

DIVERSION PROGRAM GUIDELINES

Jackson County Attorney's Office

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- Felony
- Misdemeanor
- DUI

Diversion Application

The Jackson County Attorney has established the following guidelines for the Diversion Program.

Diversion is a privilege and not a right. No presumption in favor of diversion exists in any case, and the burden of persuasion rests with the applicant to establish that a Diversion Agreement will serve the ends of justice in the interests of the community, public safety, and the rights of victims.

In determining whether or not to grant diversion, the Jackson County Attorney's Office will consider whether the applicant demonstrates a genuine sense of remorse and is prepared to acknowledge the act(s) charged and accountability for the consequences of his or her actions. Other factors to consider are the nature of the crime and the circumstances surrounding it, the probability that the applicant will cooperate and benefit from the program, the impact on the community of placing the applicant on Diversion, the recommendation of the involved law enforcement officers and of the victims, the amount of restitution owed, and any mitigating and aggravating circumstances surrounding the crime.

An applicant on an Adult Criminal case has the right to obtain an attorney and have the present throughout the Diversion Application process. Applicants that are approved for Diversion will be required to pay any Court-Appointed attorney's fees, if applicable.



Eligibility

The Jackson County Attorney will consider a number of factors in determining whether or not Diversion is appropriate. It is presumed by these guidelines that diversion is NOT appropriate in the following circumstances, subject to review of the facts and circumstances by the County Attorney's Office:

- 1) The Defendant is charged with a felony that amounts to: an off-grid felony; a non-drug severity level 1, 2, 3, 4, 5, 6 felony, a level 7 person felony that is not a property offense, or a drug level 1, 2, 3, or 4 felony.
- 2) The Defendant is charged with a domestic violence offense and the Defendant has participated in one or more diversions in his/her lifetime.
- 3) The Defendant is charged with a DUI 2nd or subsequent (a previous diversion for DUI counts as a prior).
- 4) The Defendant is charged with a crime against law enforcement.
- 5) The Defendant is charged with a crime that was committed using a firearm or other weapon.
- 6) The Defendant is charged with an offense that, based on criminal history or special rule, carries a presumption of imprisonment.
- 7) The Defendant was on bond, probation and/or parole at the time the offense was committed.

There is no presumption in favor of Diversion in any case on any charge. The burden of persuasion falls upon the defendant to establish that a Diversion will serve the ends of justice and the interests of the community. In determining if Diversion is in the interest of justice and benefits the Defendant and the community, the County Attorney will consider the following list of factors (non-exclusive):

- 1) Timeliness of Defendant's application and whether Defendant has contested charges by setting evidentiary hearings or filing motions.
- 2) The nature and circumstances of the current offense.
- 3) Special characteristics and circumstances of the Defendant.
- 4) The Defendant's criminal history and/or driving record.
- 5) The Defendant's history, if any, of following conditions of diversion, probation and/or parole.
- 6) The Defendant's history, if any, of following conditions of treatment.
- 7) The probability that the Defendant will cooperate with and benefit from Diversion.
- 8) Whether a Diversion is appropriate to the needs of the Defendant.
- 9) Probability the current offense was committed as a result of injury or a condition suffered during service in a combat zone while in the armed services of the United States. If so, whether there is also a probability the Defendant will cooperate with and benefit from an available treatment program provided by the United States, the VA, or the Kansas National Guard.
- 10) The impact of a Diversion upon the community.
- 11) The recommendations, if any, of the involved law enforcement agency and/or victim.
- 12) Whether restitution is appropriate and provisions for payment of restitution, if any.
- 13) Whether the Defendant was legally present in the United States at the time of the offense.
- 14) Other identifiable aggravating or mitigating circumstances.

Procedures

1. A NON-REFUNDABLE Application fee must accompany the diversion application or the application will not be accepted. Payment shall be made with personal check, money order or a cashier's check.

