

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 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 on a “CR” case will be rejected if not submitted within 120 days of the defendant’s first appearance. A defendant’s application for diversion on a “DV” case will be rejected if not submitted within 90 days of the defendant’s first appearance. Additionally, if the defendant has pursued substantive motions, trial, or preliminary hearing in a “CR” or “DV” case the application will be rejected.

The assigned Assistant District Attorney (ADA) may request that a case be denied for Diversion even though otherwise eligible. Final approval of Diversion lies with the Diversion 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Diversion contracts not signed by the defendant within 60 days of the acceptance letter will be withdrawn.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.

DIVERSION FEES/COSTS

Diversion Application: Misdemeanor - \$30.00; Felony - \$50.00

Diversion Fee: Misdemeanor - \$100.00 (direct diversion); \$125.00 (informal conference); Felony - \$150.00

Court Costs: Misdemeanor (non-DUI) - \$161.50; Felony - \$196.50; DUI - \$849.50 (ADSAP fee to be paid directly to provider)

Additional Diversion Costs may include, but are not limited to, fingerprinting, bond supervision, urinalysis testing, lab fees, witness fees, transportation costs, court appointed attorney's fees, and restitution. Such additional costs will be made part of the defendant's Diversion contract.

Defendants are prohibited from applying for Diversion if charged with the following:

Felonies - Level 1-6

Residential Burglaries

Identity Theft and/or Identity Fraud

Felony Sex Offenses

Drug Cases - Level 1, 2, 3, 4

DUI Cases with any prior DUI diversions and/or convictions

DUI Cases involving any injuries, including the driver

DUI Cases with children present in the vehicle

DUI Cases when the driver has been previously issued a CDL license

Any case involving a financial loss over \$25,000

Any case involving a financial loss over \$10,000 AND the defendant has a prior felony conviction OR the period theft is greater than one year OR there 5 or more victims OR the defendant was in a fiduciary relationship with the victim.

In addition, Defendants with charges pending in other municipal, state, or federal jurisdictions will not be considered for Diversion.

DIRECT DIVERSION

Direct Diversion may be offered to Defendants who have absolutely no prior diversions and/or convictions and are charged with the following misdemeanor offenses:

Assault

Battery

Criminal Damage to Property

Criminal Trespass

Disorderly Conduct

Domestic Battery (no injuries)

DUI (no priors, drivers who submitted to testing of breath or bodily fluid, BAC under .20 and no accident)

Possession of Marijuana

Possession of Drug Paraphernalia

Telephone Harassment

Violation of Protective Orders

Misdemeanor Giving a Worthless Check

Revised: December 2012

All DUI and drug cases require that an evaluation, from a Diversion approved provider, be completed before an application for Diversion 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 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 arrests, diversions and/or convictions

Any Domestic Violence case classified as high risk

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 5 drug felony may be required to serve 5 days of jail time or participate in community service prior to signing the diversion agreement.

Defendants in high risk Domestic Violence cases may be required to participate in and complete Batterer's Intervention counseling as a condition of Diversion. High risk Domestic Violence cases may require an 18 month term of Diversion. Defendants in all other Domestic Violence cases will be required to obtain a DV assessment and follow the recommendations of that assessment as a condition of diversion. DV assessments may be obtained from any court approved provider, however, all counseling services must be obtained from a Diversion approved provider.

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 are not eligible to apply.

FORMAL DIVERSION CONFERENCE

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

Any charge involving a firearm.

Any case involving financial loss over \$10,000. Defendants diverted in cases involving financial loss of over \$10,000 may be required to serve 30 days jail time prior to signing the diversion agreement. A minimum 25% of restitution must be paid prior to signing the diversion agreement. Community service will be required as a condition of any such diversion. Diversion agreements must be supported by the victim, assigned ADA, and lead investigator.

The Defendant was denied Diversion after the initial conference and his/her attorney has requested a Formal Diversion Conference by letter.

Formal Conference requests shall be given to the assigned Diversion Case Manager.

The Diversion chief after meeting with the Case Manger makes the decision to grant the request or not. If granted, a conference must be scheduled with the Diversion Chief through the assigned Diversion Case Manager. Notification of said conference is then sent to the Defendant's attorney. The Diversion Chief may also automatically decide to meet with the Defendant after the case has been staffed by the Diversion Case Manager.

MENTAL HEALTH DIVERSION SPMI

The objective of Mental Health Diversion is to direct the defendant into treatment with Johnson County Mental Health (JCMH). Mental Health Diversion is available to defendants suffering from Severe and Persistent Mental Illness. The program is set forth below.

SPMI Mental Health Diversion

Basic Requirements:

- The defendant must be a Johnson County resident.
- The defendant must submit an application for Mental Health Diversion to the District Attorney's Office. If the Diversion Chief or Coordinator approves the defendant's application for further review by JCMH, the Mental Health Diversion Case Manager will notify the defendant's attorney. Todd Schemmel with JCMH will contact the defendant directly in order to schedule an assessment.
- A defendant's eligibility for Mental Health Diversion will be based in part on a letter of recommendation along with a treatment plan from JCMH. Final approval for Mental Health Diversion will be made by the Diversion Section Chief.

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