

HOUSE BILL No. 2501

By Committee on Corrections and Juvenile Justice

1-24

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to human trafficking and related crimes; court records and reporting;
3 fines; diversion; buying sexual relations; amending K.S.A. 2013 Supp.
4 12-4106, 12-4416, 21-6421, 21-6422, 22-2909 and 22-4704 and
5 repealing the existing sections.
6

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

8 Section 1. K.S.A. 2013 Supp. 12-4106 is hereby amended to read as
9 follows: 12-4106.(a) The municipal judge shall have the power to
10 administer the oaths and enforce all orders, rules and judgments made by
11 such municipal judge, and may fine or imprison for contempt in the same
12 manner and to the same extent as a judge of the district court.

13 (b) The municipal judge shall have the power to hear and determine
14 all cases properly brought before such municipal judge to: Grant
15 continuances; sentence those found guilty to a fine or confinement in jail,
16 or both; commit accused persons to jail in default of bond; determine
17 applications for parole; release on probation; grant time in which a fine
18 may be paid; correct a sentence; suspend imposition of a sentence; set
19 aside a judgment; permit time for post trial motions; and discharge accused
20 persons.

21 (c) The municipal judge shall maintain a docket in which every cause
22 commenced before such municipal judge shall be entered. Such docket
23 shall contain the names of the accused persons and complainant, the nature
24 or character of the offense, the date of trial, the names of all witnesses
25 sworn and examined, the finding of the court, the judgment and sentence,
26 the date of payment, the date of issuing commitment, if any, and every
27 other fact necessary to show the full proceedings in each case.

28 (d) The municipal judge shall promptly make such reports and
29 furnish the information requested by any departmental justice or the
30 judicial administrator, in the manner and form prescribed by the supreme
31 court.

32 (e) The municipal judge shall ensure that information concerning
33 dispositions of city ordinance violations that result in convictions
34 comparable to convictions for offenses under Kansas criminal statutes is
35 forwarded to the Kansas bureau of investigation central repository. This
36 information shall be transmitted, on a form or in a format approved by the

1 attorney general, within 30 days of final disposition.

2 (f) In all cases alleging a violation of a city ordinance prohibiting the
3 acts prohibited by K.S.A. 8-2,144, 8-1567 or 32-1131 or K.S.A. 2013
4 Supp. 8-1025, *21-6419 or 21-6421*, and amendments thereto, the
5 municipal court judge shall ensure that the municipal court reports the
6 filing and disposition of such case to the Kansas bureau of investigation
7 central repository, and, on and after July 1, 2014, reports the filing and
8 disposition of such case electronically to the Kansas bureau of
9 investigation central repository.

10 (g) In all cases in which a fine is imposed for a violation of a city
11 ordinance prohibiting the acts prohibited by K.S.A. 8-2,144 or 8-1567 or
12 K.S.A. 2013 Supp. 8-1025 or 21-6421, and amendments thereto, the
13 municipal court judge shall ensure that the municipal court remits the
14 appropriate amount of such fine to the state treasurer as provided in K.S.A.
15 2013 Supp. 12-4120, and amendments thereto.

16 Sec. 2. K.S.A. 2013 Supp. 12-4416 is hereby amended to read as
17 follows: 12-4416. (a) A diversion agreement shall provide that if the
18 defendant fulfills the obligations of the program described therein, as
19 determined by the city attorney, the city attorney shall act to have the
20 criminal charges against the defendant dismissed with prejudice. The
21 diversion agreement shall include specifically the waiver of all rights
22 under the law or the constitution of Kansas or of the United States to
23 counsel, a speedy arraignment, a speedy trial, and the right to trial by jury.
24 The diversion agreement may include, but is not limited to, provisions
25 concerning payment of restitution, including court costs and diversion
26 costs, residence in a specified facility, maintenance of gainful employment,
27 and participation in programs offering medical, educational, vocational,
28 social and psychological services, corrective and preventive guidance and
29 other rehabilitative services. The diversion agreement shall state:

- 30 (1) The defendant's full name;
31 (2) the defendant's full name at the time the complaint was filed, if
32 different from the defendant's current name;
33 (3) the defendant's sex, race and date of birth;
34 (4) the crime with which the defendant is charged;
35 (5) the date the complaint was filed; and
36 (6) the municipal court with which the agreement is filed.

