

SENATE BILL No. 93

By Committee on Federal and State Affairs

1-29

AN ACT concerning crimes, criminal procedure and punishment; relating to diversion agreements; traffic cases; costs and fees; amending K.S.A. 22-2906, 22-2908 and 22-2909 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 22-2906 is hereby amended to read as follows: 22-2906. As used in K.S.A. 22-2907 to 22-2911, inclusive:

(1) "District attorney" means district attorney or county attorney.

(2) "Complaint" means complaint, indictment or information *or traffic citation*.

(3) "*Defendant*" means a person charged with a violation in a criminal case or in a traffic offense case.

(4) "Diversion" means referral of a defendant in a criminal case or in a traffic offense case to a supervised performance program prior to adjudication.

~~(4)~~ (5) "Diversion agreement" means the specification of formal terms and conditions which a defendant must fulfill in order to have the charges against ~~him or her~~ the defendant dismissed.

(6) "*Traffic offense*" means a violation of the uniform act regulating traffic on highways and a violation of articles 1 and 2 of chapter 8 of the Kansas Statutes Annotated, and amendments thereto. Traffic offenses shall include a violation of a city ordinance or county resolution which prohibits acts which would constitute a violation of the uniform act regulating traffic on highways or a violation of articles 1 and 2 of chapter 8 of the Kansas Statutes Annotated, and amendments thereto, and any violation of a city ordinance or county resolution which prohibits acts which are not violations of state laws and which relate to the regulation of traffic on the roads, highways or streets or the operation of self-propelled or nonself-propelled vehicles of any kind.

Sec. 2. K.S.A. 22-2908 is hereby amended to read as follows: 22-2908. (a) In determining whether diversion of a defendant is in the interests of justice and of benefit to the defendant and the community, the county or district attorney shall consider at least the following factors among all factors considered:

1 (1) The nature of the crime *or traffic offense* charged and the circum-
2 stances surrounding it;

3 (2) any special characteristics or circumstances of the defendant;

4 (3) whether the defendant is a first-time offender and if the defend-
5 ant has previously participated in diversion, according to the certification
6 of the Kansas bureau of investigation or the division of vehicles of the
7 department of revenue;

8 (4) whether there is a probability that the defendant will cooperate
9 with and benefit from diversion;

10 (5) whether the available diversion program is appropriate to the
11 needs of the defendant;

12 (6) the impact of the diversion of the defendant upon the community;

13 (7) recommendations, if any, of the involved law enforcement agency;

14 (8) recommendations, if any, of the victim;

15 (9) provisions for restitution; and

16 (10) any mitigating circumstances.

17 (b) A county or district attorney shall not enter into a diversion agree-
18 ment in lieu of further criminal proceedings *or proceedings involving a*
19 *violation of a traffic offense* on a complaint if:

20 (1) The complaint alleges a violation of K.S.A. 8-1567 and amend-
21 ments thereto and the defendant: (A) Has previously participated in di-
22 version upon a complaint alleging a violation of that statute or an ordi-
23 nance of a city in this state which prohibits the acts prohibited by that
24 statute; (B) has previously been convicted of or pleaded *nolo contendere*
25 to a violation of that statute or a violation of a law of another state or of
26 a political subdivision of this or any other state, which law prohibits the
27 acts prohibited by that statute; or (C) during the time of the alleged
28 violation was involved in a motor vehicle accident or collision resulting in
29 personal injury or death; ~~or~~

30 (2) the complaint alleges that the defendant committed a class A or
31 B felony or for crimes committed on or after July 1, 1993, an off-grid
32 crime, a severity level 1, 2 or 3 felony for nondrug crimes or drug severity
33 level 1 or 2 felony for drug crimes; *or*

