

# Senate Study Bill 3099

SENATE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON  
JUDICIARY BILL BY  
CO=CHAIRPERSON KREIMAN)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act relating to the creation of drug courts in a judicial  
2 district department of correctional services.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
4 TLSB 5941SK 81  
5 jm/gg/14

PAG LIN

1 1 Section 1. NEW SECTION. 124D.1 SHORT TITLE.  
1 2 This Act shall be known and may be cited as the "Model Drug  
1 3 Offender Accountability and Treatment Act".  
1 4 Sec. 2. NEW SECTION. 124D.2 DEFINITIONS.  
1 5 For the purposes of this chapter, unless the context  
1 6 otherwise requires:  
1 7 1. "Continuum of care" means a seamless and coordinated  
1 8 course of substance abuse education and treatment designed to  
1 9 meet the needs of drug offenders as they move through the  
1 10 criminal justice system and beyond, maximizing self=  
1 11 sufficiency.  
1 12 2. "Drug" means a controlled substance as defined in  
1 13 section 124.101 or alcohol.  
1 14 3. "Drug court" means a process that combines judicial  
1 15 intervention and substance abuse treatment while incorporating  
1 16 the ten key components at any stage of a criminal proceeding  
1 17 including prior to charges being filed or upon probation or  
1 18 parole.  
1 19 4. "Drug court coordinator" means an individual who is  
1 20 responsible for coordinating the establishment, staffing,  
1 21 operation, and evaluation, and establishing the integrity, of  
1 22 a drug court.  
1 23 5. "Drug court team" means a team that consists of the  
1 24 following members who are assigned to the drug court:  
1 25 a. A judge or magistrate.  
1 26 b. A county attorney.  
1 27 c. A public defender or an attorney practicing in the area  
1 28 of criminal law.  
1 29 d. A peace officer.  
1 30 e. The drug court coordinator.  
1 31 f. A representative of the board of parole.  
1 32 g. A substance abuse treatment provider.  
1 33 h. Any other person selected by a majority of the drug  
1 34 court team.  
1 35 6. "Drug offender" means a person charged with a  
2 1 controlled substance-related offense or an offense in which  
2 2 substance abuse is determined to have been a significant  
2 3 factor in the commission of the offense.  
2 4 7. "Dual diagnosis" means a co-occurring substance abuse  
2 5 problem and mental health disorder.  
2 6 8. "Evaluation" means a diagnostic assessment to determine  
2 7 whether a drug offender would benefit from the provisions of  
2 8 this chapter.  
2 9 9. "Local advisory committee" may consist of the following  
2 10 members or their designees:  
2 11 a. The chief judge of the judicial district, who shall  
2 12 serve as chair.  
2 13 b. A judge assigned to the drug court.  
2 14 c. A county attorney.  
2 15 d. A public defender.  
2 16 e. The drug court coordinator.

