

DOUGLAS COUNTY DISTRICT ATTORNEY

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ADULT DIVERSION POLICY

I. ELIGIBILITY

The Douglas County District Attorney's Office recognizes that its responsibilities extend beyond its chief function of ensuring public safety. While public safety and victims' rights are paramount, societal interests such as equal access to justice and offender reformation can often be served through alternatives to incarceration. The Diversion Program will be administered in accordance with K.S.A. 22-2907, K.S.A. 22-2908, K.S.A. 22-2909, K.S.A. 22-2910 and K.S.A. 22-2911.

The District Attorney's Office reviews diversion applications on a case-by-case basis. Diversion is appropriate when the District Attorney's Office determines that a diversion agreement will best serve the ends of justice, the interests of the community, public safety, and the rights of the victims.

The District Attorney's Office will consider multiple factors in determining whether diversion is appropriate. Depending upon the dynamics of the specific case, those factors include:

1. Legitimate public safety concerns;
2. Input from identifiable victims;
3. The nature of the crime charged and the circumstances surrounding it;
4. Any special characteristics or circumstances of the applicant;
5. The applicant's criminal history, including any prior participation in diversionary programs;
6. Whether the applicant is amenable to engagement in diversion;
7. Whether the diversion program is appropriate for the needs of the applicant;
8. Whether there is a probability that the applicant engaged in the conduct at issue as a result of an injury, including major depressive disorder, polytrauma, post-traumatic stress disorder or traumatic brain injury, connected to service in a combat zone, as defined in section 112 of the Federal Internal Revenue Code of 1986, in the Armed Forces of the United States of America; and whether there is a probability that the applicant will cooperate with and benefit from inpatient or outpatient treatment from any treatment facility or program operated by the United States Department of Defense, the United States Department of Veterans Affairs, or the Kansas National Guard with the consent of the applicant, as a condition of diversion;
9. Recommendations, if any, of the involved law enforcement agency;
10. Provisions for payment of restitution; and,
11. Any mitigating circumstances.

Diversion cannot be granted when:

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

2. The complaint alleges that the applicant committed a Class A or B Felony or for crimes committed on or after July 1, 1993; an Off-Grid Offense; a Severity Level 1, 2 or 3 Felony for Nondrug Offenses; a Drug Severity Level 1 or 2 Felony for Drug Offenses committed on or after July 1, 1993, but prior to July 1, 2012; or, a Drug Severity Level 1, 2 or 3 Felony committed on or after July 1, 2012; or
3. The complaint alleges a Domestic Violence Offense, as defined in K.S.A. 21-5111, and amendments thereto, and the applicant has participated in two or more diversions in the previous five-year period upon complaints alleging a Domestic Violence Offense.

While diversions are granted on a case-by-case basis, some offenses *generally* not appropriate for diversion including:

1. Offenses committed with a firearm;
2. Offenses where bodily harm results;
3. Offenses involving manufacture, distribution or dealing of drugs for profit;
4. Offenses involving fiduciary relationships;
5. Offenses involving vulnerable populations;
6. Offenses involving a criminal enterprise;
7. Offenses involving sexual conduct.

II. PROCEDURE

ALL COURT APPEARANCES MUST BE ATTENDED DURING THE APPLICATION PROCESS
YOUR APPLICATION MUST BE RECEIVED WITHIN 30 DAYS AFTER YOUR 1ST TRIAL SETTING OR
YOUR APPLICATION WILL BE DENIED.

1. The applicant must disclose any prior diversions or convictions (other than traffic infractions).
2. If the offense involves alcohol or drugs, the applicant MUST obtain an alcohol or drug evaluation. The evaluation can ONLY be obtained from one of the agencies approved by the Kansas Department for Aging and Disability Services. To access the list of approved providers go to <https://kdads.ks.gov/kdads-commissions/behavioral-health/services-and-programs>. **It is the applicant's responsibility to obtain a copy of the evaluation from the agency so that it may be submitted with the application. The evaluation MUST be turned in with the diversion application or the application will be returned.** Cases where the applicant is charged with Furnishing Alcohol to a Minor are not required to obtain an alcohol evaluation.
3. If the case involves allegations of domestic violence, the applicant MUST obtain a Domestic Violence Offender Assessment. The assessment must be obtained through a provider approved by the Kansas Attorney General. **It is the applicant's responsibility to obtain a copy of the assessment from the agency so that it may be submitted with the application. The assessment MUST be turned in with the diversion application or the application will be returned.** A list of approved agencies can be found at <https://ag.ks.gov/victim-services/bip>.
4. The application must be completed on the forms provided by the District Attorney's Office.
5. The District Attorney's Office may require a conference with the applicant in order to make an informed determination as to eligibility. If a conference is required and the applicant is represented by counsel, then the applicant's counsel must also attend the conference.
6. The applicant (if Pro Se/representing oneself) or the applicant's attorney will be notified whether the diversion application has been approved. If the application is denied, notice will be sent in writing.
7. All Diversion Agreements must be prepared by the Douglas County District Attorney's office. No other Diversion Agreements will be accepted.
8. Completed applications – and any accompanying materials – must be submitted to the District Attorney's Office. The preferred method of delivery is via email to dadiversions@douglascountyks.org.

III. AGREEMENT

If approved for the Diversion Program, a written Diversion Agreement shall be offered to the applicant with a deadline for acceptance. If the applicant chooses to accept, the applicant must execute and deliver the Agreement to the District Attorney's Office, along with proof of payment of applicable Court Costs, by the deadline. If the applicant fails to do so, the offer of Diversion may be withdrawn.

