

**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.

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

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.

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