2 17 f. An attorney who practices primarily in the area of  
2 18 criminal law.  
2 19 g. The clerk of the district court.  
2 20 h. A representative of the department of corrections.  
2 21 i. A representative of the judicial district department of  
2 22 correctional services.  
2 23 j. A probation or parole officer.  
2 24 k. A peace officer.  
2 25 l. A substance abuse treatment provider.  
2 26 m. Any other person the chair designates as a member.  
2 27 10. "Memorandum of understanding" means a written document  
2 28 setting forth an agreed upon procedure.  
2 29 11. "Relapse" means a return to substance use after a  
2 30 period of abstinence.  
2 31 12. "Staffing" means the meeting before a drug offender's  
2 32 appearance in drug court in which the drug court team  
2 33 discusses a coordinated response to the drug offender's  
2 34 behavior.  
2 35 13. "Substance abuse" means the illegal or improper  
3 1 consumption of a drug.  
3 2 14. "Substance abuse treatment" means a program designed  
3 3 to provide prevention, education, and therapy services  
3 4 directed toward ending substance abuse and preventing a return  
3 5 to drug use.  
3 6 15. "Ten key components", as defined by the United States  
3 7 department of justice, mean:  
3 8 a. Drug courts integrate alcohol and other drug treatment  
3 9 services with justice system case processing.  
3 10 b. Using a nonadversarial approach, prosecution and  
3 11 defense counsel promote public safety while protecting the  
3 12 drug offender's due process rights.  
3 13 c. Eligible drug offenders are identified early and  
3 14 promptly placed in the drug court program.  
3 15 d. Drug courts provide access to a continuum of alcohol,  
3 16 drug, and other related treatment and rehabilitation services.  
3 17 e. Abstinence is monitored by frequent alcohol and other  
3 18 drug testing.  
3 19 f. A coordinated strategy governs drug court responses to  
3 20 drug offenders' compliance.  
3 21 g. Ongoing judicial interaction with each drug court  
3 22 participant is essential.  
3 23 h. Monitoring and evaluation measure the achievement of  
3 24 program goals and gauge effectiveness.  
3 25 i. Continuing interdisciplinary education promotes  
3 26 effective drug court planning, implementation, and operations.  
3 27 j. Forging partnerships among drug courts, public  
3 28 agencies, and community-based organizations generates local  
3 29 support and enhances the drug court's effectiveness.  
3 30 Sec. 3. NEW SECTION. 124D.3 FINDINGS AND DRUG COURT  
3 31 GOALS.  
3 32 1. The general assembly finds that a critical need exists  
3 33 in this state for the criminal justice system to assist in  
3 34 reducing the incidence of substance abuse and the crimes  
3 35 resulting from such abuse. For the criminal justice system to  
4 1 maintain its credibility, all drug offenders must be held  
4 2 accountable for their actions. A growing body of research  
4 3 demonstrates the impact of substance abuse on public safety,  
4 4 personal health and health care costs, the spread of  
4 5 communicable disease, educational performance and attainment,  
4 6 workforce reliability and productivity, family safety, and  
4 7 financial stability. Requiring accountability and  
4 8 rehabilitating treatment, in addition to or in place of  
4 9 conventional and expensive incarceration, will promote public  
4 10 safety and the welfare of the individuals involved, reduce the  
4 11 burden upon the public treasury, and benefit the common  
4 12 welfare of this state.  
4 13 2. The goals of this chapter include all of the following:  
4 14 a. To enhance community safety and the quality of life for  
4 15 citizens of this state.  
4 16 b. To reduce recidivism.  
4 17 c. To reduce substance abuse.  
4 18 d. To increase the personal, familial, and societal  
4 19 accountability of drug offenders.  
4 20 e. To restore drug offenders to productive, law-abiding,  
4 21 and taxpaying citizens.  
4 22 f. To promote effective interaction and use of resources  
4 23 among criminal justice and community agencies.  
4 24 g. To reduce the costs of incarceration.  
4 25 h. To improve the efficiency of the criminal justice  
4 26 system by enacting an effective methodology.  
4 27 3. The general assembly finds that, as a general

4 28 proposition, a drug offender should not be permitted to exit  
4 29 the criminal justice system until the offender has undergone  
4 30 an evaluation and an appropriate form of treatment. The  
4 31 decision whether that treatment is provided in jail, prison,  
4 32 or elsewhere should be made by the courts based not only upon  
4 33 traditional sentencing criteria but also upon the professional  
4 34 diagnostic evaluation of each drug offender and the specific  
4 35 recommendations of the evaluation. The criminal justice  
5 1 system should be used constructively to motivate drug  
5 2 offenders to accept treatment and engage in the treatment  
5 3 process.

5 4 4. In addition, the general assembly finds that, while  
5 5 participating in a drug court reshapes the traditional roles  
5 6 of a judge and a lawyer, ethical duties do not significantly  
5 7 differ from those in traditional courtrooms. A drug court  
5 8 judge and a drug court lawyer must adhere to the standards set  
5 9 forth in the model code of judicial conduct, the model rules  
5 10 of professional conduct, and the American bar association  
5 11 standards of criminal justice. The proper exercise of the  
5 12 roles of a judge or a lawyer in the drug court need not  
5 13 conflict with such person's ethical obligations and can enable  
5 14 a judge or a lawyer to fulfill the highest aspirations of  
5 15 their professional ethics while embarking on an innovative way  
5 16 to break the cycle of substance abuse and crime. A drug court  
5 17 judge and a lawyer must remain continually cognizant of the  
5 18 due process rights guaranteed to all citizens and the state's  
5 19 substantial interest in maintaining effective and efficient  
5 20 judicial and penal systems.