The Terms of the Diversion Agreement shall include:

1. A waiver of certain rights: speedy trial; speedy arraignment; preliminary hearing; jury trial.

2. Stipulation to the facts of the case.
3. Specific term of diversion agreement.
4. Agreement to remain law abiding.
5. Agreement to provide proof of completion of conditions specifically set forth in the Diversion Agreement.
6. Payment of court costs, fines, fees and other costs within specified period of time.
7. Payment of a restitution monitoring fee in all agreements wherein restitution is a term.
8. Abide by special conditions such as (non-exclusive list):
 - a. Residence in a specified facility
 - b. Maintain gainful employment
 - c. Report as directed to Adult Services Officer (if specifically required under the terms of the Diversion Agreement)
 - d. Participate in counseling or special programs
 - e. Agreement to maintain a valid DL, insurance, registration, interlock (if required)
 - f. Participation in alcohol/drug treatment, and payment of costs for such
 - g. Any other conditions specifically set forth in the Diversion Agreement

IV. EFFECT

Upon executing the Diversion Agreement the criminal proceeding shall be suspended by order of the Court. Upon successful completion of the Diversion Program, the District Attorney's Office shall dismiss the charges with prejudice. If the participant fails to complete the Agreement, the District Attorney's Office may move to revoke the Agreement. If the Agreement is revoked, the matter will proceed to a trial to the Court on stipulated facts as set out in the Diversion Agreement.

DIVERSION FEE SCHEDULE

Court Costs	\$ 108 for Traffic cases	Pay to Clerk of the District Court
	\$ 158 for Misdemeanor cases	Pay to Clerk of the District Court
	\$ 193 for Felony cases	Pay to Clerk of the District Court
Restitution payments	\$ varies	Pay to Clerk of the District Court
KBI Lab fee	\$ 400.00	Pay to Clerk of the District Court
Attorney-court appointed	\$ varies	Pay to Clerk of the District Court
Fine	\$ varies	Pay to Clerk of the District Court

The court costs must be paid to the Clerk of the District Court at the time of turning in the signed Diversion

Agreement. All other costs are to be paid to the Clerk of the District Court within three months of signing the Diversion Agreement. If payments are not made, the Diversion Agreement may be revoked and the case will be returned to court docket for trial.

DIVERSION PROGRAM APPLICATION

You must complete every blank. If an evaluation is needed, it must be attached or the application will be returned.

Case Number _____ Div _____ Charge _____

Please mark one of the following:

() I am represented by counsel. My attorney's name and information is as follows:

Name of Attorney: _____ Appointed _____ Retained _____

Street Address: _____

City/State: _____ Zip Code: _____ Phone: _____

() I am not represented by counsel at this time.

Next court appearance _____

Name _____ Date of Birth _____

Address _____ Phone _____

City/State _____ Zip _____

Student's home address _____ Home Phone _____

City/State/Zip _____

Sex _____ Social Security # _____ Driver's License # _____

City and State where you were born _____

List all other Cities and States where you have lived:

<u>City</u>	<u>State</u>	<u>Dates Lived There</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Highest level of education achieved (and year) _____

Educational and vocational training (included high school or highest grade completed if not high school graduate, as well as education beyond high school) _____

Military Service ____ Yes ____ No Branch _____

Type of Discharge _____ Date of Discharge (from active duty) _____

Most Recent Employment _____ Phone _____

Address _____ City/State _____ Zip _____

Job Title _____ Length of employment _____

Medical/Physical History _____

Psychological services received: (list dates and providers) _____

List all offenses for which you have been arrested or charged at any time and in any jurisdiction. Include expunged offenses, juvenile offenses and alcohol related traffic offenses. This section applies even if the charges were dismissed or someone told you the charges would not be on your record. _____

If you were arrested, was a bond posted? Yes _____ No _____ If yes, by whom _____

I hereby apply for status as a participant in the Diversion Program and request that the District Attorney temporarily delay trial against me in order to permit consideration of this application. I understand it is my responsibility to submit a diversion application in a prompt and timely fashion and within the guidelines set by the District Attorney and that it will be my responsibility to seek any continuance or waiver of the jury trial in order to provide the necessary time for my diversion application to receive a full and complete review by the District Attorney's Office. I understand if the District Attorney's Office is required to make a decision concerning my application prior to the Office having an opportunity to make a full and complete review, my application request will be denied. I understand that the final decision to commence criminal proceedings or to defer prosecution in my case rests entirely with the District Attorney.

I authorize the District Attorney's Office to conduct an investigation to determine suitability for this program. I understand that any information by me or authorized by me to be furnished to the District Attorney's Office in connection with this investigation will be kept confidential.

A false answer to or omission of any question in this application shall be grounds for recommendation against placement into this program or removal after placement in the program, in which case, the District Attorney will resume prosecution on the original charges.

I understand and agree that in the event it is learned I have falsified or omitted any part of the Application for Diversion, including, but not limited to, my listing of prior traffic and criminal offenses, it shall be considered a violation of my Diversion Agreement and I may be taken off Diversion. I agree that a criminal justice report, including, but not limited to, a Department of Justice report, KBI report, Police Department or Sheriff's Department report, and/or Department of Revenue report, may be admitted as evidence in any court, without foundation, to prove prior traffic or criminal offenses.

I understand that failure to respond to any question will render the application incomplete and the District Attorney's Office will not consider the application.

I declare (or verify, certify or state) under penalty of perjury under the laws of the State of Kansas that I have personally read or have had read to me the above Application for Diversion and responses thereto and that all information contained in the foregoing application for the Diversion Program is true and correct.

Executed on _____
Date

Applicant's Signature