



**OFFICE OF THE COUNTY ATTORNEY  
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**Torrance R. Parkins, County Attorney**

**ADULT OFFENDER DIVERSION PROGRAM  
POLICY AND PROCEDURES**

Pursuant to K.S.A. 22-2907, the McPherson County Attorney has established the following guidelines for the diversion application process. These guidelines are effective for any offense committed on or after July 1, 1997. No qualified applicant will be denied diversion solely due to inability to pay any of the costs thereof. No person shall be denied diversion on the basis of race, color, national origin, sex, age, disability, surname, or religious affiliation.

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 Defendant to establish that a Diversion Agreement will best serve the ends of justice, the interests of the community, public safety, and the rights of the victims.

In determining whether or not to grant Diversion, the County Attorney will consider whether the Defendant 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 Defendant will cooperate and benefit from the program, the impact on the community of placing the Defendant on Diversion, the recommendations of the involved law enforcement officers and victims, the amount of restitution owed, and any mitigating and aggravating circumstances surrounding the crime.

It is not required that a defendant have an attorney for the purpose of diversion. A defendant on an adult criminal case has the right to obtain an attorney and have him or her present throughout the diversion application process. Defendants that are approved for diversion may be required to pay any court appointed attorney's fees.

**ELIGIBILITY**

It is presumed by these guidelines that Diversion is not appropriate in the following circumstances:

1. The Defendant is charged with a crime contained in Article 54, 55, or 56 of Chapter 21 of the Kansas Statutes Annotated.

2. The Defendant is charged with a crime classified as a felony.
3. The Defendant has other pending criminal matters or a prior criminal record.
4. The Defendant has participated in a diversion program previously.
5. The Defendant has been charged with an offense involving a firearm.

A diversion shall not be granted in lieu of further criminal proceedings if:

1. The Defendant is charged with DUI, of a state or local traffic control law, pursuant to K.S.A. 8-1567 and:
  - a. The Defendant has a previous conviction for DUI. "Conviction" includes being convicted of a violation of this section or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section. "Conviction" includes being convicted of a violation of a law of another state or an ordinance of any city, or resolution of any county, which prohibits the acts that this section prohibits or entering into a diversion agreement in lieu of further criminal proceedings in a case alleging a violation of such law, ordinance or resolution, or
  - b. During the time of the alleged violation was involved in a motor vehicle accident or collision resulting in death or personal injury to any person.
  - c. The Defendant was a holder of a commercial driver's license, in any type of motor vehicle. A person shall be considered a holder of a commercial driver's license if the person was a holder of a commercial driver's license at the time the person was arrested or was issued a citation and shall remain a holder of a commercial driver's license even if the person surrenders the commercial driver's license after the arrest or citation.
2. The complaint alleges that the Defendant committed the following:
  - a. An off-grid crime, or
  - b. A severity level 1, 2, or 3 non-drug felony, or
  - c. A severity level 1, 2, or 3 drug felony.

## **PROCEDURES**

The Defendant must appear for all scheduled court hearings during the application process, unless otherwise ordered by the court.

Applications for diversion must be received any time before or within fourteen (14) days of Defendant's first appearance or such application may be denied.

1. A \$50.00 non-refundable application fee must accompany the diversion application or the application for diversion will not be accepted, unless otherwise waived due to severe financial hardship. Payment may be made by cash, personal check, trust account check, money order, or cashier's check – we cannot accept electronic payment (cards) at this time.
2. The application must be completed on the forms provided by the County Attorney's Office.

Upon receipt of an application, a pre-diversion conference may be held between the Defendant, the Diversion Coordinator, and other interested parties, for which all of the applicable factors will be considered. The County Attorney will then review the Defendant's case for a final determination. After a determination has been made, the Defendant (if not represented by an attorney) or the Defendant's Attorney will be notified whether or not the diversion application has been approved. If the application is denied, notice will be given in writing.

Upon the determination that the Defendant is an acceptable candidate for entering the Diversion Program, a written Diversion Agreement will be prepared by the Diversion Coordinator.