5 21 Sec. 4. NEW SECTION. 124D.4 DRUG COURT STRUCTURE.

5 22 1. Each judicial district shall establish a drug court  
5 23 under the purview of a local advisory committee established  
5 24 pursuant to section 124D.10. The purpose of the drug court  
5 25 shall be to appropriately address substance abuse problems  
5 26 through the judicial system and to make drug courts a  
5 27 condition of pretrial release, probation, jail, prison,  
5 28 parole, or other release from a correctional facility.

5 29 2. A drug court shall be established by written agreement  
5 30 between the county attorney and a majority of the district  
5 31 judges in the judicial district. The written agreement shall  
5 32 include incentives for a drug offender who is performing  
5 33 satisfactorily and sanctions including incarceration or  
5 34 expulsion for a drug offender who is performing  
5 35 unsatisfactorily.

6 1 3. If the court finds that the drug offender is performing  
6 2 satisfactorily in drug court, the court may grant incentives  
6 3 to the drug offender under the following circumstances:

6 4 a. The drug offender is benefiting from education,  
6 5 treatment, and rehabilitation.  
6 6 b. The drug offender has not engaged in criminal conduct.  
6 7 c. The drug offender has not violated the terms and  
6 8 conditions of the agreement.

6 9 4. The court may impose sanctions under the following  
6 10 circumstances:

6 11 a. The drug offender is not performing satisfactorily in  
6 12 drug court.  
6 13 b. The drug offender is not benefiting from education,  
6 14 treatment, or rehabilitation.  
6 15 c. The drug offender has engaged in conduct rendering the  
6 16 drug offender unsuitable for the drug court program.  
6 17 d. The drug offender has violated the terms and conditions  
6 18 of the agreement.  
6 19 e. The drug offender is for any reason unable to  
6 20 participate.

6 21 5. Upon successful completion of drug court, a drug  
6 22 offender's case shall be disposed of by the judge in the  
6 23 manner prescribed by the agreement and by the applicable  
6 24 policies and procedures adopted by the drug court. This may  
6 25 include, but is not limited to, withholding criminal charges,  
6 26 dismissal of charges, deferral of judgment or sentence, or  
6 27 suspending the sentence.

6 28 6. A drug court must include the ten key components and  
6 29 the drug court team shall act to ensure compliance with such  
6 30 components.

6 31 7. Cases handled pursuant to this chapter shall be  
6 32 calendared on dedicated dockets and set aside from other  
6 33 criminal cases.

6 34 8. Each judicial district shall establish a drug court or  
6 35 continue the operation of an existing drug court and shall  
7 1 establish a local drug court team.

7 2 9. The drug court team shall, when practicable, conduct a  
7 3 staffing prior to each drug court session to discuss and

7 4 provide updated information regarding drug offenders. After  
7 5 determining such drug offenders' progress, the drug court team  
7 6 shall agree on the appropriate incentive or sanction to be  
7 7 applied to each drug offender, if any, subject to court  
7 8 approval. If the drug court team cannot agree on the  
7 9 appropriate action, the court shall make the decision based on  
7 10 information presented in the staffing.

7 11 10. Nothing contained in this chapter shall confer a right  
7 12 or an expectation of a right to participate in drug court nor  
7 13 shall it obligate the drug court to accept every drug  
7 14 offender. The establishment of a drug court shall not be  
7 15 construed as limiting the discretion of the county attorney to  
7 16 act on any criminal case which the county attorney believes is  
7 17 advisable to prosecute. Each drug court judge may establish  
7 18 rules and may make special orders and rules as necessary that  
7 19 do not conflict with the Iowa rules of criminal procedure and  
7 20 the rules of the state court advisory commission.

