

As Amended by House Committee

Session of 2019

SENATE BILL No. 18

By Committee on Judiciary

1-16

1 AN ACT concerning **crimes, punishment and** criminal procedure;
2 relating to **counterfeiting currency; sentencing; presentence**
3 **investigation report;** diversion agreements; attorney general;
4 amending K.S.A. 22-2906 and K.S.A. 2018 Supp. **21-5840, 21-6813**
5 **and 22-2909** and repealing the existing sections.

6
7 *Be it enacted by the Legislature of the State of Kansas:*

8 **Section 1.** K.S.A. 2018 Supp. 21-5840 is hereby amended to read
9 as follows: **21-5840.** (a) Counterfeiting currency is, ~~with the intent to~~
10 ~~defraud:~~

11 (1) Making, forging or altering any note, currency, obligation or
12 security of the United States *with the intent to defraud;*

13 (2) distributing, or possessing with the intent to distribute, any
14 note, currency, obligation or security of the United States knowing such
15 note, currency, obligation or security has been ~~so~~ made, forged or
16 altered *with the intent to defraud;* or

17 (3) possessing any paper, ink, printer, press, currency plate,
18 computer or other item with the intent to ~~produce any counterfeit~~ *make,*
19 *forge or alter any note, currency, obligation or security of the United*
20 *States.*

21 (b) Counterfeiting currency as defined in:

22 (1) Subsection (a)(1) or (a)(2) is a:

23 (A) Severity level 7, nonperson felony, if the total face value of the
24 notes, currency, obligations or securities ~~seized~~ is \$25,000 or more; and

25 (B) severity level 8, nonperson felony, if the total face value of the
26 notes, currency, obligations or securities ~~seized~~ is less than \$25,000; and

27 (2) subsection (a)(3) is a severity level 9, nonperson felony.

28 (c) This section shall be part of and supplemental to the Kansas
29 criminal code.

30 **Sec. 2.** K.S.A. 2018 Supp. 21-6813 is hereby amended to read as
31 follows: **21-6813.** (a) The court shall order the preparation of the
32 presentence investigation report by the court services officer as soon
33 as possible after conviction of the defendant.

34 (b) Each presentence *investigation* report prepared for an
35 offender to be sentenced for one or more felonies committed on or
36 after July 1, 1993, shall be limited to the following information:

1 **(1) A summary of the factual circumstances of the crime or**
2 **crimes of conviction.**

3 **(2) If the defendant desires to do so, a summary of the**
4 **defendant's version of the crime.**

5 **(3) When there is an identifiable victim, a victim report. The**
6 **person preparing the victim report shall submit the report to the**
7 **victim and request that the information be returned to be submitted**
8 **as a part of the presentence investigation. To the extent possible, the**
9 **report shall include a complete listing of restitution for damages**
10 **suffered by the victim.**

11 **(4) An appropriate classification of each crime of conviction on**
12 **the crime severity scale.**

13 **(5) A listing of prior adult convictions or juvenile adjudications**
14 **for felony or misdemeanor crimes or violations of county resolutions**
15 **or city ordinances comparable to any misdemeanor defined by state**
16 **law. Such listing shall include an assessment of the appropriate**
17 **classification of the criminal history on the criminal history scale and**
18 **the source of information regarding each listed prior conviction and**
19 **any available source of journal entries or other documents through**
20 **which the listed convictions may be verified. If any such journal**
21 **entries or other documents are obtained by the court services officer,**
22 **they shall be attached to the presentence investigation report. Any**
23 **prior criminal history worksheets of the defendant shall also be**
24 **attached.**

25 **(6) A proposed grid block classification for each crime, or crimes**
26 **of conviction and the presumptive sentence for each crime, or crimes**
27 **of conviction.**

28 **(7) If the proposed grid block classification is a grid block**~~which~~
29 **that presumes imprisonment, the presumptive prison term range and**
30 **the presumptive duration of postprison supervision as it relates to the**
31 **crime severity scale.**

32 **(8) If the proposed grid block classification does not presume**
33 **prison, the presumptive prison term range and the presumptive**
34 **duration of the nonprison sanction as it relates to the crime severity**
35 **scale and the court services officer's professional assessment as to**
36 **recommendations for conditions to be mandated as part of the**
37 **nonprison sanction.**

38 **(9) For defendants who are being sentenced for a conviction of a**
39 **felony violation of K.S.A. 65-4160 or 65-4162, prior to their repeal, or**
40 **K.S.A. 2018 Supp. 21-5706, and amendments thereto, and meet the**
41 **requirements of K.S.A. 2018 Supp. 21-6824, and amendments thereto,**
42 **the drug abuse assessment as provided in K.S.A. 2018 Supp. 21-6824,**
43 **and amendments thereto.**

1 (10) For defendants who are being sentenced for a third or
2 subsequent felony conviction of a violation of K.S.A. 65-4160 or 65-
3 4162, prior to their repeal, or K.S.A. 2018 Supp. 21-5706, and
4 amendments thereto, the drug abuse assessment as provided in K.S.A.
5 2018 Supp. 21-6824, and amendments thereto.

