

## HOUSE BILL No. 2849

By Representative Newton

2-11

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9 AN ACT relating to criminal procedure; concerning certain traffic vio-  
10 lations; relating to diversion; amending K.S.A. 12-4416 and 22-2909  
11 and repealing the existing sections.

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

14 New Section 1. (a) When any city attorney amends a traffic citation  
15 issued to a driver for violation of a traffic ordinance of a city which would  
16 be defined as a moving violation under K.A.R. 92-52-9, and amendments  
17 thereto, to a violation of a traffic ordinance which is not defined as a  
18 moving violation, the city attorney shall forward to the division of vehicles  
19 of the state department of revenue a statement, on a form approved by  
20 the division, stating:

21 (1) The driver's full name;

22 (2) the driver's sex, race and date of birth;

23 (3) the traffic ordinance cited in the original traffic citation;

24 (4) the traffic ordinance cited in the amended traffic citation; and

25 (5) the date the original traffic citation was issued.

26 (b) The form provided in subsection (a) shall be made available upon  
27 request to any county, district or city attorney or court.

28 Sec. 2. K.S.A. 12-4416 is hereby amended to read as follows: 12-  
29 4416. (a) A diversion agreement shall provide that if the defendant fulfills  
30 the obligations of the program described therein, as determined by the  
31 city attorney, the city attorney shall act to have the criminal charges  
32 against the defendant dismissed with prejudice. The diversion agreement  
33 shall include specifically the waiver of all rights under the law or the  
34 constitution of Kansas or of the United States to counsel, a speedy ar-  
35 raignment, a speedy trial, and the right to trial by jury. The diversion  
36 agreement may include, but is not limited to, provisions concerning pay-  
37 ment of restitution, including court costs and diversion costs, residence  
38 in a specified facility, maintenance of gainful employment, and partici-  
39 pation in programs offering medical, educational, vocational, social and  
40 psychological services, corrective and preventive guidance and other re-  
41 habilitative services. The diversion agreement shall state:

42 (1) The defendant's full name;

43 (2) the defendant's full name at the time the complaint was filed, if

- 1 different from the defendant's current name;
- 2 (3) the defendant's sex, race and date of birth;
- 3 (4) the crime with which the defendant is charged;
- 4 (5) the date the complaint was filed; and
- 5 (6) the municipal court with which the agreement is filed.
- 6 (b) If a diversion agreement is entered into in lieu of further criminal
- 7 proceedings on a complaint alleging an alcohol related offense, the di-
- 8 version agreement shall include a stipulation, agreed to by the defendant
- 9 and the city attorney, of the facts upon which the charge is based and a
- 10 provision that if the defendant fails to fulfill the terms of the specific
- 11 diversion agreement and the criminal proceedings on the complaint are
- 12 resumed, the proceedings, including any proceedings on appeal, shall be
- 13 conducted on the record of the stipulation of facts relating to the com-
- 14 plaint. In addition, the agreement shall include a requirement that the
- 15 defendant:
- 16 (1) Pay a fine specified by the agreement in an amount equal to an
- 17 amount authorized by K.S.A. 8-1567, and amendments thereto, for a first
- 18 offense or, in lieu of payment of the fine, perform community service
- 19 specified by the agreement, consonant with K.S.A. 8-1567, and amend-
- 20 ments thereto; and
- 21 (2) enroll in and successfully complete an alcohol and drug safety
- 22 action program or a treatment program, or both, as provided in K.S.A. 8-
- 23 1008, and amendments thereto, and specified by the agreement, and pay
- 24 the assessment required by K.S.A. 8-1008, and amendments thereto.
- 25 (c) If the person entering into a diversion agreement is a nonresident,
- 26 the city attorney shall transmit a copy of the diversion agreement to the
- 27 division. The division shall forward a copy of the diversion agreement to
- 28 the motor vehicle administrator of the person's state of residence.
- 29 (d) If the city attorney elects to offer diversion in lieu of further crim-
- 30 inal proceedings on the complaint and the defendant agrees to all of the
- 31 terms of the proposed agreement, the diversion agreement shall be filed
- 32 with the municipal court and the municipal court shall stay further pro-
- 33 ceedings on the complaint. If the defendant declines to accept diversion,
- 34 the municipal court shall resume the criminal proceedings on the
- 35 complaint.
- 36 (e) *At the time of filing the diversion agreement with the municipal*
- 37 *court, the city attorney shall forward to the division of vehicles of the state*
- 38 *department of revenue a copy of the any diversion agreement at the time*
- 39 *such agreement is filed with the municipal court entered into in lieu of*
- 40 *further criminal proceedings on a complaint alleging a violation of a traffic*
- 41 *ordinance which would be defined as a moving violation under K.A.R.*
- 42 *92-52-9, and amendments thereto, including any alcohol related offense.*
- 43 The copy of the agreement shall be made available upon request to any

1 county, district or city attorney or court.

2 Sec. 3. K.S.A. 22-2909 is hereby amended to read as follows: 22-  
3 2909. (a) A diversion agreement shall provide that if the defendant fulfills  
4 the obligations of the program described therein, as determined by the  
5 attorney general or county or district attorney, such attorney shall act to  
6 have the criminal charges against the defendant dismissed with prejudice.  
7 The diversion agreement shall include specifically the waiver of all rights  
8 under the law or the constitution of Kansas or of the United States to a  
9 speedy arraignment, preliminary examinations and hearings, and a speedy  
10 trial, and in the case of diversion under subsection (c) waiver of the rights  
11 to counsel and trial by jury. The diversion agreement may include, but is  
12 not limited to, provisions concerning payment of restitution, including  
13 court costs and diversion costs, residence in a specified facility, mainte-  
14 nance of gainful employment, and participation in programs offering  
15 medical, educational, vocational, social and psychological services, cor-  
16 rective and preventive guidance and other rehabilitative services. If a  
17 county creates a local fund under the property crime restitution and com-  
18 pensation act, a county or district attorney may require in all diversion  
19 agreements as a condition of diversion the payment of a diversion fee in  
20 an amount not to exceed \$100. Such fees shall be deposited into the local  
21 fund and disbursed pursuant to recommendations of the local board un-  
22 der the property crime restitution and victims compensation act.