7 21 11. A drug court coordinator shall be responsible for the  
7 22 general administration of the drug court.

7 23 12. The supervising agency shall timely forward  
7 24 information to the drug court concerning the drug offender's  
7 25 progress and compliance with any court-imposed terms and  
7 26 conditions.

7 27 Sec. 5. NEW SECTION. 124D.5 EVALUATION.

7 28 1. An offender arrested shall be ordered to undergo an  
7 29 evaluation by the court if any of the following apply:

7 30 a. The present offense involves a controlled substance or  
7 31 an operating-while-intoxicated offense.

7 32 b. The offender requests an evaluation.

7 33 c. The offender admits to substance use or abuse within  
7 34 the year preceding the arrest for the present offense.

7 35 d. The results of any drug test are positive.

8 1 e. The offender has a previous conviction involving a  
8 2 controlled substance or has a prior conviction for operating  
8 3 while intoxicated.

8 4 2. Notwithstanding the requirements of subsection 1, the  
8 5 court shall order an offender to undergo an evaluation if the  
8 6 court has reason to believe the offender is a substance abuser  
8 7 or would otherwise benefit from undergoing an evaluation.

8 8 3. If an offender is required to undergo an evaluation and  
8 9 has not done so at the time of the offender's release prior to  
8 10 trial or on probation, submission to an evaluation shall be a  
8 11 condition of the offender's pretrial release, probation, or  
8 12 parole.

8 13 4. Unless otherwise ordered by the court, the drug test  
8 14 results and evaluation of an offender shall be provided within  
8 15 fourteen days of the offender's initial appearance before the  
8 16 drug court team.

8 17 5. The evaluation shall include recommendations concerning  
8 18 the offender's need for substance abuse treatment and the  
8 19 appropriate and available course of treatment necessary to  
8 20 address the offender's needs.

8 21 6. Any person receiving drug test results, an evaluation,  
8 22 or other personal medical information shall maintain that  
8 23 information in accordance with federal and state  
8 24 confidentiality laws.

8 25 Sec. 6. NEW SECTION. 124D.6 TREATMENT == ORDER.

8 26 1. A court shall order an offender to participate in drug  
8 27 court if any of the following apply:

8 28 a. An evaluation reveals that an offender is a substance  
8 29 abuser, and the evaluation recommends that the drug offender  
8 30 participate in drug court.

8 31 b. The court makes a finding that participation in drug  
8 32 court would benefit the drug offender by addressing the  
8 33 offender's substance abuse.

8 34 c. The county attorney consents to the drug offender's  
8 35 participation in the program.

9 1 2. If the court determines that participation in drug  
9 2 court will not benefit the offender, or the offender is not an  
9 3 appropriate candidate, notwithstanding a recommendation  
9 4 pursuant to the evaluation that the offender participate in  
9 5 such treatment program, the court shall record its  
9 6 determination in the confidential treatment file and make a  
9 7 general finding on the record that the offender is ineligible  
9 8 to participate in drug court.

9 9 Sec. 7. NEW SECTION. 124D.7 TREATMENT AND SUPPORT  
9 10 SERVICES.

9 11 1. As part of the evaluation, each jurisdiction shall  
9 12 establish a system to ensure that drug offenders are placed  
9 13 into a clinically approved substance abuse treatment program.  
9 14 The program conducting the individual evaluations should make

9 15 specific recommendations to the drug court team regarding the  
9 16 type of treatment program and duration necessary so that a  
9 17 drug offender's individualized needs can be addressed. The  
9 18 evaluations and resulting recommendations should be based upon  
9 19 objective medical diagnostic criteria. Treatment  
9 20 recommendations accepted by the court, pursuant to this  
9 21 chapter, shall be deemed to be reasonable and necessary.

9 22 2. Each local advisory committee shall establish an  
9 23 adequate continuum of care for drug offenders to meet the  
9 24 requirements of this chapter.

