STATE OF KANSAS

Tenth Judicial District

OFFICE OF THE DISTRICT ATTORNEY

STEPHEN M. HOWE, DISTRICT ATTORNEY

Adult Diversion Program

**GENERAL POLICY**

1. The Diversion program is intended to give a “second chance” to offenders who commit a relatively minor criminal offense.
2. 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.
3. 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.
4. A defendant is required to reimburse the court when represented by court appointed counsel. Additionally, if a defendant wants to participate in the Diversion program and must serve jail time, the defendant may be asked to sign a waiver of counsel form.
5. 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.
6. 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 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.
7. Diversion contracts not signed by the defendant within 60 days of the acceptance letter will be withdrawn.
8. 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**

1. Diversion Application (Exact cash or money order only):
2. Misdemeanor - $30.00
3. Felony - $50.00
4. Diversion Fee:
	1. Misdemeanor - $100.00 (direct diversion); $125.00 (informal conference);
	2. Felony - $150.00
5. Court Costs:
	1. Misdemeanor (non-DUI) - $159.50;
	2. Felony - $194.50;
	3. DUI - $909.50
6. Additional Diversion Costs may include, but are not limited to:
	1. Fingerprinting fee
	2. Pre-Trial Supervision fees
	3. Urinalysis testing
	4. Lab fees
	5. Witness fees
	6. Extradition costs
	7. Court appointed attorneys fees
	8. Restitution

**ELIGIBILITY**

*Current Offense*

1. A defendant is prohibited from applying for Diversion if charged with the following:
2. Felonies - Level 1-6
3. Aggravated Domestic Battery
4. Residential Burglaries
5. Identity Theft and/or Identity Fraud
6. Mistreatment of a Dependent Adult
7. Felony Sex Offenses
8. Person Felony Offenses where victim is under the age of 18
9. Drug Cases - Level 1 - 4
10. DUI cases with any prior DUI diversions and/or convictions
11. DUI cases involving any injuries of any severity, including the driver
12. DUI cases with children present in the vehicle
13. DUI cases when the driver has been previously issued a CDL license
14. Any case involving a financial loss over $25,000
15. Any case involving a financial loss over $10,000 AND the defendant has a prior felony conviction OR the period of theft is greater than one year OR there are 5 or more victims OR the defendant was in fiduciary relationship with the victim
16. The input of any victim shall be taken into consideration when determining whether to grant or deny diversion.
17. The assigned Assistant District Attorney (ADA) may request that a case be denied for Diversion even though otherwise eligible.
18. Final approval of Diversion lies with the Diversion Chief in conjunction with the District Attorney.

*Prior Criminal History*

1. A defendant with the following criminal history is ineligible to apply **(5/10 Rule)**:
	1. Misdemeanor diversion or conviction within the last 5 years
	2. Felony diversion or conviction within the last 10 years
2. Traffic misdemeanors will not be subject to the 5/10 Rule except as described below in paragraphs Nos. 3 and 4. The District Attorney’s Office reserves the right to consider any prior offense as a basis to deny diversion on a case by case basis.
3. The following traffic misdemeanors are subject to the 5/10 Rule:
	1. Any class ‘A” misdemeanor
	2. DUI
	3. Fleeing and Eluding
	4. PBT Refusal
	5. Reckless Driving
4. In addition to the offenses listed above, if currently charged with a DUI, the following traffic misdemeanors are also subject to the 5/10 Rule:
	1. Minor in Possession of Alcohol,
	2. Transporting an Open Container,
	3. DWS (if basis for suspension was alcohol related)
5. Juvenile adjudications are not subject to the 5/10 Rule. The District Attorney’s Office reserves the right to consider the nature, quantity, and timing of juvenile adjudications as a basis to deny diversion on a case by case basis.
6. A defendant who has had a prior diversion contract with the District Attorney’s Office as an adult may not apply until 10 years after the dismissal date of the prior diversion. A defendant shall not be placed on diversion a second time for an offense which is the same or similar to the first diversion contract.
7. A defendant who has more than one pending case in Johnson County District Court will not be considered for diversion.
8. A defendant with criminal charges pending in any other municipal, state, or federal jurisdictions will not be considered for Diversion. Any outstanding traffic warrants must be resolved prior to any defendant applying for diversion.

