

SENATE BILL No. 18

By Committee on Judiciary

1-16

1 AN ACT concerning criminal procedure; relating to diversion agreements;
2 attorney general; amending K.S.A. 22-2906 and K.S.A. 2018 Supp. 22-
3 2909 and repealing the existing sections.

grand juries;

and 22-3011

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 22-2906 is hereby amended to read as follows: 22-
7 2906. As used in K.S.A. 22-2907 ~~to~~ through 22-2911, ~~inclusive and~~
8 ~~amendments thereto:~~

9 ~~(1)~~(a) "District attorney" means district attorney ~~or~~, county attorney
10 ~~or attorney general.~~

11 ~~(2)~~(b) "Complaint" means complaint, indictment or information.

12 ~~(3)~~(c) "Diversion" means referral of a defendant in a criminal case to
13 a supervised performance program prior to adjudication.

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

17 Sec. 2. K.S.A. 2018 Supp. 22-2909 is hereby amended to read as
18 follows: 22-2909. (a) (1) A diversion agreement shall provide that if the
19 defendant fulfills the obligations of the program described therein, as
20 determined by the attorney general or county or district attorney, such
21 attorney shall act to have the criminal charges against the defendant
22 dismissed with prejudice. The diversion agreement shall include
23 specifically the waiver of all rights under the law or the constitution of
24 Kansas or of the United States to a speedy arraignment, preliminary
25 examinations and hearings, and a speedy trial, and in the case of diversion
26 under subsection (c) waiver of the rights to counsel and trial by jury. The
27 diversion agreement may include, but is not limited to, provisions
28 concerning payment of restitution, including court costs and diversion
29 costs, residence in a specified facility, maintenance of gainful employment,
30 and participation in programs offering medical, educational, vocational,
31 social and psychological services, corrective and preventive guidance and
32 other rehabilitative services.

33 (2) If a county creates a local fund under the property crime
34 restitution and compensation act, a county or district attorney may require
35 in all diversion agreements as a condition of diversion the payment of a
36 diversion fee in an amount not to exceed \$100. Such fees shall be

1 deposited into the local fund and disbursed pursuant to recommendations
2 of the local board under the property crime restitution and victims
3 compensation act.

4 (3) *If the attorney general enters into a diversion agreement: (A) Any*
5 *diversion costs or fees collected pursuant to such agreement shall be*
6 *deposited in the fraud and abuse criminal prosecution fund established by*
7 *K.S.A. 75-765, and amendments thereto; and (B) the attorney general may*
8 *enter into agreements with the appropriate county or district attorney or*
9 *other appropriate parties regarding the supervision of conditions of such*
10 *diversion agreement.*

11 (b) The diversion agreement shall state: (1) The defendant's full
12 name; (2) the defendant's full name at the time the complaint was filed, if
13 different from the defendant's current name; (3) the defendant's sex, race
14 and date of birth; (4) the crime with which the defendant is charged; (5)
15 the date the complaint was filed; and (6) the district court with which the
16 agreement is filed.

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

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

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

36 (d) If a diversion agreement is entered into in lieu of further criminal
37 proceedings on a complaint alleging a domestic violence offense, as
38 defined in K.S.A. 2018 Supp. 21-5111, and amendments thereto, the
39 diversion agreement shall include a requirement that the defendant
40 undergo a domestic violence offender assessment and follow all
41 recommendations unless otherwise agreed to with the prosecutor in the
42 diversion agreement. The defendant shall be required to pay for such
43 assessment and, unless otherwise agreed to with the prosecutor in the

(4) Notwithstanding any other provision of law, the attorney general and any county or district attorney shall not enter into a diversion agreement related to a true bill of indictment found by a citizen-initiated grand jury impaneled pursuant to K.S.A. 22-3001(c), and amendments thereto.

1 diversion agreement, for completion of all recommendations.

2 (e) If a diversion agreement is entered into in lieu of further criminal
3 proceedings on a complaint alleging a violation other than K.S.A. 8-1567,
4 and amendments thereto, the diversion agreement may include a
5 stipulation, agreed to by the defendant, the defendant's attorney if the
6 defendant is represented by an attorney and the attorney general or county
7 or district attorney, of the facts upon which the charge is based and a
8 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.

13 (f) If the person entering into a diversion agreement is a nonresident,
14 the attorney general or county or district attorney shall transmit a copy of
15 the diversion agreement to the division. The division shall forward a copy
16 of the diversion agreement to the motor vehicle administrator of the
17 person's state of residence.

18 (g) If the attorney general or county or district attorney elects to offer
19 diversion in lieu of further criminal proceedings on the complaint and the
20 defendant agrees to all of the terms of the proposed agreement, the
21 diversion agreement shall be filed with the district court and the district
22 court shall stay further proceedings on the complaint. If the defendant
23 declines to accept diversion, the district court shall resume the criminal
24 proceedings on the complaint.

25 (h) Except as provided in subsection (i), if a diversion agreement is
26 entered into in lieu of further criminal proceedings alleging commission of
27 a misdemeanor by the defendant, while under 21 years of age, under
28 K.S.A. 2018 Supp. 21-5701 through 21-5717, and amendments thereto, or
29 K.S.A. 41-719, 41-727, 41-804, 41-2719 or 41-2720, and amendments
30 thereto, the agreement shall require the defendant to participate in an
31 alcohol and drug evaluation conducted by a licensed provider pursuant to
32 K.S.A. 8-1008, and amendments thereto, and follow any recommendation
33 made by the provider after such evaluation.

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

38 (j) If a diversion agreement is entered into in lieu of further criminal
39 proceedings on a complaint alleging a violation of K.S.A. 2018 Supp. 21-
40 6421, and 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 2018 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 (k) Except diversion agreements reported under subsection (l), the
5 attorney general or county or district attorney shall forward to the Kansas
6 bureau of investigation a copy of the diversion agreement at the time such
7 agreement is filed with the district court. The copy of the agreement shall
8 be made available upon request to the attorney general or any county,
9 district or city attorney or court.

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

17 Sec. 3. K.S.A. 22-2906 and K.S.A. 2018 Supp. 22-2909 are hereby
18 repealed. and 22-3011

19 Sec. 4. This act shall take effect and be in force from and after its
20 publication in the statute book.

And by redesignating sections accordingly

Sec. 3. K.S.A. 2018 Supp. 22-3011 is hereby amended to read as follows: 22-3011. (a) An indictment may be found only on the concurrence of 12 or more grand jurors. When an indictment is found, the presiding juror shall endorse thereon "a true bill" and shall sign the presiding juror's name as presiding juror or sign the indictment "Presiding Grand Juror."
(b) When 12 or more grand jurors do not concur in finding an indictment, the presiding juror shall certify that the indictment is "not a true bill."
(c) Indictments found by the grand jury shall be presented by its presiding juror, in the jury's presence, to the court and shall be filed and remain as records of the court.
(d) A citizen-initiated grand jury impaneled pursuant to K.S.A. 22-3001 (c), and amendments thereto, may shall request that the attorney general prosecute the case arising from an indictment found by such grand jury if, in the opinion of the grand jury, the prosecuting attorney would not diligently prosecute such case the appropriate county or district attorney does not prosecute the indictment within 30 days after the indictment is found by such grand jury. The court shall notify the attorney general of such request and the attorney general may prosecute such case. Notwithstanding any other provision of law, the attorney general and any county or district attorney shall not enter into a diversion agreement related to a true bill of indictment found by a citizen-initiated grand jury impaneled pursuant to K.S.A. 22-3001(c), and amendments thereto.