

SENATE BILL No. 551

By Committee on Ways and Means

3-4

10 AN ACT concerning diversion; amending K.S.A. 12-4112, 12-4412, 12-
11 4416 and 22-2909 and repealing the existing sections.

12

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

14 Section 1. K.S.A. 12-4112 is hereby amended to read as follows: 12-
15 4112. No person shall be assessed costs for the administration of justice
16 in any municipal court case, except for witness fees and mileage as set
17 forth in K.S.A. 12-4411, and amendments thereto; for the assessment
18 required by K.S.A. ~~2001 Supp. 20-1a~~11, and amendments thereto; for the
19 judicial branch education fund; for the assessment required by K.S.A. 12-
20 4117 and amendments thereto for the law enforcement training center
21 fund established pursuant to K.S.A. 74-5619 and amendments thereto,
22 the local law enforcement training reimbursement fund established pur-
23 suant to K.S.A. 74-5620, and amendments thereto, and the juvenile de-
24 tention facilities fund as provided in K.S.A. 12-4117, and amendments
25 thereto; ~~and~~ for the assessment required by K.S.A. 12-16,119, and amend-
26 ments thereto, for the detention facility processing fee; *and for the costs*
27 *required by K.S.A. 12-4412 and 12-4416, and amendments thereto.*

28 Sec. 2. K.S.A. 12-4412 is hereby amended to read as follows: 12-
29 4412. (a) Any diversion agreement entered into in lieu of further criminal
30 proceedings on a complaint alleging a violation of a city ordinance **or**
31 **proceedings on an alleged violation of an ordinance traffic infrac-**
32 **tion** shall include: (1) The defendant's full name; (2) the defendant's full
33 name at the time the complaint was filed, if different from the defendant's
34 current name; (3) the defendant's sex, race and date of birth; (4) the crime
35 with which the defendant is charged; (5) the date the complaint was filed;
36 ~~and~~ (6) the municipal court with which the agreement is filed; *and* (7)
37 *for the payment of an amount equal to the amount of court costs which*
38 *the defendant would have been assessed had the defendant been convicted*
39 *of the crime with which the defendant is charged. Such amount shall be*
40 *remitted to the state treasurer in the same manner as court costs.*

41 (b) The city attorney shall forward to the Kansas bureau of investi-
42 gation a copy of a diversion agreement entered into by the city attorney
43 only when required by rules and regulations adopted by the director of

1 the bureau pursuant to K.S.A. 22-4704 and amendments thereto. The
2 copy of the agreement shall be made available upon request to any county,
3 district or city attorney who subsequently considers diversion of the
4 person.

5 (c) As used in this section, “complaint” includes a citation or notice
6 to appear.

7 Sec. 3. K.S.A. 12-4416 is hereby amended to read as follows: 12-
8 4416. (a) A diversion agreement shall provide that if the defendant fulfills
9 the obligations of the program described therein, as determined by the
10 city attorney, the city attorney shall act to have the criminal charges
11 against the defendant dismissed with prejudice. The diversion agreement
12 shall include: (1) Specifically the waiver of all rights under the law or the
13 constitution of Kansas or of the United States to counsel, a speedy ar-
14 raignment, a speedy trial, and the right to trial by jury; and (2) *for the*
15 *payment of an amount equal to the amount of court costs which the de-*
16 *fendant would have been assessed had the defendant been convicted of*
17 *the crime with which the defendant is charged. Such amount shall be*
18 *remitted to the state treasurer in the same manner as court costs.* The
19 diversion agreement may include, but is not limited to, provisions con-
20 cerning payment of restitution, including ~~court costs and~~ diversion costs,
21 residence in a specified facility, maintenance of gainful employment, and
22 participation in programs offering medical, educational, vocational, social
23 and psychological services, corrective and preventive guidance and other
24 rehabilitative services. The diversion agreement shall state:

25 (1) The defendant’s full name;

26 (2) the defendant’s full name at the time the complaint was filed, if
27 different from the defendant’s current name;

28 (3) the defendant’s sex, race and date of birth;

29 (4) the crime with which the defendant is charged;

30 (5) the date the complaint was filed; and

31 (6) the municipal court with which the agreement is filed.

32 (b) If a diversion agreement is entered into in lieu of further criminal
33 proceedings on a complaint alleging an alcohol related offense, the di-
34 version agreement shall include a stipulation, agreed to by the defendant
35 and the city attorney, of the facts upon which the charge is based and a
36 provision that if the defendant fails to fulfill the terms of the specific
37 diversion agreement and the criminal proceedings on the complaint are
38 resumed, the proceedings, including any proceedings on appeal, shall be
39 conducted on the record of the stipulation of facts relating to the com-
40 plaint. In addition, the agreement shall include a requirement that the
41 defendant:

42 (1) Pay a fine specified by the agreement in an amount equal to an
43 amount authorized by K.S.A. 8-1567, and amendments thereto, for a first

1 offense or, in lieu of payment of the fine, perform community service
2 specified by the agreement, consonant with K.S.A. 8-1567, and amend-
3 ments thereto; and

4 (2) enroll in and successfully complete an alcohol and drug safety
5 action program or a treatment program, or both, as provided in K.S.A. 8-
6 1008, and amendments thereto, and specified by the agreement, and pay
7 the assessment required by K.S.A. 8-1008, and amendments thereto.

