. To be eligible for certification
14 under this subsection, the secretary shall determine that a drug abuse
15 treatment program: (1) Meets the qualifications established by the sec-
16 retary; (2) is capable of providing the assessments, supervision and mon-
17 itoring required under subsection (a); (3) has employed or contracted with
18 certified treatment providers; and (4) meets any other functions and du-
19 ties specified by law.

20 (c) Any treatment provider who is employed or has contracted with
21 a certified drug abuse treatment program who provides services to of-
22 fenders shall be certified by the secretary of corrections. The secretary
23 shall require education and training which shall include, but not be lim-
24 ited to, case management and cognitive behavior training. The duties of
25 providers who prepare the ~~presentence~~ drug abuse assessment may also
26 include appearing at sentencing and probation hearings in accordance
27 with the orders of the court, monitoring offenders in the treatment pro-
28 grams, notifying the probation department and the court of any offender
29 failing to meet the conditions of probation or referrals to treatment, ap-
30 pearing at revocation hearings as may be required and providing assis-
31 tance and data reporting and program evaluation.

32 (d) The cost for all drug abuse assessments and certified drug abuse
33 treatment programs for any person shall be paid by the Kansas sentencing
34 commission from funds appropriated for such purpose. The Kansas sen-
35 tencing commission shall contract for payment for such services with the
36 supervising agency. The sentencing court shall determine the extent, if
37 any, that such person is able to pay for such assessment and treatment.
38 Such payments shall be used by the supervising agency to offset costs to
39 the state. If such financial obligations are not met or cannot be met, the
40 sentencing court shall be notified for the purpose of collection or review
41 and further action on the offender's sentence.

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

1 the offender.

2 (f) The secretary of corrections is hereby authorized to adopt rules
3 and regulations to carry out the provisions of this section.

4 Sec. 4. K.S.A. 2005 Supp. 21-4714, 21-4729 and 75-52,144 are
5 hereby repealed.

6 Sec. 5. This act shall take effect and be in force from and after its
7 publication in the statute book.