The Diversion Agreement will include:

1. The Defendant's full name; the Defendant's full name at the time the complaint was filed, if different from the Defendant's current name; the Defendant's sex, race and date of birth; the crime with which the Defendant is charged; the date the complaint was filed; and the district court with which the Agreement is filed.
2. A specific waiver of all rights under the law or the Constitution of Kansas or of the United States to a speedy arraignment, preliminary examinations and hearings, and a speedy trial, and in the case of diversion for a DUI, waiver of the rights to counsel and trial by jury.
3. A stipulation, agreed to by the Defendant, the Defendant's Attorney, if the Defendant is represented by an attorney, and the County Attorney, of the facts upon which the charge is based and a provision that if the Defendant fails to fulfill the terms of the specific Diversion Agreement and the criminal proceedings on the complaint are resumed, the proceedings, including any proceedings on appeal, shall be conducted on the record of the stipulation of facts relating to the complaint.
4. If the original charge(s) included DUI, the Agreement must also include a requirement that the Defendant: Pay a fine specified by the agreement in an

amount equal to an amount authorized by K.S.A. 8-1567, and amendments thereto, for a first offense or, in lieu of payment of the fine, perform community service specified by the agreement, in accordance with K.S.A. 8-1567, and amendments thereto; and enroll in and successfully complete an alcohol and drug safety action program or a treatment program, or both, as provided in K.S.A. 8-1008, and amendments thereto, and specified by the agreement, and pay the assessment required by K.S.A. 8-1008, and amendments thereto.

The Diversion Agreement may include, but is not limited to:

1. Provisions concerning payment of restitution, including court costs and diversion costs, residence in a specified facility, maintenance of gainful employment, and participation in programs offering medical, educational, vocational, social and psychological services, corrective and preventive guidance and other rehabilitative services.
2. A fee in an amount equal to the minimum statutory fine listed within the statute for the crime(s) charged. If the legislature has imposed no minimum fine within the statute, no fee in lieu of a fine will be imposed as a condition of diversion.
3. Any other lawful conditions required by the County Attorney.

Unless otherwise required by law, the County Attorney may reduce or waive any costs associated with the Diversion Program.

The Diversion Agreement must be signed by the Defendant, the Defendant's Attorney, if any, and the County Attorney or a Deputy County Attorney before such diversion is in effect.

Upon the Defendant entering into a Diversion Agreement, the criminal proceedings will be suspended. Upon the Defendant's successful completion of the terms and conditions of said agreement, the County Attorney or Deputy County Attorney will move to have the criminal charges dismissed with prejudice against the Defendant.

If, prior to the expiration of the diversion agreement period, it has been determined that the Defendant failed to fulfill the terms and conditions of the Agreement, the County Attorney or Deputy County Attorney will make notice to the Court and the Defendant or Defendant's Attorney of the failure. If the Court finds the Defendant has failed to fulfill the terms and conditions of the Agreement at a hearing thereon, the Agreement shall be terminated and the original criminal proceedings shall resume upon the facts as they were stipulated to within the Agreement.

(For Office Use Only)

Case: \_\_\_\_\_ Application Fee: \_\_\_\_\_ Date Received: \_\_\_\_\_

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**APPLICATION FOR THE CRIMINAL DIVERSION PROGRAM**

All answers must be complete. After completing the Application, please return it to the County Attorney's Office with the \$50.00 non-refundable Application Fee; cash, check, or money order are accepted. Application Fee must be made payable to McPherson County. A waiver of the Application Fee due to severe financial hardship may be requested and will be considered upon submission of a completed Application.

**Out of State Drivers**

**Must include a Certified Copy of their Driving Record with this Application**

Note: This Application must be completed and returned, by mail or in person, to the County Attorney's Office before or within fourteen (14) days of the First Appearance in Court.  
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\_\_\_\_\_  
Last Name First Name Middle Name

\_\_\_\_\_  
Other names (Maiden, Alias, Street Names)

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City State, Zip Code Email Address

\_\_\_\_\_  
Primary Phone Number Secondary Phone Number

\_\_\_\_\_  
Social Security Number Age Date of Birth (MM/DD/YYYY)

\_\_\_\_\_  
Driver's License Number State of Issuance CDL?

