



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

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**GREGORY T. BENEFIEL, County Attorney**

## **Juvenile Diversion Program**

Pursuant to K.S.A. 22-2906 et seq. the County Attorney of the Ninth Judicial District of Kansas has established a Juvenile 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 Juvenile and their Parent(s)/Guardian(s) 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.

### **Important Information for Juvenile Diversion Applicants**

Each applicant for diversion will have to accept responsibility for the actions, which brought them before the court. Accepting responsibility is the first step toward the goal of deterring the respondent from committing further illegal acts. The parent(s) or guardian(s) of the juvenile offender will be required to be a part of the diversion program.

- Please consult with your attorney or contact the juvenile diversion office to determine if you are eligible to apply.
- The applicant and a parent/guardian must appear before the court on the date and time listed on the court summons. Completion of this application does not excuse you from your required court appearance. The application will not be accepted until you have made your first appearance in court.
- The application must be returned to the diversion office no later than 7 days after the first court appearance.

### **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 are case specific eg: attached garage)
- Criminal Trespass
- Forgery
- Giving a Worthless Check
- Criminal Use of a Financial Card
- Misdemeanor Battery
- 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 9/01/2013)
- Other non-violent crimes, at the discretion of the County Attorney
  - Arson (Not including Aggravated Arson or use of explosives or some incendiary devices)
  - Animal Cruelty

Cases involving: firearms and 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.

### **Applicant 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 juvenile's completed application to be considered, it must be returned to the diversion office no later than seven (7) days after the first court appearance.

Eligibility does not guarantee acceptance for diversion. If the juvenile is determined to be ineligible for consideration for diversion, the juvenile will be notified. If the juvenile is eligible for consideration for diversion, he or she may be scheduled for an interview with a Diversion Coordinator, which the juvenile's attorney and parents may attend. The juvenile 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 juvenile may also be required to submit to an evaluation to address the specific needs of the juvenile. Juveniles 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 juvenile is in the best interest of justice and will be of benefit to the juvenile 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 juvenile
- Previous criminal conduct, whether or not such conduct resulted in a formal charge or conviction of the juvenile
- The probability that the juvenile will cooperate with and benefit from diversion
- The appropriateness of Diversion to meet the needs of the juvenile 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 juvenile admits the offense and accepts responsibility

## **Determination**

The Diversion Coordinator will review the juvenile'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 juvenile's suitability for diversion. Once a juvenile 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 juvenile is found suitable for the Diversion Program, a written Agreement for Pretrial Diversion shall be offered to the juvenile for acceptance or rejection. If no action is taken within the allotted time after the mailing of the offer, the offer will be considered rejected. If the offer is accepted by the juvenile, 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 juvenile 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 juvenile 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 juvenile entering into an Agreement for Pretrial Diversion, the criminal proceeding shall be suspended by appropriate order of the Court. When the juvenile 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 juvenile 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 juvenile has failed to fulfill the terms of the Agreement shall order Diversion revoked. Criminal proceedings on the original complaint shall be resumed.

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

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**APPLICATION FOR THE JUVENILE DIVERSION PROGRAM**

All answers must be complete. After completing the Application, please return it to the County Attorney's Office. This Application must be completed and returned, by mail or in person.

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

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

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

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

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

\_\_\_\_\_  
Race Sex Hispanic?

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

\_\_\_\_\_  
Defense Attorney (if any) Phone Number City, State

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

**Parent/Guardian Contact Information:**

Name: \_\_\_\_\_ Primary Phone: \_\_\_\_\_

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

Relationship to you: \_\_\_\_\_ Employer: \_\_\_\_\_

**Parent/Guardian Contact Information:**

Name: \_\_\_\_\_ Primary Phone: \_\_\_\_\_

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

Relationship to you: \_\_\_\_\_ Employer: \_\_\_\_\_

**Who do you live with?**

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

How long have you lived at this current address? \_\_\_\_\_

**In what other cities and states have you lived?**

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

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

<u>Name of Dependents</u>	<u>Relationship</u>	<u>Age</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

**Education**

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

**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

\_\_\_\_\_  
Attorney 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

\_\_\_\_\_  
Attorney 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

\_\_\_\_\_  
Attorney Signature

\_\_\_\_\_  
Date