8 (c) If the person entering into a diversion agreement is a nonresident,
9 the city attorney shall transmit a copy of the diversion agreement to the
10 division. The division shall forward a copy of the diversion agreement to
11 the motor vehicle administrator of the person's state of residence.

12 (d) If the city attorney elects to offer diversion in lieu of further crim-
13 inal proceedings on the complaint and the defendant agrees to all of the
14 terms of the proposed agreement, the diversion agreement shall be filed
15 with the municipal court and the municipal court shall stay further pro-
16 ceedings on the complaint. If the defendant declines to accept diversion,
17 the municipal court shall resume the criminal proceedings on the
18 complaint.

19 (e) The city attorney shall forward to the division of vehicles of the
20 state department of revenue a copy of the diversion agreement at the
21 time such agreement is filed with the municipal court. The copy of the
22 agreement shall be made available upon request to any county, district
23 or city attorney or court.

24 Sec. 4. K.S.A. 22-2909 is hereby amended to read as follows: 22-
25 2909. (a) A diversion agreement shall provide that if the defendant fulfill
26 the obligations of the program described therein, as determined by the
27 attorney general or county or district attorney, such attorney shall act to
28 have the criminal charges against the defendant dismissed with prejudice.
29 The diversion agreement shall include: (1) Specifically the waiver of all
30 rights under the law or the constitution of Kansas or of the United States
31 to a speedy arraignment, preliminary examinations and hearings, and a
32 speedy trial, ~~and~~; (2) in the case of diversion under subsection (c) a waiver
33 of the rights to counsel and trial by jury; *and* (3) *for the payment of an*
34 *amount equal to the amount of court costs which the defendant would*
35 *have been assessed had the defendant been convicted of the crime with*
36 *which the defendant is charged. Such amount shall be remitted to the*
37 *state treasurer in the same manner as court costs. The diversion agree-*
38 *ment may include, but is not limited to, provisions concerning payment*
39 *of restitution, including ~~court costs and~~ diversion costs, residence in a*
40 *specified facility, maintenance of gainful employment, and participation*
41 *in programs offering medical, educational, vocational, social and psycho-*
42 *logical services, corrective and preventive guidance and other rehabili-*
43 *tative services. If a county creates a local fund under the property crime*

1 restitution and compensation act, a county or district attorney may require
2 in all diversion agreements as a condition of diversion the payment of a
3 diversion fee in an amount not to exceed \$100. Such fees shall be depos-
4 ited into the local fund and disbursed pursuant to recommendations of
5 the local board under the property crime restitution and victims com-
6 pensation act.

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

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

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

29 (2) enroll in and successfully complete an alcohol and drug safety
30 action program or a treatment program, or both, as provided in K.S.A. 8-
31 1008, and amendments thereto, and specified by the agreement, and pay
32 the assessment required by K.S.A. 8-1008, and amendments thereto.

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

1 (e) If the person entering into a diversion agreement is a nonresident,
2 the attorney general or county or district attorney shall transmit a copy
3 of the diversion agreement to the division. The division shall forward a
4 copy of the diversion agreement to the motor vehicle administrator of the
5 person's state of residence.

6 (f) If the attorney general or county or district attorney elects to offer
7 diversion in lieu of further criminal proceedings on the complaint and the
8 defendant agrees to all of the terms of the proposed agreement, the di-
9 version agreement shall be filed with the district court and the district
10 court shall stay further proceedings on the complaint. If the defendant
11 declines to accept diversion, the district court shall resume the criminal
12 proceedings on the complaint.

13 (g) Except as provided in subsection (h), if a diversion agreement is
14 entered into in lieu of further criminal proceedings alleging commission
15 of a misdemeanor by the defendant, while under 21 years of age, under
16 the uniform controlled substances act (K.S.A. 65-4101 *et seq.*, and amend-
17 ments thereto) or K.S.A. 41-719, 41-727, 41-804, 41-2719, 41-2720, 65-
18 4152, 65-4153, 65-4154 or 65-4155, and amendments thereto, the agree-
19 ment shall require the defendant to submit to and complete an alcohol
20 and drug evaluation by a community-based alcohol and drug safety action
21 program certified pursuant to K.S.A. 8-1008, and amendments thereto,
22 and to pay a fee not to exceed the fee established by that statute for such
23 evaluation. If the attorney general or county or district attorney finds that
24 the defendant is indigent, the fee may be waived.

25 (h) If the defendant is 18 or more years of age but less than 21 years
26 of age and allegedly committed a violation of K.S.A. 41-727, and amend-
27 ments thereto, involving cereal malt beverage, the provisions of subsec-
28 tion (g) are permissive and not mandatory.

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

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

42 Sec. 5. K.S.A. 12-4112, 12-4412, 12-4416 and 22-2909 are hereby
43 repealed.

1 Sec. 6. This act shall take effect and be in force from and after its
2 publication in the statute book.