

HOUSE BILL No. 2708

By Committee on Judiciary

2-7

1 AN ACT concerning criminal procedure; relating to the attorney general;
2 diversion agreements; amending K.S.A. 22-2906 and 22-2907 and
3 K.S.A. 2017 Supp. 22-2909 and repealing the existing sections.

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) "District attorney" means district attorney ~~or~~, county attorney *or*
10 *attorney general.*

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

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

14 (4) "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. 22-2907 is hereby amended to read as follows: 22-
18 2907. (1) After a complaint has been filed charging a defendant with
19 commission of a crime and prior to conviction thereof, and after the
20 district attorney has considered the factors listed in K.S.A. 22-2908, *and*
21 *amendments thereto*, if it appears to the district attorney that diversion of
22 the defendant would be in the interests of justice and of benefit to the
23 defendant and the community, the district attorney may propose a
24 diversion agreement to the defendant. The terms of each diversion
25 agreement shall be established by the district attorney in accordance with
26 K.S.A. 22-2909, *and amendments thereto.*

27 (2) Each district attorney shall adopt written policies and guidelines
28 for the implementation of a diversion program in accordance with this act.
29 Such policies and guidelines shall provide for a diversion conference and
30 other procedures in those cases where the district attorney elects to offer
31 diversion in lieu of further criminal proceedings on the complaint. *The*
32 *provisions of this subsection shall not apply to the attorney general.*

33 (3) Each defendant shall be informed in writing of the diversion
34 program and the policies and guidelines adopted by the district attorney.
35 The district attorney may require any defendant requesting diversion to
36 provide information regarding prior criminal charges, education, work

1 experience and training, family, residence in the community, medical
2 history, including any psychiatric or psychological treatment or
3 counseling, and other information relating to the diversion program. In all
4 cases, the defendant shall be present and shall have the right to be
5 represented by counsel at the diversion conference with the district
6 attorney. *The provisions of this subsection shall not apply to the attorney
7 general.*

8 Sec. 3. K.S.A. 2017 Supp. 22-2909 is hereby amended to read as
9 follows: 22-2909. (a) A diversion agreement shall provide that if the
10 defendant fulfills the obligations of the program described therein, as
11 determined by the attorney general or county or district attorney, such
12 attorney shall act to have the criminal charges against the defendant
13 dismissed with prejudice. The diversion agreement shall include
14 specifically the waiver of all rights under the law or the constitution of
15 Kansas or of the United States to a speedy arraignment, preliminary
16 examinations and hearings, and a speedy trial, and in the case of diversion
17 under subsection (c) waiver of the rights to counsel and trial by jury. The
18 diversion agreement may include, but is not limited to, provisions
19 concerning payment of restitution, including court costs and diversion
20 costs, residence in a specified facility, maintenance of gainful employment,
21 and participation in programs offering medical, educational, vocational,
22 social and psychological services, corrective and preventive guidance and
23 other rehabilitative services. If a county creates a local fund under the
24 property crime restitution and compensation act, a county or district
25 attorney may require in all diversion agreements as a condition of
26 diversion the payment of a diversion fee in an amount not to exceed \$100.
27 Such fees shall be deposited into the local fund and disbursed pursuant to
28 recommendations of the local board under the property crime restitution
29 and victims compensation act. *If the attorney general enters into a
30 diversion agreement: (1) Any diversion costs or fees collected pursuant to
31 such agreement shall be deposited in the fraud and abuse criminal
32 prosecution fund established by K.S.A. 75-765, and amendments thereto;
33 and (2) the attorney general may enter into agreements with the
34 appropriate county or district attorney or other appropriate parties
35 regarding the supervision of conditions of such diversion agreement.*

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

42 (c) If a diversion agreement is entered into in lieu of further criminal
43 proceedings on a complaint alleging a violation of K.S.A. 8-1567 or

1 K.S.A. 2017 Supp. 8-1025, and amendments thereto, the diversion
2 agreement shall include a stipulation, agreed to by the defendant, the
3 defendant's attorney if the defendant is represented by an attorney and the
4 attorney general or county or district attorney, of the facts upon which the
5 charge is based and a provision that if the defendant fails to fulfill the
6 terms of the specific diversion agreement and the criminal proceedings on
7 the complaint are resumed, the proceedings, including any proceedings on
8 appeal, shall be conducted on the record of the stipulation of facts relating
9 to the complaint. In addition, the agreement shall include a requirement
10 that the defendant:

11 (1) Pay a fine specified by the agreement in an amount equal to an
12 amount authorized by K.S.A. 8-1567 or K.S.A. 2017 Supp. 8-1025, and
13 amendments thereto, for a first offense or, in lieu of payment of the fine,
14 perform community service specified by the agreement, in accordance
15 with K.S.A. 8-1567 or K.S.A. 2017 Supp. 8-1025, and amendments
16 thereto; and

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

20 (d) If a diversion agreement is entered into in lieu of further criminal
21 proceedings on a complaint alleging a domestic violence offense, as
22 defined in K.S.A. 2017 Supp. 21-5111, and amendments thereto, the
23 diversion agreement shall include a requirement that the defendant
24 undergo a domestic violence offender assessment and follow all
25 recommendations unless otherwise agreed to with the prosecutor in the
26 diversion agreement. The defendant shall be required to pay for such
27 assessment and, unless otherwise agreed to with the prosecutor in the
28 diversion agreement, for completion of all recommendations.

29 (e) If a diversion agreement is entered into in lieu of further criminal
30 proceedings on a complaint alleging a violation other than K.S.A. 8-1567
31 or K.S.A. 2017 Supp. 8-1025, and amendments thereto, the diversion
32 agreement may include a stipulation, agreed to by the defendant, the
33 defendant's attorney if the defendant is represented by an attorney and the
34 attorney general or county or district attorney, of the facts upon which the
35 charge is based and a provision that if the defendant fails to fulfill the
36 terms of the specific diversion agreement and the criminal proceedings on
37 the complaint are resumed, the proceedings, including any proceedings on
38 appeal, shall be conducted on the record of the stipulation of facts relating
39 to the complaint.

40 (f) If the person entering into a diversion agreement is a nonresident,
41 the attorney general or county or district attorney shall transmit a copy of
42 the diversion agreement to the division. The division shall forward a copy
43 of the diversion agreement to the motor vehicle administrator of the

1 person's state of residence.

2 (g) If the attorney general or county or district attorney elects to offer
3 diversion in lieu of further criminal proceedings on the complaint and the
4 defendant agrees to all of the terms of the proposed agreement, the
5 diversion agreement shall be filed with the district court and the district
6 court shall stay further proceedings on the complaint. If the defendant
7 declines to accept diversion, the district court shall resume the criminal
8 proceedings on the complaint.

9 (h) Except as provided in subsection (i), if a diversion agreement is
10 entered into in lieu of further criminal proceedings alleging commission of
11 a misdemeanor by the defendant, while under 21 years of age, under
12 K.S.A. 2017 Supp. 21-5701 through 21-5717, and amendments thereto, or
13 K.S.A. 41-719, 41-727, 41-804, 41-2719 or 41-2720, and amendments
14 thereto, the agreement shall require the defendant to participate in an
15 alcohol and drug evaluation conducted by a licensed provider pursuant to
16 K.S.A. 8-1008, and amendments thereto, and follow any recommendation
17 made by the provider after such evaluation.

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

22 (j) If a diversion agreement is entered into in lieu of further criminal
23 proceedings on a complaint alleging a violation of K.S.A. 2017 Supp. 21-
24 6421, and amendments thereto, the agreement:

25 (1) Shall include a requirement that the defendant pay a fine specified
26 by the agreement in an amount equal to an amount authorized by K.S.A.
27 2017 Supp. 21-6421, and amendments thereto; and

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

31 (k) Except diversion agreements reported under subsection (l), the
32 attorney general or county or district attorney shall forward to the Kansas
33 bureau of investigation a copy of the diversion agreement at the time such
34 agreement is filed with the district court. The copy of the agreement shall
35 be made available upon request to the attorney general or any county,
36 district or city attorney or court.

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

1 Sec. 4. K.S.A. 22-2906 and 22-2907 and K.S.A. 2017 Supp. 22-2909
2 are hereby repealed.

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