9 25 3. A drug court shall, when practicable, ensure that no  
9 26 agency or organization provides both evaluation and treatment  
9 27 services for the drug court to avoid potential conflicts of  
9 28 interest or the appearance that a given diagnostic evaluation  
9 29 agency or organization might benefit by determining that an  
9 30 offender is in need of the particular form of treatment that  
9 31 the evaluator provides.

9 32 4. A drug court making a referral for substance abuse  
9 33 treatment shall refer the drug offender to a program that is  
9 34 approved by the court.

9 35 5. The court shall determine which treatment programs are  
10 1 authorized to provide the recommended treatment to a drug  
10 2 offender. The relationship between the treatment program and  
10 3 the court shall be governed by a memorandum of understanding,  
10 4 which shall include the timely reporting of the drug  
10 5 offender's progress to the court.

10 6 6. Recognizing that drug offenders are frequently dually  
10 7 diagnosed, appropriate services shall be made available to a  
10 8 person with a dual diagnosis.

10 9 Sec. 8. NEW SECTION. 124D.8 DRUG TESTING.

10 10 1. A drug court team shall ensure fair, accurate, and  
10 11 reliable drug testing procedures.

10 12 2. A drug offender shall be ordered to submit to frequent,  
10 13 random, and observed drug testing to monitor abstinence.

10 14 3. The results of all drug tests shall be provided to the  
10 15 drug court team as soon as practicable, but in the event of a  
10 16 positive drug test, not later than seven days from the test.

10 17 4. Any person receiving drug test results shall maintain  
10 18 the information in compliance with the requirements of federal  
10 19 and state confidentiality laws.

10 20 Sec. 9. NEW SECTION. 124D.9 STATE DRUG COURT ADVISORY  
10 21 COMMISSION == CERTIFICATION OF DRUG COURTS.

10 22 1. The state drug court advisory commission shall be  
10 23 established by the chief justice of the supreme court to plan,  
10 24 implement, and develop drug courts.

10 25 2. The commission shall consist of members of the  
10 26 executive, legislative, and judicial branches of government,  
10 27 and representatives of the collaborative partners involved in  
10 28 the drug courts. The chair and staffing of the commission  
10 29 shall be determined by the chief justice.

10 30 3. The commission shall make recommendations to the chief  
10 31 justice and representatives of the executive and legislative  
10 32 branches for developing a comprehensive, coordinated state  
10 33 policy concerning the extent to which a drug court can provide  
10 34 a meaningful solution to the devastating effects of substance  
10 35 abuse on society.

11 1 4. The commission shall recommend criteria for eligibility  
11 2 for a drug court program, promulgate procedural rules,  
11 3 establish guidelines for operation, and draft standards and  
11 4 protocols. The commission shall periodically review and  
11 5 revise the rules, guidelines, and standards and protocols, and  
11 6 shall take such other actions as are necessary and  
11 7 appropriate.

11 8 5. The commission shall identify existing resources for  
11 9 evaluation and treatment and make recommendations for the  
11 10 allocation of those resources.

11 11 6. The commission shall explore grants and funds necessary  
11 12 to support drug courts.

11 13 7. The commission shall promote training and technical  
11 14 assistance for criminal justice personnel and education for  
11 15 the public about the effectiveness of drug courts.

11 16 8. The commission shall certify that a drug court is in  
11 17 compliance with the standards established by the commission  
11 18 and shall revoke the certification of a drug court that does  
11 19 not comply.

11 20 9. The commission has general statewide oversight, but the  
11 21 chief judge in each judicial district shall appoint a local  
11 22 advisory committee to advise a drug court at the local level  
11 23 pursuant to section 124D.10.

11 24 10. The commission shall establish evaluation criteria and  
11 25 procedures, including criteria and procedures for tracking the

11 26 status of drug offenders after concluding drug court. The  
11 27 commission shall serve as a repository of the critical data  
11 28 elements collected under section 124D.11 from drug courts  
11 29 around the state.

11 30 11. The commission shall provide a statewide report  
11 31 annually to the state supreme court, general assembly, and  
11 32 governor regarding the need for, and implementation of, this  
11 33 chapter. The report shall include a synopsis of such  
11 34 information or data necessary to determine the impact,  
11 35 utility, and cost-effectiveness of the chapter's

12 1 implementation and ongoing operation.