Felony Application Fee: \$100

Misdemeanor Application Fee: \$50

DUI Application Fee: \$50

2. If applying for a diversion on a felony, the application MUST be submitted prior to the preliminary hearing.
3. The Applicant MUST sign a statement under oath as to the facts and circumstances surrounding the offense(s).
4. The County Attorney reserves the right to accept or deny any application that does not meet the eligibility requirements or is determined to not be in the interest of justice and/or would not benefit the Defendant and/or the community. The Defendant shall provide complete and truthful information in completing the application.
5. Upon acceptance into the Diversion program, the NON-REFUNDABLE Application fee will be applied towards the Diversion fee, which is due at the time of entering into the diversion.
6. The application must be completed on the forms provided by the Jackson County Attorney's Office.
7. The applicant or the applicant's Attorney will be notified whether or not the diversion application has been approved. If the application is denied, notice will be in writing.
8. If denied, the applicant or the applicant's Attorney can request a diversion conference with the County Attorney's Office. The County Attorney's Office has the discretion to decline the request for a diversion conference. If granted a diversion conference, the applicant will be expected to be in attendance with their attorney (if represented). The applicant has the burden of proving to the County Attorney's Office that a diversion should be reconsidered, and a diversion is in the best interest of justice.

AGREEMENT

If approved for Diversion, a written Agreement for Pretrial diversion shall be offered to the Defendant **with a deadline** for acceptance. If the Defendant chooses to accept, the Defendant must execute and deliver the Agreement to the CA's Office, along with the Diversion fee, by the deadline. The Diversion fee must be in the form of a cashier's check, money order, or attorney trust account check payable to "Jackson County Attorney." **Diversion fees** shall be:

\$500 for Felonies
\$400 for Misdemeanors
\$400 for DUI

If the Defendant fails to submit the written Agreement and Diversion fee by the deadline, the offer of Diversion may be withdrawn.

The Terms of the Criminal Diversion shall include:

- 1) A waiver of certain rights: speedy trial; speedy arraignment; preliminary hearing; jury trial; revocation hearing in the event of failing to comply with Agreement
- 2) Agreement to a stipulation to the facts of the case
- 3) Specific term of diversion agreement
- 4) Agreement to remain law abiding
- 5) Agreement to report to the County Attorney's Office as required
- 6) Payment of court costs, fines, fees and other costs within specified period of time, including a \$10 fee to the YWCA
- 7) Abide by special conditions such as (non-exclusive list):
 - a. Residence in a specified facility
 - b. Maintain gainful employment
 - c. Participate in counseling or special programs
 - d. Agreement to maintain a valid DL, insurance, registration, interlock (if required)
 - e. Participation in alcohol/drug treatment, and payment of costs for such
 - f. Any other conditions specifically set forth in the Diversion Agreement

EFFECT

Upon executing the Diversion Agreement the criminal proceeding shall be suspended by order of the Court. Upon successful completion of the Diversion the County Attorney shall dismiss the charges with prejudice. If the Defendant fails to complete the Agreement, the County Attorney will revoke the Agreement. There will be no other proceedings except for a trial to the court on stipulated facts, as set forth in the diversion contract.

(FOR OFFICE USE ONLY)

Application Fee _____ Date Received_____

Case No._____ Diversion Status Hearing Date_____

APPLICATION FOR DIVERSION

The Non-Refundable Application fee MUST accompany the Application:

Felony Application Fee: \$100

Misdemeanor Application Fee: \$50

DUI Application Fee: \$50

The Applicant must complete every blank.

Name:_____

Court Case:_____

Address:_____

Date of Birth:_____

City/State/Zip:_____

Phone:_____

Student's Home Address:_____

City/State/Zip:_____

Email:_____

Sex: M F ; Social Security No. _____; Driver's License No. _____

If the Applicant lives with someone not listed above , list the names and addresses:

Case Information: Date of Next Appearance:_____

Charge(s):_____

Attorney (if applicable): Name: _____ Appointed Retained

Phone:_____ Address:_____

How long have you lived in Jackson County, Ks:_____

List all States other than Kansas, where you have lived: _____

Explain your connection to the victim of the charged crime(s):

Present employer: _____ Phone: _____

Address/City/State/Zip: _____

Job Title: _____ Term of Employ: _____ Salary: _____

Previous employer: _____ Phone: _____

Address/City/State/Zip: _____

Job Title: _____ Term of Employ: _____ Salary: _____

If Applicant has additional previous positions, continue list on the back of this page.

