



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

DEREK SCHMIDT
ATTORNEY GENERAL

MEMORIAL HALL
120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
WWW.AG.KS.GOV

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ATTORNEY GENERAL OPINION NO. 2011- 22

Patricia A. Scalia
Executive Director
State Board of Indigents' Defense Services
714 SW Jackson, Suite 200
Topeka, Kansas 66603-3714

Re: Automobiles and other vehicles—Driving Under Influence Of Alcohol Or Drugs; Related Provisions: Alcohol and Drug Safety Action Program; Evaluation and Supervision of Persons Convicted of Violation of K.S.A. 8-2,144 or 8-1567, or Comparable City Ordinance; Certification of Programs

Synopsis: The person convicted of a violation of K.S.A. 8-2,144 or 8-1567, or comparable ordinance of a city or resolution of a county in this state is responsible to pay for evaluations required by K.S.A. 8-1008(d). The law does not provide for a waiver of the evaluation fee for a defendant who is indigent. Cited herein: K.S.A. 8-1008, L. 2011 Ch. 105, § 10.

* * *

Dear Ms. Scalia:

As Executive Director of the State Board of Indigents' Defense Services (BIDS), you point out that K.S.A. 2010 Supp. 8-1008(c) provided prior to the amendment in L. 2011 Ch. 105, § 10:

The costs of any alcohol and drug education, rehabilitation and treatment programs for any person shall be paid by such person, and such costs shall include, but not be limited to, the assessment required by subsection (c). *If financial obligations are not met or cannot be met, the sentencing*

court shall be notified for the purpose of collection or review and further action on the defendant's sentence." (Emphasis added.)

Under the above version of the law, you state the practical application of the statute had been that defendants who could not pay for the drug and alcohol evaluation up-front, were assessed the payment as part of their sentence. Although you did not state it, such action is presumably taken under the authority of K.S.A. 22-4513 governing the reimbursement of BIDS expenses by a defendant convicted of a criminal offense.

You are concerned about the *absence* of the language emphasized above in K.S.A. 8-1008 as amended in L. 2011 Ch. 105, § 10, and request an Attorney General opinion on who is responsible to pay for such drug and alcohol evaluations when a defendant is indigent under the new law.

L. 2011 Ch. 105, § 10 (d), provides:

Prior to sentencing, an alcohol and drug evaluation shall be conducted on any person who is convicted of a violation of K.S.A. 8-2,144 or 8-1567, and amendments thereto, or the ordinance of a city or resolution of a county in this state which prohibits the acts prohibited by those statutes. The alcohol and drug evaluation report shall be made available to and shall be considered by the court prior to sentencing. *The court shall order that cost of any alcohol and drug evaluation for any person shall be paid by such person to the provider at the time of service, and shall not exceed \$150.* (Emphasis added.)

Statutory interpretation begins with the language selected by the legislature. If that language is clear, if it is unambiguous, then statutory interpretation ends there as well.¹ In short, the language of the statute, being clear and unambiguous, needs no interpretation.²

The statute provides that the person convicted of a violation of K.S.A. 8-2,144 or 8-1567, or comparable ordinance of a city or resolution of a county in this state, is responsible to pay for evaluations required by K.S.A. 8-1008(d). The law does not distinguish between defendants based on their indigency status. Furthermore, it does not distinguish between defendants who are convicted of a felony or who are convicted of a misdemeanor. This statute does not explicitly provide for a waiver of the cost of the evaluation for any defendant.³ Thus, L. 2011 Ch. 105, § 10 clearly and unambiguously requires the defendant to pay the fee for the alcohol and drug evaluation.

Your inquiry necessarily leads to the question of what happens to a defendant who appears before a sentencing judge without the statutorily required/court ordered

¹ *Graham v. Dokter Trucking Group*, 284 Kan. 547, 161 P.3d 695 (2007).

² *Williamson v. Amrani*, 283 Kan. 227, 231, 152 P.3d 60 (2007); *State v. Robinson*, 281 Kan. 538, 539–40 (2006).

³ E.g. K.S.A. 12-4419.

evaluation pursuant to K.S.A. 8-1008(d). This inquiry is a mixed question of fact and law for the sentencing court to determine. Where a court utilizes K.S.A. 22-4513 governing the reimbursement of BIDS expenses, it may waive part or all of the reimbursement when the court makes factual findings regarding the defendant's financial resources and the nature of the burden that payment will impose, explicitly stating on the record how those factors have been weighed in the court's decision.⁴

In summary, the person convicted of a violation of K.S.A. 8-2,144 or 8-1567, or comparable ordinance of a city or resolution of a county in this state, is responsible to pay for evaluations required by K.S.A. 8-1008(d). The law does not explicitly provide for a waiver of the evaluation fee for a defendant who is indigent.

Sincerely,

Derek Schmidt
Attorney General

Athena Andaya
Deputy Attorney General

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⁴ E.g. 281 Kan. at 546-547.