37 (b) *If a diversion agreement is entered into in lieu of further criminal*
38 *proceedings on a complaint alleging a violation of a city ordinance*
39 *prohibiting the acts prohibited by K.S.A. 2013 Supp. 21-6421, and*
40 *amendments thereto, the agreement:*

- 41 (1) *Shall include a requirement that the defendant pay a fine specified*
42 *by the agreement in an amount equal to an amount authorized by K.S.A.*
43 *2013 Supp. 21-6421, and amendments thereto; and*

1 (2) *may include a requirement that the defendant enter into and*
2 *complete a suitable educational or treatment program regarding*
3 *commercial sexual exploitation.*

4 ~~(b)~~ (c) If a diversion agreement is entered into in lieu of further
5 criminal proceedings on a complaint alleging an alcohol related offense,
6 the diversion agreement shall include a stipulation, agreed to by the
7 defendant and the city attorney, of the facts upon which the charge is based
8 and a provision that if the defendant fails to fulfill the terms of the specific
9 diversion agreement and the criminal proceedings on the complaint are
10 resumed, the proceedings, including any proceedings on appeal, shall be
11 conducted on the record of the stipulation of facts relating to the
12 complaint. In addition, the agreement shall include a requirement that the
13 defendant:

14 (1) Pay a fine specified by the agreement in an amount equal to an
15 amount authorized by K.S.A. 8-1567 or K.S.A. 2013 Supp. 8-1025, and
16 amendments thereto, for a first offense or, in lieu of payment of the fine,
17 perform community service specified by the agreement, consonant with
18 K.S.A. 8-1567 or K.S.A. 2013 Supp. 8-1025, and amendments thereto; and

19 (2) participate in an alcohol and drug evaluation conducted by a
20 licensed provider pursuant to K.S.A. 8-1008, and amendments thereto, and
21 follow any recommendation made by the provider after such evaluation.

22 ~~(e)~~ (d) If the person entering into a diversion agreement is a
23 nonresident, the city attorney shall transmit a copy of the diversion
24 agreement to the division. The division shall forward a copy of the
25 diversion agreement to the motor vehicle administrator of the person's
26 state of residence.

27 ~~(d)~~ (e) If the city attorney elects to offer diversion in lieu of further
28 criminal proceedings on the complaint and the defendant agrees to all of
29 the terms of the proposed agreement, the diversion agreement shall be
30 filed with the municipal court and the municipal court shall stay further
31 proceedings on the complaint. If the defendant declines to accept
32 diversion, the municipal court shall resume the criminal proceedings on
33 the complaint.

34 ~~(e)~~ (f) The city attorney shall forward to the division of vehicles of
35 the state department of revenue a copy of the diversion agreement at the
36 time such agreement is filed with the municipal court. The copy of the
37 agreement shall be made available upon request to any county, district or
38 city attorney or court.

39 Sec. 3. K.S.A. 2013 Supp. 21-6421 is hereby amended to read as
40 follows: 21-6421. (a) Buying sexual relations is knowingly:

41 (1) Entering or remaining in a place where sexual relations are being
42 sold or offered for sale with intent to engage in manual or other bodily
43 contact stimulation of the genitals of any person with the intent to arouse

1 or gratify the sexual desires of the offender or another, sexual intercourse,
2 sodomy or any unlawful sexual act with a person selling sexual relations
3 who is 18 years of age or older; or

4 (2) hiring a person selling sexual relations who is 18 years of age or
5 older to engage in manual or other bodily contact stimulation of the
6 genitals of any person with the intent to arouse or gratify the sexual desires
7 of the offender or another, sexual intercourse, sodomy or any unlawful
8 sexual act.

