

STATE OF KANSAS
Tenth Judicial District

OFFICE OF THE DISTRICT ATTORNEY
STEPHEN M. HOWE, DISTRICT ATTORNEY
Adult Diversion Program

GENERAL POLICY

The Diversion program is intended to give a “second chance” to offenders who commit a relatively minor criminal offense.

Diversion is a privilege and not a right. There is no guarantee Diversion will be granted in any given case. The needs of the offender are less important than those of public safety and the rights of the victim.

It is not required that a Defendant have an attorney for the purpose of Diversion. However, a Defendant has the right to employ an attorney and have him/her present throughout the Diversion application process.

Defendants are required to reimburse the “AID FUND” when represented by court appointed counsel. Additionally, if a Defendant wants to participate in the Diversion program and must serve jail time, the Defendant will be asked to sign a waiver of counsel form.

The District Attorney makes all decisions regarding Diversion policy. He appoints a Diversion Section Chief to enforce such policies and determine Diversion eligibility including conditions of Diversion contracts. The District Attorney has the final authority to approve or deny any Diversion application.

A defendant’s application for diversion may be rejected or denied if not submitted within 30 days of the first appearance.

The assigned Assistant District Attorney (ADA) may request that a case be denied for Diversion even though otherwise eligible. Additionally, an assigned ADA may request that a case be approved for diversion if outside the guidelines. In either case, the ADA is responsible for notifying the Diversion Coordinator and/or Diversion Section Chief of his/her wishes. Final approval of Diversion lies with the Diversion Section Chief in conjunction with the District Attorney.

Diversion contracts not signed by the defendant within 60 days of the acceptance letter will be withdrawn.

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.

All DUI and drug cases require that an evaluation, from a Diversion approved provider, be completed before the Diversion application will be accepted.

Direct Diversion is not always automatically approved. A conference may be set at a later date after the file is reviewed. If more information is required, a conference will be set with a Diversion Case Manager.

If a case falls within the guidelines for Direct Diversion, it may be approved or denied by a Diversion Case Manager without staffing with the Diversion Section Chief.

INFORMAL DIVERSION CONFERENCE

Diversion conferences are scheduled with a Diversion Case Manager for the following reasons:

- All felony charges
- All theft charges
- DUI (driver refused to submit to testing of breath or bodily fluid, driver BAC was greater than .20%, driver was involved in an accident, or evaluator determines the Defendant to be chemically dependant.)
- Misdemeanor sex offenses including but not limited to sexual battery, lewd and lascivious behavior, prostitution and patronizing a prostitute.
- Unemployment Fraud, Welfare Fraud and Insurance Fraud
- Any charges involving children
- Any injuries to victim
- Any charges involving a weapon
- Any prior diversions and/or convictions

All cases that fall within the guidelines for an Informal Diversion Conference must be staffed with the Diversion Section Chief prior to granting/denying Diversion.

Defendants diverted on a level 4 drug felony must serve 5 days of jail time prior to signing the diversion agreement.

Defendants who have a misdemeanor diversion or conviction within the last 5 years and/or a felony diversion or conviction within the last 10 years will require compelling circumstances to be granted.

FORMAL DIVERSION CONFERENCE

A formal Diversion conference may be set with the Diversion Section Chief in the following instances:

- The Defendant was denied Diversion after the initial conference and his/her attorney has requested a Formal Diversion Conference by letter. This request is given to the assigned Diversion Case Manager to be staffed with the Diversion Section Chief. The Diversion Section Chief makes the decision to grant the request or not. If granted, a conference must be scheduled with the Diversion Section Chief and the assigned Diversion Case Manager. Notification of said conference is then sent to the Defendant's attorney.
- The Diversion Section Chief may automatically decide to meet with the Defendant after the case has been staffed by the Diversion Case Manager.
- Any charge involving a firearm.

MENTAL HEALTH DIVERSION

The objective of Mental Health Diversion is to direct the offender into treatment with JCMH.

Basic Requirements:

- Defendant must be a Johnson County resident.
- Attorneys representing defendants are required to contact Matt Botkin at JCMH, (913) 962-9955 to schedule an assessment.
- Determination of Mental Health Diversion eligibility will be based on a letter of recommendation and treatment plan from JCMH and final approval by the Diversion Section Chief.

THE DISTRICT ATTORNEY MAY APPROVE OR DENY ANY DIVERSION APPLICATION IN THEIR SOLE DISCRETION FOR ANY LAWFUL REASON.