

## HOUSE BILL No. 2050

By Committee on Corrections and Juvenile Justice

1-23

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AN ACT concerning criminal procedure; relating to diversion; amending  
K.S.A. 22-2908 and repealing the existing section.

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

Section 1. K.S.A. 22-2908 is hereby amended to read as follows: 22-2908. (a) In determining whether diversion of a defendant is in the interests of justice and of benefit to the defendant and the community, the county or district attorney shall consider at least the following factors among all factors considered:

(1) The nature of the crime charged and the circumstances surrounding it;

(2) any special characteristics or circumstances of the defendant;

(3) whether the defendant is a first-time offender and if the defendant has previously participated in diversion, according to the certification of the Kansas bureau of investigation or the division of vehicles of the department of revenue;

(4) whether there is a probability that the defendant will cooperate with and benefit from diversion;

(5) whether the available diversion program is appropriate to the needs of the defendant;

(6) the impact of the diversion of the defendant upon the community;

(7) recommendations, if any, of the involved law enforcement agency;

(8) recommendations, if any, of the victim;

(9) provisions for restitution; and

(10) any mitigating circumstances.

(b) A county or district attorney shall not enter into a diversion agreement in lieu of further criminal proceedings on a complaint if:

(1) The complaint alleges a violation of K.S.A. 8-1567 and amendments thereto and the defendant: (A) Has previously participated in diversion upon a complaint alleging a violation of that statute or an ordinance of a city in this state which prohibits the acts prohibited by that statute; (B) has previously been convicted of or pleaded *nolo contendere* to a violation of that statute or a violation of a law of another state or of a political subdivision of this or any other state, which law prohibits the acts prohibited by that statute; or (C) during the time of the alleged

1 violation was involved in a motor vehicle accident or collision resulting in  
2 personal injury or death; ~~or~~

3 (2) the complaint alleges that the defendant committed a class A or  
4 B felony or for crimes committed on or after July 1, 1993, an off-grid  
5 crime, a severity level 1, 2 or 3 felony for nondrug crimes or drug severity  
6 level 1 or 2 felony for drug crimes; *or*

7 (3) *the complaint alleges a violation of K.S.A. 41-727, 65-4160 or 65-*  
8 *4162, and amendments thereto; the defendant is under 18 years of age*  
9 *and is currently participating in a diversion upon a complaint alleging a*  
10 *violation of that statute or an ordinance of a city in this state which*  
11 *prohibits the acts prohibited by that statute.*

12 Sec. 2. K.S.A. 22-2908 is hereby repealed.

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

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