9 (b) (1) Buying sexual relations is a:

10 (A) Class A person misdemeanor, except as provided in subsection
11 (b)(1)(B); and

12 (B) severity level 9, person felony when committed by a person who
13 has, prior to the commission of the crime, been convicted of a violation of
14 this section, or any prior version of this section.

15 (2) In addition to any other sentence imposed, a person convicted
16 under subsection (b)(1)(A) shall be fined \$2,500. In addition to any other
17 sentence imposed, a person convicted under subsection (b)(1)(B) shall be
18 fined not less than \$5,000. All fines collected pursuant to this section shall
19 be remitted to the human trafficking victim assistance fund created by
20 K.S.A. 2013 Supp. 75-758, and amendments thereto.

21 (3) In addition to any other sentence imposed, for any conviction
22 under this section, the court may order the person convicted to enter into
23 and complete a suitable educational ~~and~~ or treatment program regarding
24 commercial sexual exploitation.

25 (c) *For the purpose of determining whether a conviction is a first,*
26 *second or subsequent conviction in sentencing under this section:*

27 (1) *Convictions for a violation of this section, or any prior version of*
28 *this section, or a violation of an ordinance of any city or resolution of any*
29 *county which prohibits the acts that this section prohibits, or entering into*
30 *a diversion agreement in lieu of further criminal proceedings on a*
31 *complaint alleging any such violations, shall be taken into account; and*

32 (2) *a person may enter into a diversion agreement in lieu of further*
33 *criminal proceedings for a violation of this section or an ordinance which*
34 *prohibits the acts of this section only once during the person's lifetime.*

35 (d) (1) Nothing contained in this section shall be construed as
36 preventing any city from enacting ordinances, or any county from adopting
37 resolutions, declaring acts prohibited or made unlawful by this act as
38 unlawful or prohibited in such city or county and prescribing penalties for
39 violation thereof.

40 (2) The minimum penalty prescribed by any such ordinance or
41 resolution shall not be less than the minimum penalty prescribed by this
42 section for the same violation, and the maximum penalty in any such
43 ordinance or resolution shall not exceed the maximum penalty prescribed

1 for the same violation.

2 Sec. 4. K.S.A. 2013 Supp. 21-6422 is hereby amended to read as
3 follows: 21-6422. (a) Commercial sexual exploitation of a child is
4 knowingly:

5 (1) Giving, receiving, offering or agreeing to give, or offering or
6 agreeing to receive anything of value to perform any of the following acts:

7 (A) Procuring, recruiting, inducing, soliciting, hiring or otherwise
8 obtaining any person younger than 18 years of age to engage in sexual
9 intercourse, sodomy or manual or other bodily contact stimulation of the
10 genitals of any person with the intent to arouse or gratify the sexual desires
11 of the offender or another; or

12 (B) procuring, recruiting, inducing, soliciting, hiring or otherwise
13 obtaining a patron where there is an exchange of value, for any person
14 younger than 18 years of age to engage in sexual intercourse, sodomy or
15 manual or other bodily contact stimulation of the genitals of any person
16 with the intent to arouse or gratify the sexual desires of the patron, the
17 offender or another;

18 (2) establishing, owning, maintaining or managing any property,
19 whether real or personal, where sexual relations are being sold or offered
20 for sale by a person younger than 18 years of age, or participating in the
21 establishment, ownership, maintenance or management thereof;

22 (3) permitting any property, whether real or personal, partially or
23 wholly owned or controlled by the defendant to be used as a place where
24 sexual relations are being sold or offered for sale by a person who is
25 younger than 18 years of age; or

26 (4) procuring transportation for, paying for the transportation of or
27 transporting any person younger than 18 years of age within this state with
28 the intent of causing, assisting or promoting that person's engaging in
29 selling sexual relations.

30 (b) (1) Commercial sexual exploitation of a child is a:

31 (A) Severity level 5, person felony, except as provided in subsections
32 (b)(1)(B) and (b)(2); and

33 (B) severity level 2, person felony when committed by a person who
34 has, prior to the commission of the crime, been convicted of a violation of
35 this section, except as provided in subsection (b)(2).