34 (3) *the complaint alleges a violation of a traffic offense and the de-*
35 *fendant: (A) Has previously participated in a diversion upon a complaint*
36 *alleging a violation of a traffic offense within three years immediately*
37 *preceding the occurrence of the current alleged violation; or (B) has pre-*
38 *viously been convicted of or pleaded nolo contendere to a violation of a*
39 *traffic offense within three years immediately preceding the occurrence*
40 *of the current alleged violation.*

41 Sec. 3. K.S.A. 22-2909 is hereby amended to read as follows: 22-
42 2909. (a) A diversion agreement shall provide that if the defendant fulfills
43 the obligations of the program described ~~therein~~ *in such diversion agree-*

1 *ment*, as determined by the attorney general or county or district attorney,
2 such attorney shall act to have the criminal charges *or charges involving*
3 *a violation of a traffic offense* against the defendant dismissed with prej-
4 udice. The diversion agreement shall include specifically the waiver of all
5 rights under the law or the constitution of Kansas or of the United States
6 to a speedy arraignment, preliminary examinations and hearings, and a
7 speedy trial, and in the case of diversion under subsection (c) waiver of
8 the rights to counsel and trial by jury. *The diversion agreement shall in-*
9 *clude provisions concerning payment of court costs.* The diversion agree-
10 ment may include, ~~but is not limited to,~~ provisions concerning payment
11 ~~of any of the following payments:~~ Restitution, ~~including court costs which~~
12 *shall be paid to the victims; a diversion application fee not to exceed \$100,*
13 *which shall be deposited with the county treasurer and credited to the*
14 *county general fund; a diversion fee in an amount equal to the amount of*
15 *the fine authorized by law upon conviction, which shall be deposited as*
16 *provided by K.S.A. 20-2801, and amendments thereto; and diversion*
17 *costs, which shall be deposited with the county treasurer and credited to*
18 *the county general fund. The diversion agreement may also include, but*
19 *not be limited to, provisions concerning the following types of rehabili-*
20 *tative programs:* Residence in a specified facility, maintenance of gainful
21 employment, and participation in programs offering medical, educational,
22 vocational, social and psychological services, corrective and preventive
23 guidance and other rehabilitative services. *If the diversion is for a traffic*
24 *offense, the diversion agreement shall include a diversion fee which shall*
25 *be in an amount not to exceed the amount of the fine authorized by law*
26 *upon conviction, which shall be deposited in the same manner as fines*
27 *are deposited as provided by law.* If a county creates a local fund under
28 the property crime restitution and compensation act, a county or district
29 attorney may require in all diversion agreements as a condition of diver-
30 sion the payment of ~~a~~ *an additional* diversion fee in an amount not to
31 exceed \$100. Such fees shall be deposited into the local fund and dis-
32 bursed pursuant to recommendations of the local board under the prop-
33 erty crime restitution and victims compensation act.

34 (b) The diversion agreement shall state: (1) The defendant's full
35 name; (2) the defendant's full name at the time the complaint was filed,
36 if different from the defendant's current name; (3) the defendant's sex,
37 race and date of birth; (4) the crime *or traffic offense* with which the
38 defendant is charged; (5) the date the complaint was filed; and (6) the
39 district court with which the agreement is filed.

40 (c) If a diversion agreement is entered into in lieu of further criminal
41 proceedings on a complaint alleging a violation of K.S.A. 8-1567, and
42 amendments thereto, the diversion agreement shall include a stipulation,
43 agreed to by the defendant, the defendant's attorney if the defendant is

1 represented by an attorney and the attorney general or county or district
2 attorney, of the facts upon which the charge is based and a provision that
3 if the defendant fails to fulfill the terms of the specific diversion agree-
4 ment and the criminal proceedings on the complaint are resumed, the
5 proceedings, including any proceedings on appeal, shall be conducted on
6 the record of the stipulation of facts relating to the complaint. In addition,
7 the agreement shall include a requirement that the defendant:

8 (1) Pay a fine specified by the agreement in an amount equal to an
9 amount authorized by K.S.A. 8-1567, and amendments thereto, for a first
10 offense or, in lieu of payment of the fine, perform community service
11 specified by the agreement, in accordance with K.S.A. 8-1567, and
12 amendments thereto; and

13 (2) enroll in and successfully complete an alcohol and drug safety
14 action program or a treatment program, or both, as provided in K.S.A. 8-
15 1008, and amendments thereto, and specified by the agreement, and pay
16 the assessment required by K.S.A. 8-1008, and amendments thereto.

