



**OFFICE OF THE COUNTY ATTORNEY
McPHERSON COUNTY, KANSAS**

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Criminal Diversion Program

Pursuant to K.S.A. 22-2906 et seq. the County Attorney of the Ninth Judicial District of Kansas has established a Diversion Program. 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 best serve the ends of justice, the interests of the community, public safety, and the rights of the victims. 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.

Eligibility

All defendants charged in a single case with nonperson crimes, except those involving Class A and B felonies, severity level 1, 2 and 3 crimes, theft after two or more prior convictions, weapons violations, cruelty to animals, injury to domestic animals, crimes involving animals defined in K.S.A. 2011 Supp. 21-6411 to 21-6417, sex offenses and/or sexually motivated crimes, obscenity crimes, any offense involving a death or any attempt to commit the previously specified crimes, may be eligible for diversion if they have no prior felony convictions and have never previously been placed on diversion, deferred prosecution, pretrial probation or deferred judgment for a criminal offense in this or any jurisdiction. 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. 2011 Supp., 21-5414(a)(b)(1) (first-time misdemeanor Domestic Battery), and 21-5608(a) (Unlawful Hosting). All defendants charged with an anticipatory crime under Article 53 of Kansas

Statutes Annotated, where the underlying crime is an offense that is not a divertible offense as described above, are ineligible for diversion. Defendants who have holds from other jurisdictions or law enforcement agencies for separate legal actions are ineligible for diversion. Certain first-time offenders charged with DUI, or defendants charged with certain traffic violations may be eligible for diversion under separate diversion programs administered by the County Attorney.

Application Procedure

The application is available on the County Attorney's website and in the Diversion Office. The application must be completed on the forms provided by the McPherson County Attorney's Office. For the defendant's completed application to be considered, it must be submitted to the Diversion Coordinator with the appropriate fee prior to the first Preliminary Hearing date. A non-refundable \$50.00 Criminal History and Application 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. Payment for the Criminal History and Application Fee shall be submitted at the time of application, in one payment, if the defendant chooses. Fees must be in the form of cash, a personal check, cashier's check, money order, or attorney's trust account check made payable to "McPherson County."

If the crime involves Domestic Battery, the applicant must obtain a domestic batterer's evaluation. The evaluation must be obtained through a provider approved by the Kansas Attorney General (or the like in your respected State of Residence) after the diversion agreement is filed. A list of approved Kansas agencies can be found at <https://ag.ks.gov/victim-services/bip>. 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.

The Domestic Violence Policy for McPherson County is included with this application.

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 may be scheduled for an interview with

a Diversion Coordinator, which the defendant's attorney may attend. The defendant shall give such information as may be necessary for the Diversion Coordinator 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. 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 still be required to pay any court-appointed attorney's fees.

Considerations of the Applicant

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. 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, the public safety, and the rights of the victims:

- Nature of the crime 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 the Diversion Coordinator and/or assessment evaluator
- Any mitigating or aggravating circumstances
- Whether the defendant admits the offense and accepts responsibility

McPherson County Attorney's Office

Prosecution Policy for Domestic Violence Cases

The purpose of this policy is to deal more effectively with domestic violence cases. The McPherson County Attorney's Office will aggressively prosecute incidents of domestic violence. The goal of this policy is to protect the victim, deter the offender from committing further acts of violence, and to raise community awareness of domestic violence.

1. The McPherson County Attorney's Office will file charges in all cases referred to this office by law enforcement where there is sufficient evidence to prosecute. Prior to filing charges, the law enforcement officer investigating the case will obtain, when possible, a written statement from the victim.
2. Victims will be informed of their rights under the Victims' Rights Constitutional Amendment including the right to be informed of and to be present at public hearings and the right to be heard at sentencing.
3. At the first appearance, the prosecutor will request that a no contact condition be placed on the applicant's bond. This condition will remain in place while the case is pending unless the victim appears, and for good reason, requests that the condition be removed.
4. Factors to consider if the applicant wishes to apply for diversion are: the victim's position regarding the case, the safety of the victim and the community, the nature and extent of the victim's injuries, the applicant's prior criminal record, the applicant's prior history of domestic abuse, the applicants willingness to comply with the terms of the program and the prognosis of the applicant's evaluation.
5. A victim's request for a domestic violence case to be dismissed will not automatically result in the dismissal of that case. Such a request on the part of a victim is just one of a number of factors the County Attorney's Office will consider when deciding how to proceed with a domestic violence case.

Determination

The Diversion Coordinator will review the defendant's suitability for diversion and make a recommendation to the County Attorney. The County Attorney reserves the right to accept or reject the recommendations of the Diversion Coordinator 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 County Attorney.

Agreement

All Diversion Agreements must be prepared by the McPherson County Attorney's office. No other Diversion Agreements will be accepted. 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 no action is taken within the allotted time after the mailing of the offer, the offer will be considered to be withdrawn. 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
- 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 the Diversion Program Coordinator or to any other person at the time he or she may be ordered to do so by the Court, or anyone so designated by the Court
- Payment of all court costs, Diversion costs, fees and fines within a specified period. (Unless otherwise required by law, the County Attorney retains the right to reduce or waive any costs associated with the Diversion Program.)
- Any special conditions agreed to by the parties which may include but is not limited to any of the following:
 1. Full restitution to the victim
 2. Residence in a specified facility
 3. Maintenance of gainful employment
 4. Participation in any recommended program
 5. Counseling or substance abuse treatment
 6. Performance of community service
 7. Other conditions as determined by the County 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 County Attorney shall move to have the criminal charges dismissed with prejudice. At some point, the Defendant may become eligible for an expungement of the charges, to which any questions may be directed towards your attorney.

If the defendant fails to fulfill the terms and conditions of the Agreement for Pretrial Diversion, the County Attorney will request that the diversion be revoked. After an appropriate hearing, the Court, upon finding the defendant has failed to fulfill the terms of the Agreement shall order Diversion revoked. Criminal proceedings on the original complaint shall be resumed.

City and state where born: _____

Who do you live with?

Name

Relationship

<u>Name</u>	<u>Relationship</u>

How long have you lived at this current address? _____

In what other cities and states have you lived?

City

State

Dates Lived There

<u>City</u>	<u>State</u>	<u>Dates Lived There</u>

Marital Status: _____ Spouse's Name: _____

Education and vocational training (include high school or highest grade completed if not high school graduate)

Name of School

Location

Dates Attended

Grade or Degree

<u>Name of School</u>	<u>Location</u>	<u>Dates Attended</u>	<u>Grade or Degree</u>

Have you been in the military? _____ No _____ Yes What branch? _____

Type of Discharge/Date: _____

Nearest Contact:

Name: _____ Primary Phone: _____

Address: _____

Relationship to you: _____

Employment History:

Present Employer: _____ Phone: _____

Address: _____

Date of Hire: _____ Occupation: _____

Salary: _____

Previous Employer: _____ Phone: _____

Address: _____

Dates Employed: _____ to _____ Occupation: _____

Salary: _____

Reason Left: _____

2nd 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 AGGREEMENT 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 Coordinator, or any other evaluating agency which may participate in evaluating me during my application process.

Applicant's Signature

Date