



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

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**JUVENILE 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 Juvenile to establish that a diversion agreement will best serve the interests of the community, the ends of justice, the rights of victims, and for public safety.

In determining whether or not to grant diversion, the County Attorney will consider whether the Juvenile 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 Juvenile will cooperate and benefit from the program, the impact on the community of placing the Juvenile 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.

**ELIGIBILITY**

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

1. The Juvenile is charged with a crime contained in Article 54, 55, or 56 of Chapter 21 of the Kansas Statutes Annotated.
2. The Juvenile is charged with a crime classified as a felony.
3. The Juvenile has other pending criminal matters or a prior criminal record.
4. The Juvenile has participated in a diversion program previously.

5. The Juvenile has been charged with an offense involving a firearm.

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

1. The Juvenile is charged with DUI, pursuant to K.S.A. 8-1567 and:
  - a. The Juvenile 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 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 Juvenile 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 Juvenile 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 Juvenile'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 Juvenile, the Juvenile's Attorney, the County Attorney or Deputy County Attorney, the Diversion Coordinator, and other interested parties, for which all of the applicable factors will be considered. The County Attorney will then review the Juvenile's case for a final determination. After a determination has been made, the Juvenile'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 Juvenile 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 Juvenile's full name; the Juvenile's full name at the time the complaint was filed, if different from the Juvenile's current name; the Juvenile's sex, race and date of birth; the crime with which the Juvenile 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 Juvenile, the Juvenile's Attorney, and the County Attorney, of the facts upon which the charge is based and a provision that if the Juvenile 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 Juvenile: 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 Juvenile, the Juvenile's Parent(s) or Guardian(s), the Juvenile's Attorney, and the County Attorney or a Deputy County Attorney before such diversion is in effect.

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

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

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

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**APPLICATION FOR THE JUVENILE PRETRIAL DIVERSION PROGRAM**

All answers must be complete. After completing the application, please return 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.

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 after the First Appearance in Court.

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\_\_\_\_\_  
Last Name First Name Middle Name

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

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

\_\_\_\_\_  
Address cont. City State Zip Code

\_\_\_\_\_  
Primary Phone Number Secondary Phone Number Email Address

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

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

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

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

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

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

\_\_\_\_\_  
City and state where born: \_\_\_\_\_



**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 Family Income Sources:**

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

Parent'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 juvenile incidents, 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 juvenile incidents, 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 denied entry into, or 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.

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.

\_\_\_\_\_  
Juvenile Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Parent Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Parent 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.

\_\_\_\_\_  
Juvenile Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Parent Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Parent 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.

\_\_\_\_\_  
Juvenile Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Parent Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Parent Signature

\_\_\_\_\_  
Date