\_\_\_\_\_  
Defense Attorney (if any) Phone Number

\_\_\_\_\_  
Defense Attorney Address

\_\_\_\_\_  
Charges Filed Against You

\_\_\_\_\_  
Race: \_\_\_\_\_ Sex: \_\_\_\_\_ Hispanic: \_\_\_\_\_



**Employment History:**

Present Employer: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_

Date of Hire: \_\_\_\_\_ Occupation: \_\_\_\_\_

Salary: \_\_\_\_\_

Previous Employer: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_

Dates Employed: \_\_\_\_\_ to \_\_\_\_\_ Occupation: \_\_\_\_\_

Reason Left: \_\_\_\_\_

2<sup>nd</sup> Previous Employer: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_

Dates Employed: \_\_\_\_\_ to \_\_\_\_\_ Occupation: \_\_\_\_\_

Reason Left: \_\_\_\_\_

**Present Income Sources:**

Defendant's Employment: \$ \_\_\_\_\_ / month

Spouse's Employment: \$ \_\_\_\_\_ /month

Unemployment Compensation: \$ \_\_\_\_\_ /month

Public Assistance: \$ \_\_\_\_\_ /month

Other Income: \$ \_\_\_\_\_ /month

(If other income, please indicate source.)

**History:**

Have you ever received or attended counseling or treatment for an alcohol, drug, emotional or psychological problem or disorder? \_\_\_\_\_ Yes \_\_\_\_\_ No

If yes, state when, where and reason for attendance:

**Prior Traffic Offense Record:**

(List all arrests, citations, orders to appear, prosecutions, convictions, expungements or deferred prosecution agreements in Kansas or any other states, including those not resulting in formal charges or convictions. Include date of incident, agency involved, charge and disposition.)

**Prior Criminal Offense Record:**

(List all arrests, citations, orders to appear, prosecutions, convictions, expungements or deferred prosecution agreements in Kansas or any other states, including those not resulting in formal charges or convictions. Include date of incident, agency involved, charge and disposition.)

(Applicant may attach personal reference letters.)

## **APPLICATION AGREEMENT**

I hereby apply for status as a participant in the Diversion Program and request that the County Attorney temporarily delay trial against me in order to permit consideration of this Application. I understand that it is my responsibility to submit a Diversion Application in a prompt and timely fashion and within the guidelines set by the County Attorney and that it will be my responsibility to seek any continuance or waiver of the jury trial in order to provide the necessary time for my Diversion Application to receive a full and complete review by the County Attorney's Office.

I understand that if the County Attorney's Office is required to make a decision concerning my application prior to the Office having the opportunity to make a full and complete review, my application request will be denied. I further understand that the final decision to commence criminal proceedings or to defer prosecution in my case rests entirely with the County Attorney.

I authorize the County Attorney's Office to conduct an investigation to determine my suitability for this program. I understand that any information provided by me or authorized to be released by me to the County Attorney's Office will be kept confidential.

A false answer to or omission of any question in this Application shall be grounds for recommendation against placement into this program or removal from the program after placement. I understand that the County Attorney will then resume prosecution of the original charge(s).

I understand and agree that in the event it is learned I have falsified or omitted any part of the Application for Diversion, including, but not limited to, my listing of prior traffic and criminal offenses, it shall be considered a violation of my Pre-trial Diversion Agreement and I may be removed from the Diversion Program. I agree that a criminal justice report, including, but not limited to, a Department of Justice report, KBI report, Police Department and/or Sheriff's Department report, and/or a Department of Revenue report, may be admitted as evidence in any court, without foundation, to prove prior traffic or criminal offenses.

I understand that failure to respond to any question will render this Application incomplete and that the County Attorney's Office will not consider the Application.

**APPLICATION AGREEMENT cont.**

I declare (or verify, certify or state) under penalty of perjury under the laws of the State of Kansas that I have personally read or have had read to me the above Application for Diversion and responses thereto and that all information contained in the forgoing Application for the Pre-trial Diversion Program is true and correct.

\_\_\_\_\_  
Applicant's Signature

\_\_\_\_\_  
Date

I authorize the County Attorney's Office to conduct a background check of my past employment record and I authorize my present and previous employers to furnish the County Attorney's Office with any information they request. I further authorize the County Attorney's Office to contact my liability insurance carrier and authorize them to release information.

\_\_\_\_\_  
Applicant's Signature

\_\_\_\_\_  
Date

I authorize the County Attorney's Office to release all records in their possession, including, but not limited to, criminal history information and investigation reports to the Diversion Committee, or any other evaluating agency which may participate in evaluating me during my application process.

\_\_\_\_\_  
Applicant's Signature

\_\_\_\_\_  
Date