**ADDITIONAL REQUIREMENTS**

1. All DUI and drug cases require that a substance use evaluation be completed before an application for Diversion will be accepted. The evaluation must be obtained from a Diversion approved provider.
2. A defendant may be required to submit additional evaluations prior to determining whether to offer a Diversion contract.
3. A defendant charged with a felony domestic violence offense must obtain a Domestic Violence Assessment prior to making application for Diversion. A defendant charged in a Domestic Violence case which has been designated as “high risk” per the lethality assessment may be required to participate in and complete Batterer’s Intervention counseling as a condition of Diversion. Unless directed otherwise, in all other Domestic Violence cases, a defendant will be required to obtain a Domestic Violence Assessment after signing the Diversion agreement and must follow the recommendations of that assessment as a condition of Diversion. All Domestic Violence Assessments and counseling must be obtained from a Diversion approved provider.
4. A defendant diverted on a felony offense may be required to serve jail shock time prior to signing the Diversion agreement.
5. A defendant charged with Lewd and Lascivious Behavior, Sexual Battery or other sexual related offense shall be required to obtain a non-violent sex-offender evaluation and submit said evaluation with the application for Diversion.
6. A defendant diverted on cases involving financial loss of over $10,000 may be required to serve jail shock time prior to signing the Diversion agreement. A defendant may be required to submit a restitution payment of 25% prior to signing the Diversion agreement.

**DIRECT DIVERSION**

1. Direct Diversion may be offered to a defendant with absolutely no prior diversions or convictions and is charged with one of the following misdemeanor offenses:
2. Assault
3. Battery
4. Criminal Damage to Property
5. Criminal Trespass
6. Disorderly Conduct
7. Domestic Battery (no injuries)
8. DUI with all of the following conditions:
	* 1. Defendant has no prior convictions
		2. Defendant submitted to testing of breath or bodily fluid
		3. Defendant had a BAC under .20
		4. Defendant not involved in an accident
9. Possession of Marijuana
10. Possession of Drug Paraphernalia
11. Telephone Harassment
12. Violation of Protection Orders
13. Misdemeanor Giving a Worthless Check
14. A Direct Diversion is not always automatically approved. A conference may be set at a later date after the application is reviewed. If more information is required, a conference will be set with a Diversion Case Manager.
15. 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**

1. Diversion conferences are scheduled with a Diversion Case Manager for the following reasons:
2. All felony charges
3. All theft charges
4. DUI with one of the following conditions:
	1. Defendant refused to submit to testing of breath or bodily fluid
	2. Defendant under the age of 21 at time of DUI.
	3. Defendant’s BAC was greater than .20
	4. Defendant was involved in an accident
	5. Excessive speed
	6. Evaluator determines the defendant to be chemically dependent
5. Misdemeanor sex offenses including but not limited to Sexual Battery, Lewd and Lascivious Behavior, Prostitution and Patronizing a Prostitute
6. Unemployment Fraud, Welfare Fraud and Insurance Fraud
7. Any charges involving children
8. Any injuries to victim
9. Any charges involving a weapon
10. Any prior arrests, diversions and/or convictions
11. Any Domestic Violence case classified as high risk
12. All cases that fall within the guidelines for an Informal Diversion Conference must be staffed with the Diversion Chief prior to granting/denying Diversion.

**FORMAL DIVERSION CONFERENCE**

1. A formal Diversion conference will be set with the Diversion Chief under the following circumstances:
	1. Any case involving a person crime involving a firearm or other weapon
	2. The Diversion Chief approved a request for a formal conference after a defendant was denied Diversion after the initial conference. Such a request must be submitted in writing to the assigned Diversion Case Manager within 2 weeks of the original denial notification
	3. At the request of the Diversion Chief for any reason

**MENTAL HEALTH DIVERSION**

1. 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 a Serious Mental Illness (SMI). Symptoms of a SMI are generally defined as impairments in functioning in one or more major area of life that have occurred as either a continuous or intermittent basis over the last two years and are a direct result of the individual’s mental illness.
2. Examples of functional impairments resulting from SMI would include:
3. Inability to maintain gainful employment or manage finances
4. Shows severe inability to establish or maintain a personal support system
5. Requires help in attending to basic health care regarding hygiene, grooming, nutrition, dental and medical care, and taking medications
6. Exhibits inappropriate social behavior not easily tolerated in the community
7. Engages in unsafe or self-harming behavior
8. Basic Requirements:
	1. The defendant must be a Johnson County resident.  The defendant must remain a Johnson County resident throughout the term of the diversion.
	2. In order for a defendant to be placed on Mental Health Diversion, he/she must be approved by the District Attorney’s Office as well as meet the SMI criteria as determined by JCMH.
	3. The defendant must submit an application for Mental Health Diversion to the DA’s Office. A Release of Information (ROI) must be submitted along with the application. Upon receipt of the application and the ROI, the DA’s Office shall screen the defendant’s application for further review by JCMH.
	4. JCMH will contact the defendant directly in order to schedule an initial assessment. The defendant must complete the initial assessment within 2 weeks of being contacted by JCMH. The defendant must fully participate in services, as well as attend all subsequent mental health appointments while the application is being reviewed. Final eligibility for Mental Health Diversion will be determined by the DA’s Office.
	5. The DA’s Office may approve or deny any diversion application in their sole discretion for any lawful reason, including criminal history (arrests, convictions, prior diversions, police contact, etc.). Applicants with criminal history will be evaluated on a case by case basis.