

DIVERSION NOTICE/POLICY

Pursuant to K.S.A. 22-2906 *et.seq.*, the Office of the Kansas Attorney General (OAG) has established a pre-trial Diversion Program for eligible criminal cases being prosecuted by the Office of the Kansas Attorney General. Diversion is a privilege and not a right. There is no presumption in favor of diversion in any case, and the Attorney General has the final authority to approve or deny any application for diversion. Eligibility does not guarantee acceptance. The OAG reserves the right to deny any application that does not meet the eligibility requirements, is determined by the OAG in its exclusive discretion to not be in the interest of justice, or is determined by the OAG in its exclusive discretion not to benefit the defendant and/or the community.

The defendant or defendant's attorney shall apply for diversion by requesting such in writing. The OAG may require a conference with the defendant in order to make a determination as to eligibility. A defendant has the right to employ an attorney and have him/her present throughout the diversion application process. It is not required that a defendant have an attorney for the purpose of diversion if the Court makes a finding on the record the Defendant is representing himself or herself *pro se*.

ELIGIBILITY

Pursuant to K.S.A. 22-2908(b), a defendant is prohibited from applying for diversion, if charged with the following:

- 1) The complaint alleges a violation of a violation of 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 a Class A or B Felony, or for crimes committed on or after July 1, 1993, an off-grid crime, a severity level 1, 2, or 3 felony for non-drug crimes, a severity level 1 or 2 felony for drug crimes 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 defendant has participated in two or more diversions in the previous five-year period upon complaints alleging a domestic violence offense, or any attempt or conspiracy to commit the previously specified crimes.

In addition, except upon extraordinary circumstances, the OAG shall not approve any application for division by a defendant charged with the following:

- 1) A severity level 4 or 5 felony for non-drug crimes;
- 2) A level 3 or 4 drug felony
- 3) All person felonies
- 4) Mistreatment of a dependent or elder adult
- 5) Any sex offense or sexually motivated crime
- 6) Any offense involving a death
- 7) DUI cases with children present in the vehicle
- 8) DUI cases when the driver, at time of offense, has a CDL license or was operating a commercial motor vehicle; or
- 9) Any crime involving a weapon violation

CONSIDERATIONS

The following list of factors will be considered in determining whether diversion of the defendant is in the best interest of justice and will be of benefit to the defendant and the community:

- 1) **The nature of the crime charged and the circumstances surrounding it;**
- 2) any special characteristics or circumstances of the defendant;
- 3) whether the defendant is a first-time offender and whether the defendant has previously participated in diversion, according to the certification of the Kansas bureau of investigation or the division of vehicles of the department of revenue;
- 4) whether there is a probability that the defendant will cooperate with and benefit from diversion;
- 5) whether the available diversion program is appropriate to the needs of the defendant;
- 6) whether there is a probability that the defendant committed such crime as a result of an injury, including major depressive disorder, poly-trauma, 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;
- 7) if paragraph (6) applies to the defendant, whether there is a probability that the defendant 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 defendant, as a condition of diversion;
- 8) the impact of the diversion of the defendant upon the community;
- 9) recommendations, if any, of the involved law enforcement agency;
- 10) recommendations, if any, of the victim;
- 11) provisions for restitution;
- 12) any mitigating circumstances; and
- 13) **any other factor deemed relevant by the Office of the Kansas Attorney General.**

AGREEMENT

The terms of the Diversion Agreement may 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 the Diversion Agreement;
- 2) Stipulation to the facts of the case;
- 3) Specific durational term of Diversion Agreement;
- 4) Agreement to remain law abiding;
- 5) Agreement to report to the Attorney General's Office as required;
- 6) Payment of court costs, fines, fees and other costs within specified period of time;
- 7) Payment of a restitution monitoring fee in all Diversion 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. Participate in counseling or special programs
 - d. Maintain a valid driver's license, insurance, registration, interlock (if required)
 - e. Participation in alcohol/drug treatment, and payment of costs for such
 - f. Not consume alcoholic liquor or cereal malt beverages, or inhale, inject, or otherwise ingest any illegal drug(s) as defined by Kansas and/or federal law during the term of the Diversion Agreement
 - g. Provide sworn truthful testimony in future hearings or other proceedings involving the underlying matter if requested to do so;
 - h. Defendant shall surrender any relevant professional or vocational license or permit;
 - i. **Any other conditions specifically set forth in the Diversion Agreement.**

COSTS

1. Diversion Fee - \$400 (due upon filing of agreement)
2. Court costs
3. Restitution Monitoring Fee (if not paid up front) - \$75
4. All statutory mandatory fines and any fines agreed upon by the parties
5. Additional diversion costs may include, but are not limited to:
 - a. Fingerprinting fee
 - b. Pre-Trial Supervision fees
 - c. Urinalysis testing
 - d. Lab fees

- e. Witness fees
- f. Extradition costs
- g. Court appointed attorneys fees
- h. Payment to Human Trafficking Victim Assistance Fund
- i. Reimbursement for costs of the investigation as laid out in statute or by agreement of the parties.

EFFECT

Upon the defendant entering into a pretrial Diversion Agreement, the criminal proceeding shall be suspended by appropriate order of the Court. When the defendant successfully fulfills the terms and conditions of diversion, the Attorney General shall move to have the criminal charges dismissed with prejudice. If the Defendant fails to fulfill the terms and conditions of the Diversion Agreement, the Attorney General shall request that the diversion be terminated. After an appropriate hearing, the Court, upon finding the defendant has failed to fulfill the terms of the Diversion Agreement, shall order diversion terminated. There will be no other proceedings except a trial to the court on stipulated facts, as set forth in the Diversion Agreement.