23 (b) The diversion agreement shall state: (1) The defendant's full  
24 name; (2) the defendant's full name at the time the complaint was filed,  
25 if different from the defendant's current name; (3) the defendant's sex,  
26 race and date of birth; (4) the crime with which the defendant is charged;  
27 (5) the date the complaint was filed; and (6) the district court with which  
28 the agreement is filed.

29 (c) If a diversion agreement is entered into in lieu of further criminal  
30 proceedings on a complaint alleging a violation of K.S.A. 8-1567, and  
31 amendments thereto, the diversion agreement shall include a stipulation,  
32 agreed to by the defendant, the defendant's attorney if the defendant is  
33 represented by an attorney and the attorney general or county or district  
34 attorney, of the facts upon which the charge is based and a provision that  
35 if the defendant fails to fulfill the terms of the specific diversion agree-  
36 ment and the criminal proceedings on the complaint are resumed, the  
37 proceedings, including any proceedings on appeal, shall be conducted on  
38 the record of the stipulation of facts relating to the complaint. In addition,  
39 the agreement shall include a requirement that the defendant:

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

1 amendments thereto; and

2 (2) enroll in and successfully complete an alcohol and drug safety  
3 action program or a treatment program, or both, as provided in K.S.A. 8-  
4 1008, and amendments thereto, and specified by the agreement, and pay  
5 the assessment required by K.S.A. 8-1008, and amendments thereto.

6 (d) If a diversion agreement is entered into in lieu of further criminal  
7 proceedings on a complaint alleging a violation other than K.S.A. 8-1567  
8 and amendments thereto, the diversion agreement may include a stipu-  
9 lation, agreed to by the defendant, the defendant's attorney if the de-  
10 fendant is represented by an attorney and the attorney general or county  
11 or district attorney, of the facts upon which the charge is based and a  
12 provision that if the defendant fails to fulfill the terms of the specific  
13 diversion agreement and the criminal proceedings on the complaint are  
14 resumed, the proceedings, including any proceedings on appeal, shall be  
15 conducted on the record of the stipulation of facts relating to the  
16 complaint.

17 (e) If the person entering into a diversion agreement is a nonresident,  
18 the attorney general or county or district attorney shall transmit a copy  
19 of the diversion agreement to the division. The division shall forward a  
20 copy of the diversion agreement to the motor vehicle administrator of the  
21 person's state of residence.

22 (f) If the attorney general or county or district attorney elects to offer  
23 diversion in lieu of further criminal proceedings on the complaint and the  
24 defendant agrees to all of the terms of the proposed agreement, the di-  
25 version agreement shall be filed with the district court and the district  
26 court shall stay further proceedings on the complaint. If the defendant  
27 declines to accept diversion, the district court shall resume the criminal  
28 proceedings on the complaint.

29 (g) Except as provided in subsection (h), if a diversion agreement is  
30 entered into in lieu of further criminal proceedings alleging commission  
31 of a misdemeanor by the defendant, while under 21 years of age, under  
32 the uniform controlled substances act (K.S.A. 65-4101 *et seq.*, and amend-  
33 ments thereto) or K.S.A. 41-719, 41-727, 41-804, 41-2719, 41-2720, 65-  
34 4152, 65-4153, 65-4154 or 65-4155, and amendments thereto, the agree-  
35 ment shall require the defendant to submit to and complete an alcohol  
36 and drug evaluation by a community-based alcohol and drug safety action  
37 program certified pursuant to K.S.A. 8-1008, and amendments thereto,  
38 and to pay a fee not to exceed the fee established by that statute for such  
39 evaluation. If the attorney general or county or district attorney finds that  
40 the defendant is indigent, the fee may be waived.

41 (h) If the defendant is 18 or more years of age but less than 21 years  
42 of age and allegedly committed a violation of K.S.A. 41-727, and amend-  
43 ments thereto, involving cereal malt beverage, the provisions of subsec-

1 tion (g) are permissive and not mandatory.

2 (i) Except diversion agreements reported under subsection (j), the  
3 attorney general or county or district attorney shall forward to the Kansas  
4 bureau of investigation a copy of the diversion agreement at the time such  
5 agreement is filed with the district court. The copy of the agreement shall  
6 be made available upon request to the attorney general or any county,  
7 district or city attorney or court.

8 (j) At the time of filing the diversion agreement with the district  
9 court, the attorney general or county or district attorney shall forward to  
10 the division of vehicles of the state department of revenue a copy of any  
11 diversion agreement entered into in lieu of further criminal proceedings  
12 on a complaint alleging a violation of *any moving violation as defined*  
13 *under K.A.R. 92-52-9, and amendments thereto, including any violation*  
14 *of K.S.A. 8-1567, and amendments thereto.* The copy of the agreement  
15 shall be made available upon request to the attorney general or any  
16 county, district or city attorney or court.

17 Sec. 4. K.S.A. 12-4416 and 22-2909 are hereby repealed.

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