

OFFICE OF THE DISTRICT ATTORNEY

EIGHTEENTH JUDICIAL DISTRICT OF KANSAS

AARON BREITENBACH

*Deputy District Attorney
Administration*

BOYD ISHERWOOD

*Deputy District Attorney
Appeals and Post-Conviction Divisions*

MARC BENNETT

DISTRICT ATTORNEY



RON PASCHAL

*Deputy District Attorney
Juvenile Division and Ethics
Coordinator*

SHANNON WILSON

*Deputy District Attorney
General Trial Divisions and Attorney
Training*

Juvenile Diversion Programs

Pursuant to K.S.A. 38-2346 and amendments thereto, the District Attorney of the Eighteenth Judicial District of Kansas has established diversion programs for juveniles. 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 respondent to establish that a diversion will serve the ends of justice and the interests of the community. The parent(s) or guardian(s) of the juvenile offender will be required to be a part of the diversion program.

Eligibility

Juveniles charged with the following crimes are eligible to apply for diversion if they do not have more than one pending case and have no prior juvenile adjudication, convictions other than traffic infractions, diversion or deferred prosecution in this or any jurisdiction:

- Theft
- Criminal deprivation of Property or Motor Vehicle
- Criminal Damage to Property
- Burglary (exceptions for Aggravated Burglary could be case specific ie: attached garage)
- Criminal Trespass
- Forgery
- Giving a Worthless Check
- Criminal Use of a Financial Card
- Battery (Charges involving bodily harm are reviewed individually)
- Disorderly Conduct
- Minor in Possession/Consumption of Alcohol
- Possession of Drug Paraphernalia
- Misdemeanor Possession of Controlled Substances
- Felony Possession of Controlled Substances (Only charges filed on or after September 1, 2013)
- Other non-violent crimes, at the discretion of the District Attorney
- Arson (with exception for but not limited to: Aggravated Arson or use of explosives or some incendiary devices)

Charges involving bodily harm or violence are not eligible. Cases involving weapons; explosives; manufacturing, distribution or sales of controlled substances; sex/sexual motivation or death are not eligible for diversion regardless of the resulting charge. Gang members are not eligible for diversion.

Application Procedure

Respondents will be notified of their eligibility for diversion at their initial appearance in court. Eligible respondents who wish to apply for diversion must report to the District Attorney's Diversion Office immediately following their initial appearance in court. The respondent and his/her parent or verifiable guardian shall complete and sign the application for diversion and submit the application and processing fee to the Diversion Office by the end of the next business day.

Applications not so filed, will not be considered without good cause. The processing fee for charges involving drugs or alcohol is \$45 (two money orders: \$25/\$20). The fee for all other offenses is \$25. This fee is non-refundable and must be made in the form of a cashier's check, money order, or attorney's trust account check made payable to the District Attorney. In the event that a family is truly indigent and is unable to submit an application fee, there is an application to waive the diversion application fee available upon their request. The application process takes approximately 6-8 weeks.

Considerations

The District Attorney will consider many factors to determine if diversion will be in the best interest of justice and will be of benefit to the respondent and the community including but not limited to:

- Nature of the crime charged and surrounding circumstances.
- Any special characteristics or circumstances of the respondent.
- Previous criminal conduct, whether or not such conduct resulted in a formal charge or adjudication of the respondent.
- The probability that the respondent will cooperate with and benefit from diversion.
- The appropriateness of this diversion program for the needs of the respondent and the community.
- Provisions for payment of restitution
- Any mitigating or aggravating circumstances.
- Whether the respondent admits the offense and accepts responsibility and displays the appropriate attitude and concern about criminal activity.

Determination

The respondent and at least one parent/guardian will be scheduled to appear at an interview with a Diversion Coordinator. Failure to attend the scheduled interview will result in the respondent being denied diversion. The respondent will fully cooperate and provide such information as may be necessary to determine suitability of the respondent for diversion, including information which would otherwise be privileged. The respondent shall submit to and pay for a substance abuse evaluation, mental health evaluation or other assessments if determined necessary by the District Attorney.

The respondent and parent/guardian will sign a release of information for any records requested by the District Attorney. This may include educational records; mental health records, substance abuse treatment records, legal records, or any other records deemed necessary by the District Attorney.

The District Attorney's Diversion Committee will review the respondent's suitability for diversion. The District Attorney reserves the right to accept or reject any applicant. If a respondent is denied diversion, he/she will not be reconsidered unless good cause to do so is provided by the respondent's attorney. Such cause should be detailed in a "letter of reconsideration" addressed to the Diversion Committee. The letter should also include any updated contact information for the respondent/family and a return court date. In the event that a letter of reconsideration is needed, an application will not be dispersed or accepted until said letter has been received by the Diversion Committee.

Agreement

If approved for the Diversion Program, a written Agreement for Pretrial Diversion shall be offered to the respondent and his/her parent or guardian for review. The agreement will contain a waiver of all rights to a jury trial and speedy trial, a stipulation of the facts of the case, the length of the diversion term, and all conditions which the respondent will have to complete prior to expiration of the agreement. The Agreement must be signed by the respondent and his/her parent(s) or verifiable legal guardian.

Effect

Upon the respondent entering into an Agreement for Pretrial Diversion, the juvenile proceeding shall be suspended by the appropriate order of the Court. When respondent successfully fulfills the terms and conditions of diversion, the District Attorney shall move to have the respondent's charges dismissed with prejudice. If the respondent fails to fulfill the terms and conditions of diversion, the District Attorney will request that diversion be terminated. After an appropriate hearing, the Court, upon finding the respondent has failed to fulfill the terms of the Agreement for Pretrial Diversion, shall order diversion terminated and the Juvenile proceedings on the original complaint shall be resumed.