36 (2) Commercial sexual exploitation of a child or attempt, conspiracy
37 or criminal solicitation to commit commercial sexual exploitation of a
38 child is an off-grid person felony when the offender is 18 years of age or
39 older and the victim is less than 14 years of age.

40 (3) In addition to any other sentence imposed, a person convicted
41 under subsection (b)(1)(A) shall be fined not less than \$2,500 nor more
42 than \$5,000. In addition to any other sentence imposed, a person convicted
43 under subsection (b)(1)(B) or subsection (b)(2) shall be fined not less than

1 \$5,000. All fines collected pursuant to this section shall be remitted to the
2 human trafficking victim assistance fund created by ~~section 3~~ *K.S.A. 2013*
3 *Supp. 75-758*, and amendments thereto.

4 (4) In addition to any other sentence imposed, for any conviction
5 under this section, the court may order the person convicted to enter into
6 and complete a suitable educational ~~and~~ *or* treatment program regarding
7 commercial sexual exploitation of a child.

8 (c) If the offender is 18 years of age or older and the victim is less
9 than 14 years of age, the provisions of:

10 (1) Subsection (c) of *K.S.A. 2013 Supp. 21-5301*, and amendments
11 thereto, shall not apply to a violation of attempting to commit the crime of
12 commercial sexual exploitation of a child pursuant to this section;

13 (2) subsection (c) of *K.S.A. 2013 Supp. 21-5302*, and amendments
14 thereto, shall not apply to a violation of conspiracy to commit the crime of
15 commercial sexual exploitation of a child pursuant to this section; and

16 (3) subsection (d) of *K.S.A. 2013 Supp. 21-5303*, and amendments
17 thereto, shall not apply to a violation of criminal solicitation to commit the
18 crime of commercial sexual exploitation of a child pursuant to this section.

19 (d) This section shall be part of and supplemental to the Kansas
20 criminal code.

21 Sec. 5. *K.S.A. 2013 Supp. 22-2909* is hereby amended to read as
22 follows: 22-2909. (a) A diversion agreement shall provide that if the
23 defendant fulfills the obligations of the program described therein, as
24 determined by the attorney general or county or district attorney, such
25 attorney shall act to have the criminal charges against the defendant
26 dismissed with prejudice. The diversion agreement shall include
27 specifically the waiver of all rights under the law or the constitution of
28 Kansas or of the United States to a speedy arraignment, preliminary
29 examinations and hearings, and a speedy trial, and in the case of diversion
30 under subsection (c) waiver of the rights to counsel and trial by jury. The
31 diversion agreement may include, but is not limited to, provisions
32 concerning payment of restitution, including court costs and diversion
33 costs, residence in a specified facility, maintenance of gainful employment,
34 and participation in programs offering medical, educational, vocational,
35 social and psychological services, corrective and preventive guidance and
36 other rehabilitative services. If a county creates a local fund under the
37 property crime restitution and compensation act, a county or district
38 attorney may require in all diversion agreements as a condition of
39 diversion the payment of a diversion fee in an amount not to exceed \$100.
40 Such fees shall be deposited into the local fund and disbursed pursuant to
41 recommendations of the local board under the property crime restitution
42 and victims compensation act.

43 (b) The diversion agreement shall state: (1) The defendant's full

1 name; (2) the defendant's full name at the time the complaint was filed, if
2 different from the defendant's current name; (3) the defendant's sex, race
3 and date of birth; (4) the crime with which the defendant is charged; (5)
4 the date the complaint was filed; and (6) the district court with which the
5 agreement is filed.

