



*Adult Diversion*  
Sedgwick County Courthouse  
535 N. Main, Wichita, Kansas 67203

**Office of the District Attorney**  
*18<sup>th</sup> Judicial District of Kansas*

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**DIVERSION PROGRAM**

Pursuant to K.S.A. 22-2906 *et seq.* the District Attorney of the Eighteenth Judicial District of Kansas has established a diversion program for the Eighteenth Judicial District. Diversion is a privilege and not a right. There is no presumption in favor of diversion in any case, and the burden of persuasion falls upon the defendant to establish that a diversion program will serve the ends of justice and the interests of the community.

**ELIGIBILITY**

All defendants charged in a single case with nonperson crimes may be eligible for diversion. All defendants charged with severity level 1, 2 and 3 crimes, theft after two or more prior convictions, drug crimes, weapons violations or violations where weapons were involved, cruelty to animals, injury to domestic animals, crimes involving animals defined in K.S.A. 2018 Supp. 21-6411 to 21-6417, sex offenses and/or sexually motivated crimes, obscenity crimes, any offense involving a death or any attempt, conspiracy, or solicitation to commit the previously specified crimes are ineligible for diversion. Defendants with a prior felony conviction or diversion/deferred prosecution/deferred judgment for violent or sex offenses or any offense which resulted in an imposed prison sanction in this or any jurisdiction are ineligible for diversion. Defendants with a prior felony conviction or diversion/deferred prosecution/deferred judgment for any type of felony offense in this or any jurisdiction within 8 years prior to the current case are ineligible for diversion. All defendants charged with a person crime are ineligible to apply for diversion except those charged with violating or attempting to violate K.S.A. 2018 Supp. 21-5807(a)(1) (Burglary), 21-5807(b) (Aggravated Burglary), 21-5414(a)(b)(1) (first-time misdemeanor Domestic Battery), 21-5607(a) (Furnishing Alcohol to a Minor), and 21-5608(a) (Unlawful Hosting). Defendants who have warrants or pending felony cases in this or any jurisdiction for separate legal actions are ineligible for diversion. Defendants charged with certain drug offenses, DUI, or certain traffic infractions may be eligible for diversion under separate diversion programs administered by the District Attorney.

## PROCEDURE

The application is available on the District Attorney's website and in the Diversion Office. **For the defendant's completed application to be considered, it must be submitted to the Diversion Office with the appropriate fee within thirty (30) days of the first CAD setting or within thirty (30) days of the first scheduled IAD preliminary hearing.** A **non-refundable \$45.00 criminal history fee** shall be due at the time of application in order to determine the defendant's eligibility for diversion regarding their criminal, traffic, and juvenile record. **Eligibility does not guarantee acceptance for diversion.**

If the defendant is determined to be ineligible for consideration for diversion, the defendant will be notified. If the defendant is eligible for consideration for diversion, he or she will be scheduled for an interview with a diversion coordinator, which the defendant's attorney may attend. A **non-refundable \$45.00 Application Fee** must be paid on or before the interview date. The defendant shall give such information as may be necessary for the Diversion Committee to determine his or her eligibility and suitability for diversion, including information which may otherwise be privileged. The defendant may also be required to submit to an evaluation to address the specific needs of the defendant.

Payment for both the criminal history fee and application fee may be submitted at the time of application, in one payment, if the defendant chooses. **Fees must be in the form of a cashier's check, money order, or attorney's trust account check made payable to "District Attorney."**

## CONSIDERATIONS

The following 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:

- Nature of the crimes charged and the surrounding circumstances
- Any special characteristics or circumstances of the defendant
- Previous criminal conduct, whether or not such conduct resulted in a formal charge or conviction of the defendant
- The probability that the defendant will cooperate with and benefit from diversion
- The appropriateness of diversion to meet the needs of the defendant and the community
- Provisions for restitution
- Recommendations of the law enforcement agency involved and the victim
- Recommendations of a diversion coordinator and/or assessment evaluator
- Any mitigating or aggravating circumstances
- Whether the defendant admits the offense and accepts responsibility
- Whether there is a probability the defendant committed the crime 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 while in the U.S. Armed Forces, and, if so, whether there is a probability the defendant will cooperate with and benefit from inpatient or outpatient treatment in a facility operated by the U.S. Department of Defense, the U.S. Department of Veterans Affairs, or the Kansas National Guard, with the defendant's consent, as a condition of diversion.

## **DETERMINATION**

The Diversion Committee will review the defendant's suitability for diversion and make a recommendation to the District Attorney. The District Attorney reserves the right to accept or reject the recommendations of the Diversion Committee in making the final determination of the defendant's suitability for diversion. Once a defendant is denied diversion, an application will not be reconsidered unless material circumstances have arisen which were not initially brought to the attention of the Diversion Coordinator and/or the District Attorney.

## **AGREEMENT**

If the defendant is found suitable for the Diversion Program, a written agreement for pretrial diversion shall be offered to the defendant for acceptance or rejection. If the offer is accepted by the defendant, all parties shall sign the written agreement for pretrial diversion with the approval of the court. This agreement may contain:

- A waiver of all rights to a speedy trial, all rights to a jury trial and a stipulation as to the facts of the case
- A specified term of diversion and an agreement that the defendant shall remain on a pre-trial release bond during the diversion term
- An agreement that the defendant shall not violate any laws of the United States or any state, or ordinances of any city, or resolutions of any county
- An agreement that the defendant shall report to a diversion coordinator or to any other person at the time he or she may be ordered to do so by a diversion coordinator, or anyone so designated by a diversion coordinator
- Payment of all court costs, diversion costs, fees and fines within a specified period
- Any special conditions agreed to by the parties which may include any of the following:
  1. Full restitution to the victim and payment of associated costs
  2. Residence in a specified facility
  3. Maintenance of gainful employment
  4. Participation in any recommended treatment, counseling, or other program
  5. Performance of community service
  6. Other conditions as determined by the District Attorney

## **EFFECT**

Upon the defendant entering into an agreement for pretrial diversion, the criminal proceeding shall be suspended by appropriate order of the court. When the defendant successfully fulfills the terms and conditions of diversion, the District Attorney shall move to have the criminal charges dismissed with prejudice. If the defendant fails to fulfill the terms and conditions of the agreement for pretrial diversion, the District Attorney will request that the diversion be terminated. After an appropriate hearing, the court, upon finding the defendant has failed to fulfill the terms of the agreement shall order diversion terminated. Criminal proceedings on the original complaint shall be resumed.