



## **DOUGLAS COUNTY DISTRICT ATTORNEY**

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### **ADULT DIVERSION POLICY**

#### **I. ELIGIBILITY**

The Douglas County District Attorney's Office recognizes that its responsibilities extend beyond its chief function of ensuring public safety. While public safety and victims' rights are paramount, societal interests such as equal access to justice and offender reformation can often be served through alternatives to incarceration. 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.

The District Attorney's Office reviews diversion applications on a case-by-case basis. Diversion is appropriate when the District Attorney's Office determines that a diversion agreement will best serve the ends of justice, the interests of the community, public safety, and the rights of the victims.

The District Attorney's Office will consider multiple factors in determining whether diversion is appropriate. Depending upon the dynamics of the specific case, those factors include:

1. Legitimate public safety concerns;
2. Input from identifiable victims;
3. The nature of the crime charged and the circumstances surrounding it;
4. Any special characteristics or circumstances of the applicant;
5. The applicant's criminal history, including any prior participation in diversionary programs;
6. Whether the applicant is amenable to engagement in diversion;
7. Whether the diversion program is appropriate for the needs of the applicant;
8. Whether there is a probability that the applicant engaged in the conduct at issue as a result of an injury, including major depressive disorder, polytrauma, 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; and whether there is a probability that the applicant 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 applicant, as a condition of diversion;
9. Recommendations, if any, of the involved law enforcement agency;
10. Provisions for payment of restitution; and,
11. Any mitigating circumstances.

Diversion cannot be granted when:

1. The complaint alleges a violation of K.S.A. 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 that the applicant committed a Class A or B Felony or for crimes committed on or after July 1, 1993; an Off-Grid Offense; a Severity Level 1, 2 or 3 Felony for Nondrug Offenses; a Drug Severity Level 1 or 2 Felony for Drug Offenses 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 applicant has participated in two or more diversions in the previous five-year period upon complaints alleging a Domestic Violence Offense.

While diversions are granted on a case-by-case basis, some offenses *generally* not appropriate for diversion including:

1. Offenses committed with a firearm;
2. Offenses where bodily harm results;
3. Offenses involving manufacture, distribution or dealing of drugs for profit;
4. Offenses involving fiduciary relationships;
5. Offenses involving vulnerable populations;
6. Offenses involving a criminal enterprise;
7. Offenses involving sexual conduct.

## II. PROCEDURE

ALL COURT APPEARANCES MUST BE ATTENDED DURING THE APPLICATION PROCESS  
YOUR APPLICATION MUST BE RECEIVED WITHIN 30 DAYS AFTER YOUR 1<sup>ST</sup> TRIAL SETTING OR  
YOUR APPLICATION WILL BE DENIED.

1. The applicant must disclose any prior diversions or convictions (other than traffic infractions).
2. If the offense involves alcohol or drugs, the applicant MUST obtain an alcohol or drug evaluation. The evaluation can ONLY be obtained from one of the agencies approved by the Kansas Department for Aging and Disability Services. To access the list of approved providers go to <https://www.kdads.ks.gov/docs/default-source/CSP/bhs-documents/alcohol-and-drug-evaluators.xlsx>. **It is the applicant's responsibility to obtain a copy of the evaluation from the agency so that it may be submitted with the application. The evaluation MUST be turned in with the diversion application or the application will be returned.** Cases where the applicant is charged with Furnishing Alcohol to a Minor are not required to obtain an alcohol evaluation.
3. If the case involves allegations of domestic violence, the applicant MUST obtain a Domestic Violence Offender Assessment. The assessment must be obtained through a provider approved by the Kansas Attorney General. **It is the applicant's responsibility to obtain a copy of the assessment from the agency so that it may be submitted with the application. The assessment MUST be turned in with the diversion application or the application will be returned.** A list of approved agencies can be found at <https://ag.ks.gov/victim-services/bip>.
4. The application must be completed on the forms provided by the District Attorney's Office.
5. The District Attorney's Office may require a conference with the applicant in order to make an informed determination as to eligibility. If a conference is required and the applicant is represented by counsel, then the applicant's counsel must also attend the conference.
6. The applicant (if Pro Se/representing oneself) or the applicant's attorney will be notified whether the diversion application has been approved. If the application is denied, notice will be sent in writing.
7. All Diversion Agreements must be prepared by the Douglas County District Attorney's office. No other Diversion Agreements will be accepted.
8. Completed applications – and any accompanying materials – must be submitted to the District Attorney's Office. The preferred method of delivery is via email to [dadiversions@douglascountyks.org](mailto:dadiversions@douglascountyks.org).

### **III. AGREEMENT**

If approved for the Diversion Program, a written Diversion Agreement shall be offered to the applicant with a deadline for acceptance. If the applicant chooses to accept, the applicant must execute and deliver the Agreement to the District Attorney's Office, along with proof of payment of applicable Court Costs, by the deadline. If the applicant fails to do so, the offer of Diversion may be withdrawn.

The Terms of the Diversion Agreement shall include:

1. A waiver of certain rights: speedy trial; speedy arraignment; preliminary hearing; jury trial.
2. Stipulation to the facts of the case.
3. Specific term of diversion agreement.
4. Agreement to remain law abiding.
5. Agreement to provide proof of completion of conditions specifically set forth in the Diversion Agreement.
6. Payment of court costs, fines, fees and other costs within specified period of time.
7. Payment of a restitution monitoring fee in all 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. Report as directed to Adult Services Officer (if specifically required under the terms of the Diversion Agreement)
  - d. Participate in counseling or special programs
  - e. Agreement to maintain a valid DL, insurance, registration, interlock (if required)
  - f. Participation in alcohol/drug treatment, and payment of costs for such
  - g. Any other conditions specifically set forth in the Diversion Agreement

### **IV. EFFECT**

Upon executing the Diversion Agreement the criminal proceeding shall be suspended by order of the Court. Upon successful completion of the Diversion Program, the District Attorney's Office shall dismiss the charges with prejudice. If the participant fails to complete the Agreement, the District Attorney's Office may move to revoke the Agreement. If the Agreement is revoked, the matter will proceed to a trial to the Court on stipulated facts as set out in the Diversion Agreement.

**DIVERSION FEE SCHEDULE**

Court Costs	\$ 108 for Traffic cases	Pay to Clerk of the District Court
	\$ 158 for Misdemeanor cases	Pay to Clerk of the District Court
	\$ 193 for Felony cases	Pay to Clerk of the District Court

Restitution payments	\$ varies	Pay to Clerk of the District Court
KBI Lab fee	\$ 400.00	Pay to Clerk of the District Court
Attorney-court appointed	\$ varies	Pay to Clerk of the District Court
Fine	\$ varies	Pay to Clerk of the District Court

The court costs must be paid to the Clerk of the District Court at the time of turning in the signed Diversion Agreement. All other costs are to be paid to the Clerk of the District Court within three months of signing the Diversion Agreement. If payments are not made, the Diversion Agreement may be revoked and the case will be returned to court docket for trial.