6 (c) If a diversion agreement is entered into in lieu of further criminal
7 proceedings on a complaint alleging a violation of K.S.A. 8-1567 or
8 K.S.A. 2013 Supp. 8-1025, and amendments thereto, the diversion
9 agreement shall include a stipulation, agreed to by the defendant, the
10 defendant's attorney if the defendant is represented by an attorney and the
11 attorney general or county or district attorney, of the facts upon which the
12 charge is based and a provision that if the defendant fails to fulfill the
13 terms of the specific diversion agreement and the criminal proceedings on
14 the complaint are resumed, the proceedings, including any proceedings on
15 appeal, shall be conducted on the record of the stipulation of facts relating
16 to the complaint. In addition, the agreement shall include a requirement
17 that the defendant:

18 (1) Pay a fine specified by the agreement in an amount equal to an
19 amount authorized by K.S.A. 8-1567 or K.S.A. 2013 Supp. 8-1025, and
20 amendments thereto, for a first offense or, in lieu of payment of the fine,
21 perform community service specified by the agreement, in accordance
22 with K.S.A. 8-1567 or K.S.A. 2013 Supp. 8-1025, and amendments
23 thereto; and

24 (2) participate in an alcohol and drug evaluation conducted by a
25 licensed provider pursuant to K.S.A. 8-1008, and amendments thereto, and
26 follow any recommendation made by the provider after such evaluation.

27 (d) If a diversion agreement is entered into in lieu of further criminal
28 proceedings on a complaint alleging a domestic violence offense, as
29 defined in K.S.A. 2013 Supp. 21-5111, and amendments thereto, the
30 diversion agreement shall include a requirement that the defendant
31 undergo a domestic violence offender assessment and follow all
32 recommendations unless otherwise agreed to with the prosecutor in the
33 diversion agreement. The defendant shall be required to pay for such
34 assessment and, unless otherwise agreed to with the prosecutor in the
35 diversion agreement, for completion of all recommendations.

36 (e) If a diversion agreement is entered into in lieu of further criminal
37 proceedings on a complaint alleging a violation other than K.S.A. 8-1567
38 or K.S.A. 2013 Supp. 8-1025, and amendments thereto, the diversion
39 agreement may include a stipulation, agreed to by the defendant, the
40 defendant's attorney if the defendant is represented by an attorney and the
41 attorney general or county or district attorney, of the facts upon which the
42 charge is based and a provision that if the defendant fails to fulfill the
43 terms of the specific diversion agreement and the criminal proceedings on

1 the complaint are resumed, the proceedings, including any proceedings on
2 appeal, shall be conducted on the record of the stipulation of facts relating
3 to the complaint.

4 (f) If the person entering into a diversion agreement is a nonresident,
5 the attorney general or county or district attorney shall transmit a copy of
6 the diversion agreement to the division. The division shall forward a copy
7 of the diversion agreement to the motor vehicle administrator of the
8 person's state of residence.

9 (g) If the attorney general or county or district attorney elects to offer
10 diversion in lieu of further criminal proceedings on the complaint and the
11 defendant agrees to all of the terms of the proposed agreement, the
12 diversion agreement shall be filed with the district court and the district
13 court shall stay further proceedings on the complaint. If the defendant
14 declines to accept diversion, the district court shall resume the criminal
15 proceedings on the complaint.

16 (h) Except as provided in subsection (i), if a diversion agreement is
17 entered into in lieu of further criminal proceedings alleging commission of
18 a misdemeanor by the defendant, while under 21 years of age, under
19 K.S.A. 2013 Supp. 21-5701 through 21-5717, and amendments thereto, or
20 K.S.A. 41-719, 41-727, 41-804, 41-2719 or 41-2720, and amendments
21 thereto, the agreement shall require the defendant to participate in an
22 alcohol and drug evaluation conducted by a licensed provider pursuant to
23 K.S.A. 8-1008, and amendments thereto, and follow any recommendation
24 made by the provider after such evaluation.

25 (i) If the defendant is 18 or more years of age but less than 21 years
26 of age and allegedly committed a violation of K.S.A. 41-727, and
27 amendments thereto, involving cereal malt beverage, the provisions of
28 subsection (h) are permissive and not mandatory.