17 (d) If a diversion agreement is entered into in lieu of further criminal
18 proceedings on a complaint alleging a violation other than K.S.A. 8-1567
19 and amendments thereto, *or proceedings involving a violation of a traffic*
20 *offense*, the diversion agreement may include a stipulation, agreed to by
21 the defendant, the defendant's attorney if the defendant is represented
22 by an attorney and the attorney general or county or district attorney, of
23 the facts upon which the charge is based and a provision that if the de-
24 fendant fails to fulfill the terms of the specific diversion agreement and
25 the criminal proceedings on the complaint are resumed, the proceedings,
26 including any proceedings on appeal, shall be conducted on the record
27 of the stipulation of facts relating to the complaint.

28 (e) If the person entering into a diversion agreement is a nonresident,
29 the attorney general or county or district attorney shall transmit a copy
30 of the diversion agreement to the division. The division shall forward a
31 copy of the diversion agreement to the motor vehicle administrator of the
32 person's state of residence.

33 (f) If the attorney general or county or district attorney elects to offer
34 diversion in lieu of further criminal proceedings *or proceedings involving*
35 *a violation of a traffic offense* on the complaint and the defendant agrees
36 to all of the terms of the proposed agreement, the diversion agreement
37 shall be filed with the district court and the district court shall stay further
38 proceedings on the complaint. If the defendant declines to accept diver-
39 sion, the district court shall resume the criminal proceedings *or proceed-*
40 *ings involving a violation of a traffic offense* on the complaint.

41 (g) Except as provided in subsection (h), if a diversion agreement is
42 entered into in lieu of further criminal proceedings alleging commission
43 of a misdemeanor by the defendant, while under 21 years of age, under

1 the uniform controlled substances act (K.S.A. 65-4101 *et seq.*, and amend-
2 ments thereto) or K.S.A. 41-719, 41-727, 41-804, 41-2719, 41-2720, 65-
3 4152, 65-4153, 65-4154 or 65-4155, and amendments thereto, the agree-
4 ment shall require the defendant to submit to and complete an alcohol
5 and drug evaluation by a community-based alcohol and drug safety action
6 program certified pursuant to K.S.A. 8-1008, and amendments thereto,
7 and to pay a fee not to exceed the fee established by that statute for such
8 evaluation. If the attorney general or county or district attorney finds that
9 the defendant is indigent, the fee may be waived.

10 (h) If the defendant is 18 or more years of age but less than 21 years
11 of age and allegedly committed a violation of K.S.A. 41-727, and amend-
12 ments thereto, involving cereal malt beverage, the provisions of subsec-
13 tion (g) are permissive and not mandatory.

14 (i) Except diversion agreements reported under subsection (j), the
15 attorney general or county or district attorney shall forward to the Kansas
16 bureau of investigation a copy of the diversion agreement at the time such
17 agreement is filed with the district court. The copy of the agreement shall
18 be made available upon request to the attorney general or any county,
19 district or city attorney or court.

20 (j) At the time of filing the diversion agreement with the district
21 court, the attorney general or county or district attorney shall forward to
22 the division of vehicles of the state department of revenue a copy of any
23 diversion agreement entered into in lieu of further criminal proceedings
24 on a complaint alleging a violation of K.S.A. 8-1567, and amendments
25 thereto. The copy of the agreement shall be made available upon request
26 to the attorney general or any county, district or city attorney or court.

27 Sec. 4. K.S.A. 22-2906, 22-2908 and 22-2909 are hereby repealed.

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

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