12 2 Sec. 10. NEW SECTION. 124D.10 LOCAL ADVISORY COMMITTEE.

12 3 1. The chief judge in each judicial district shall appoint  
12 4 a local advisory committee to advise the drug court  
12 5 established in the district. The local advisory committee  
12 6 shall ensure the provision of a full continuum of care for  
12 7 drug offenders. The local advisory committee shall ensure  
12 8 quality, efficiency, and fairness in planning, implementing,  
12 9 and operating a drug court that serves the jurisdiction.

12 10 2. The local advisory committee shall annually report to  
12 11 the state drug court advisory commission by January of each  
12 12 year. The report must include:

12 13 a. A description of the drug court operating within the  
12 14 jurisdiction.

12 15 b. The judges serving in a drug court.

12 16 c. The community involvement.

12 17 d. Education and training of attorneys and judges.

12 18 e. The use of moneys appropriated or provided to the drug  
12 19 court.

12 20 f. Any collaborative efforts undertaken with other  
12 21 agencies, organizations, or local authorities.

12 22 g. An evaluation of the critical data elements required by  
12 23 section 124D.11.

12 24 3. The local advisory committee shall administer any funds  
12 25 collected by or appropriated to the drug court.

12 26 Sec. 11. NEW SECTION. 124D.11 COLLECTION OF INFORMATION.

12 27 1. A drug court shall collect and maintain the following  
12 28 critical data:

12 29 a. Criminal history data.

12 30 b. Prior substance abuse treatment history, including  
12 31 information on the drug offender's success or failure in any  
12 32 treatment programs.

12 33 c. Employment, education, and income histories.

12 34 d. Gender, race, ethnicity, marital and family status, and  
12 35 any child custody and support obligations.

13 1 e. The number of relapses occurring during and after drug  
13 2 court has been completed.

13 3 f. The number of relapses occurring after a failed attempt  
13 4 in drug court.

13 5 g. The number of offenders screened for eligibility, the  
13 6 number of eligible drug offenders who were admitted into drug  
13 7 court, and the number of offenders who were not admitted.

13 8 h. The drug offender's drug of choice and the estimated  
13 9 daily financial cost of the substance abuse to the drug  
13 10 offender at the time of entry into the program.

13 11 i. Costs of operation and sources of funding.

13 12 2. A drug offender may be required as a condition of  
13 13 pretrial release, probation, or parole to provide the  
13 14 information described in this section. The collection and  
13 15 maintenance of information under this section shall be  
13 16 collected in a standardized format according to applicable  
13 17 guidelines established by the state drug court advisory  
13 18 commission pursuant to section 124D.9.

13 19 3. Treatment records must be kept in a secure environment,  
13 20 separated from the court records to which the public has  
13 21 access.

13 22 Sec. 12. NEW SECTION. 124D.12 PAYMENT OF COSTS.

13 23 A drug offender shall pay a reasonable portion of the cost  
13 24 to participate in drug court. The costs assessed shall be  
13 25 compensatory and not punitive in nature and shall take into  
13 26 account the drug offender's ability to pay. Upon a showing of  
13 27 indigency, the drug court may reduce or waive costs under this  
13 28 chapter. Any payments of such costs received by the court  
13 29 from an offender shall not be considered court costs,  
13 30 surcharges, or fines. The costs collected under this section  
13 31 shall be deposited in a fund to be used for the operation of  
13 32 the drug court.

13 33 Sec. 13. NEW SECTION. 124D.13 IMMUNITY FROM LIABILITY.

13 34 1. Any individual who, in good faith, provides services  
13 35 pursuant to this chapter shall not be liable in any civil  
14 1 action. The grant of immunity provided for in this subsection

14 2 shall extend to all employees and administrative personnel of  
14 3 the drug court.

14 4 2. Any qualified person who obtains, in a medically  
14 5 accepted manner, a specimen of breath, blood, urine, or other  
14 6 bodily substance pursuant to any provision of this chapter  
14 7 shall not be liable in any civil action.