29 (j) *If a diversion agreement is entered into in lieu of further criminal
30 proceedings on a complaint alleging a violation of K.S.A. 2013 Supp. 21-
31 6421, and amendments thereto, the agreement:*

32 (1) *Shall include a requirement that the defendant pay a fine specified
33 by the agreement in an amount equal to an amount authorized by K.S.A.
34 2013 Supp. 21-6421, and amendments thereto; and*

35 (2) *may include a requirement that the defendant enter into and
36 complete a suitable educational or treatment program regarding
37 commercial sexual exploitation.*

38 ~~(j)~~ (k) Except diversion agreements reported under subsection ~~(k)~~ (l),
39 the attorney general or county or district attorney shall forward to the
40 Kansas bureau of investigation a copy of the diversion agreement at the
41 time such agreement is filed with the district court. The copy of the
42 agreement shall be made available upon request to the attorney general or
43 any county, district or city attorney or court.

1 ~~(k)~~ (l) At the time of filing the diversion agreement with the district
2 court, the attorney general or county or district attorney shall forward to
3 the division of vehicles of the state department of revenue a copy of any
4 diversion agreement entered into in lieu of further criminal proceedings on
5 a complaint alleging a violation of K.S.A. 8-1567, and amendments
6 thereto. The copy of the agreement shall be made available upon request to
7 the attorney general or any county, district or city attorney or court.

8 Sec. 6. K.S.A. 2013 Supp. 22-4704 is hereby amended to read as
9 follows: 22-4704. (a) In accordance with the provisions of K.S.A. 77-415
10 et seq., and amendments thereto, the director shall adopt appropriate rules
11 and regulations for agencies in the executive branch of government and for
12 criminal justice agencies other than those that are part of the judicial
13 branch of government to implement the provisions of this act.

14 (b) The director shall develop procedures to permit and encourage the
15 transfer of criminal history record information among and between courts
16 and affected agencies in the executive branch, and especially between
17 courts and the central repository.

18 (c) The rules and regulations adopted by the director shall include
19 those: (1) Governing the collection, reporting, and dissemination of
20 criminal history record information by criminal justice agencies;

21 (2) necessary to insure the security of all criminal history record
22 information reported, collected and disseminated by and through the
23 criminal justice information system;

24 (3) necessary for the coordination of all criminal justice data and
25 information processing activities as they relate to criminal history record
26 information;

27 (4) governing the dissemination of criminal history record
28 information;

29 (5) governing the procedures for inspection and challenging of
30 criminal history record information;

31 (6) governing the auditing of criminal justice agencies to insure that
32 criminal history record information is accurate and complete and that it is
33 collected, reported, and disseminated in accordance with this act;

34 (7) governing the development and content of agreements between
35 the central repository and criminal justice and noncriminal justice
36 agencies; and

37 (8) governing the exercise of the rights of inspection and challenge
38 provided in this act.

39 (d) The rules and regulations adopted by the director shall not include
40 any provision that allows the charging of a fee for information requests for
41 the purpose of participating in a block parent program, including, but not
42 limited to, the McGruff house program.

43 (e) Rules and regulations adopted by the director may not be

1 inconsistent with the provisions of this act.

2 ~~(f) (1) On or before July 1, 2013, the director shall adopt rules and~~
3 ~~regulations requiring district courts to report the filing and disposition of~~
4 ~~all cases alleging a violation of K.S.A. 8-1567 or K.S.A. 2013 Supp. 8-~~
5 ~~1025, and amendments thereto, to the central repository.~~

6 (2) On or before July 1, 2014, the director shall adopt rules and
7 regulations requiring district courts to electronically report all case filings
8 and dispositions for violations of K.S.A. 8-1567 or K.S.A. 2013 Supp. 8-
9 1025, 21-5426, 21-6419, 21-6420, 21-6421 or 21-6422, and amendments
10 thereto, to the central repository.

11 Sec. 7. K.S.A. 2013 Supp. 12-4106, 12-4416, 21-6421, 21-6422, 22-
12 2909 and 22-4704 are hereby repealed.

13 Sec. 8. This act shall take effect and be in force from and after its
14 publication in the statute book.