Education: List each school attended

Elementary School: _____ Junior High: _____

High School: _____ Post-Graduate: _____

College: _____ Highest Education Achieved: _____

Medical History; (list diagnosis (mental and physical) and care providers):

Criminal History; List all criminal offenses for which you have been arrested or charged at any time in any jurisdiction. Be sure to include expunged offenses, juvenile offenses, and alcohol related traffic offenses. Include arrests and charges that resulted in dismissal or that you believe aren't on your "record".

State any Mitigating facts regarding your current charges that you believe explain or excuse your actions.

Explain why you feel you can successfully fulfill the requirements of the Diversion Program. Explain why you feel you would be a good candidate for Diversion. (Must be in applicant's handwriting)

State IN DETAIL the facts, which caused the charges to be filed. Please use the back of this page if necessary. (Must be in applicant's handwriting).

If you are under the age of 21 and the charge(s) involve alcohol or if you are any age and the charge(s) involve illegal substances, complete the following:

Where and How did you obtain the alcohol or illegal substance:

Where you required to show ID? Yes No Did you use your assigned ID? Yes No

If No, where did you obtain false ID? _____

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

Oath of the Applicant

I solemnly swear that I have read the foregoing Diversion Application and all of the information is true and correct to the best of my knowledge. I understand that giving false information will be a basis for denial of my Diversion Application or Revocation of my Diversion Agreement.

I hereby authorize the Jackson County Attorney's Office to release any information in the Jackson County Attorney's file pertaining to the offense for which I am charged to any agency which is performing the psychological, drug, alcohol, and/or other evaluation, any law enforcement agency, or any other such person or agencies for use in determining whether I am a suitable candidate for the diversion program. I further authorize any person, agency, or organization to release and provide, upon request, any information to the Jackson County Attorney's Office in consideration of my application for the Diversion Program.

I further authorize any person, agency or organization that is conducting an evaluation or treatment as a part of the Diversion Program to release information to any other person, agency or organization a needed for the evaluation or treatment process.

DATE

Signature of Applicant

Included:

\$100 Non-Refundable Application fee for Felony Offenses

\$50 Non-Refundable Application Fee Misdemeanor Offenses

\$50 Non-Refundable Application fee for DUI offenses

Cash Cashier's Check Money Order Attorney Trust Check
Is attached or otherwise accompanies this Application for Diversion.

FOR OFFICE USE ONLY

Approved on: _____ Additional fee, if any: _____

Denied on: _____

Notes: _____

Potential Drug and Alcohol Information Schools:

New Dawn Wellness & Recovery Center

Address: 4015 SW 21st St, Topeka, KS 66604

Phone: (785) 266-0202

Heartland Clinical Consultants

Address: 5040 SW 28th St, Suite F, Topeka, KS 66614

Phone: (785) 272-2266

DCCA Lawrence Outpatient

Address: 1739 East 23rd St, Lawrence, KS 66046

Phone: (785) 830-8246

Corner House, Inc.

Address: 418 Market St., Emporia, KS 66801

Phone: (620) 342-3015

L & L Assessment and Counseling Center

Address: 5245 KS-99, Wamego, KS 66547

Phone: (785) 456-2778

Healthy Recovery Options

Address: 323 Poyntz Ave, Suite 101, Manhattan, KS 66502

Phone: (913) 748-7831

** Please Note this is not an exhaustive list of providers, the defendant is permitted to seek out alternative evaluating agencies. They must be a licensed mental health treatment facility or rehabilitation facility. Online Courses are not acceptable.