6 (c) The presentence *investigation* report will become part of the
7 court record and shall be accessible to the public, except that the
8 official version, defendant's version and the victim's statement, any
9 psychological reports, risk and needs assessments and drug and
10 alcohol reports and assessments shall be accessible only to: The
11 parties;; the sentencing judge;; the department of corrections;;
12 *community correctional services; any entity required to receive the*
13 *information under the interstate compact for adult offender supervision;*
14 **and, if requested, the Kansas sentencing commission. If the offender is**
15 **committed to the custody of the secretary of corrections, the report**
16 **shall be sent to the secretary and, in accordance with K.S.A. 75-5220,**
17 **and amendments thereto, to the warden of the state correctional**
18 **institution to which the defendant is conveyed.**

19 (d) The criminal history worksheet will not substitute as a
20 presentence *investigation* report.

21 (e) The presentence *investigation* report will not include optional
22 report components, which would be subject to the discretion of the
23 sentencing court in each district except for psychological reports and
24 drug and alcohol reports.

25 (f) Except as provided in K.S.A. 2018 Supp. 21-6814, and
26 amendments thereto, the court may take judicial notice in a
27 subsequent felony proceeding of an earlier presentence *investigation*
28 report criminal history worksheet prepared for a prior sentencing of
29 the defendant for a felony committed on or after July 1, 1993.

30 (g) All presentence *investigation* reports in any case in which the
31 defendant has been convicted of a felony shall be on a form approved
32 by the Kansas sentencing commission.

33 ~~Section 1.~~ **Sec. 3.** K.S.A. 22-2906 is hereby amended to read as
34 follows: 22-2906. As used in K.S.A. 22-2907—~~to~~ *through* 22-2911,
35 ~~inclusive and amendments thereto:~~

36 ~~(1)~~(a) "District attorney" means district attorney—~~or~~, county attorney
37 *or attorney general.*

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

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

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

1 Sec. ~~2~~ 4. K.S.A. 2018 Supp. 22-2909 is hereby amended to read as
2 follows: 22-2909. (a) (1) A diversion agreement shall provide that if the
3 defendant fulfills the obligations of the program described therein, as
4 determined by the attorney general or county or district attorney, such
5 attorney shall act to have the criminal charges against the defendant
6 dismissed with prejudice. The diversion agreement shall include
7 specifically the waiver of all rights under the law or the constitution of
8 Kansas or of the United States to a speedy arraignment, preliminary
9 examinations and hearings, and a speedy trial, and in the case of diversion
10 under subsection (c) waiver of the rights to counsel and trial by jury. The
11 diversion agreement may include, but is not limited to, provisions
12 concerning payment of restitution, including court costs and diversion
13 costs, residence in a specified facility, maintenance of gainful employment,
14 and participation in programs offering medical, educational, vocational,
15 social and psychological services, corrective and preventive guidance and
16 other rehabilitative services.

17 (2) If a county creates a local fund under the property crime
18 restitution and compensation act, a county or district attorney may require
19 in all diversion agreements as a condition of diversion the payment of a
20 diversion fee in an amount not to exceed \$100. Such fees shall be
21 deposited into the local fund and disbursed pursuant to recommendations
22 of the local board under the property crime restitution and victims
23 compensation act.

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

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

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

1 and the criminal proceedings on the complaint are resumed, the
2 proceedings, including any proceedings on appeal, shall be conducted on
3 the record of the stipulation of facts relating to the complaint. In addition,
4 the agreement shall include a requirement that the defendant:

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

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

13 (d) If a diversion agreement is entered into in lieu of further criminal
14 proceedings on a complaint alleging a domestic violence offense, as
15 defined in K.S.A. 2018 Supp. 21-5111, and amendments thereto, the
16 diversion agreement shall include a requirement that the defendant
17 undergo a domestic violence offender assessment and follow all
18 recommendations unless otherwise agreed to with the prosecutor in the
19 diversion agreement. The defendant shall be required to pay for such
20 assessment and, unless otherwise agreed to with the prosecutor in the
21 diversion agreement, for completion of all recommendations.

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

33 (f) If the person entering into a diversion agreement is a nonresident,
34 the attorney general or county or district attorney shall transmit a copy of
35 the diversion agreement to the division. The division shall forward a copy
36 of the diversion agreement to the motor vehicle administrator of the
37 person's state of residence.

38 (g) If the attorney general or county or district attorney elects to offer
39 diversion in lieu of further criminal proceedings on the complaint and the
40 defendant agrees to all of the terms of the proposed agreement, the
41 diversion agreement shall be filed with the district court and the district
42 court shall stay further proceedings on the complaint. If the defendant
43 declines to accept diversion, the district court shall resume the criminal

1 proceedings on the complaint.

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

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

15 (j) If a diversion agreement is entered into in lieu of further criminal
16 proceedings on a complaint alleging a violation of K.S.A. 2018 Supp. 21-
17 6421, and amendments thereto, the agreement:

18 (1) Shall include a requirement that the defendant pay a fine specified
19 by the agreement in an amount equal to an amount authorized by K.S.A.
20 2018 Supp. 21-6421, and amendments thereto; and

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

24 (k) Except diversion agreements reported under subsection (l), the
25 attorney general or county or district attorney shall forward to the Kansas
26 bureau of investigation a copy of the diversion agreement at the time such
27 agreement is filed with the district court. The copy of the agreement shall
28 be made available upon request to the attorney general or any county,
29 district or city attorney or court.

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

37 ~~Sec. 3. 5.~~ K.S.A. 22-2906 and K.S.A. 2018 Supp. **21-5840, 21-6813**
38 **and 22-2909** are hereby repealed.

39 ~~Sec. 4. 6.~~ This act shall take effect and be in force from and after its
40 publication in the statute book.