14 8 Sec. 14. NEW SECTION. 124D.14 APPLICABILITY.

14 9 A judicial district department of correctional services may  
14 10 opt out of the provisions of this chapter if the judicial  
14 11 district has adopted and implemented a drug court by July 1,  
14 12 2006.

14 13 Sec. 15. Section 901.5, Code Supplement 2005, is amended  
14 14 by adding the following new subsection:

14 15 NEW SUBSECTION. 14. The court may order the defendant to  
14 16 participate in drug court pursuant to chapter 124D or, if  
14 17 applicable, a judicial district department of correctional  
14 18 services drug court, if the defendant is eligible.

14 19 EXPLANATION

14 20 This bill relates to the creation of drug courts.

14 21 The bill requires each judicial district to establish a  
14 22 drug court. Under the bill, a drug court shall be established  
14 23 by a written agreement between the county attorney and a  
14 24 majority of the district judges within the judicial district.

14 25 The bill establishes a state drug court advisory commission  
14 26 to plan, implement, and develop drug courts at the state  
14 27 level. The bill also provides for the establishment of local  
14 28 advisory committees to ensure a full continuum of care is  
14 29 provided for drug offenders. The bill also provides that  
14 30 local advisory committees shall collect and evaluate data from  
14 31 the drug court and provide the state drug court advisory  
14 32 commission with a report on the status of the drug court in  
14 33 January of each year.

14 34 The bill defines "drug court" to mean a process that  
14 35 combines judicial intervention and substance abuse treatment  
15 1 at any stage of a criminal proceeding including prior to  
15 2 charges being filed or upon probation or parole.

15 3 In order to determine eligibility for drug court under the  
15 4 bill, an offender must first undergo a substance abuse  
15 5 evaluation. The bill provides that an offender shall be  
15 6 ordered to undergo a substance abuse evaluation if the offense  
15 7 the offender was arrested for involves a controlled substance  
15 8 or the offender was operating a motor vehicle while  
15 9 intoxicated, the offender requests an evaluation, the offender  
15 10 admits to abusing a controlled substance or alcohol, the  
15 11 offender's drug test tests positive for a controlled  
15 12 substance, or the offender has a previous conviction involving  
15 13 a controlled substance or alcohol.

15 14 The bill provides that the court shall order an offender  
15 15 into drug court if the evaluation reveals the offender is a  
15 16 substance abuser, the court finds drug court would benefit the  
15 17 offender, or the county attorney consents to the offender's  
15 18 participation in drug court. The bill also provides the drug  
15 19 court shall, when practicable, ensure that no agency or  
15 20 organization provide both evaluation and treatment services  
15 21 for the drug court to avoid potential conflicts of interest.

15 22 If substance abuse treatment is ordered by the drug court,  
15 23 the bill provides that each judicial district shall establish  
15 24 a system to ensure that drug offenders are placed into a  
15 25 clinically approved substance abuse treatment program. A drug  
15 26 court team shall monitor the progress of the offender through  
15 27 drug court. Under the bill, if an offender is progressing  
15 28 through drug court, the drug team shall make recommendations  
15 29 for appropriate incentives to offer the drug offender subject  
15 30 to court approval. However, if the offender is not  
15 31 progressing, the drug team shall make recommendations to the  
15 32 court for appropriate sanctions including expulsion from drug  
15 33 court or incarceration.

15 34 Under the bill, upon successful completion of drug court, a  
15 35 drug offender's case shall be disposed of by the judge in the  
16 1 manner prescribed by the agreement and by the applicable  
16 2 policies and procedures adopted by the drug court. The bill  
16 3 provides the disposition of the case may include, but is not  
16 4 limited to, withholding criminal charges, dismissal of  
16 5 charges, deferral of judgment or sentence, or suspending the  
16 6 sentence.

16 7 The bill permits a judicial district department of  
16 8 correctional services to opt out of the provisions of the bill  
16 9 if the judicial district has adopted and implemented a drug  
16 10 court by July 1, 2006.

16 11 LSB 5941SK 81

16 12 jm:nh/gg/14

