



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

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**TRAFFIC MISDEMEANOR 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**

If the Defendant does not have more than one moving violation on their driving record in the past 12 months or more than two moving violations in the past 24 months, they may be eligible for a traffic diversion.

- Drivers with a valid Commercial Driver's License (CDL) per K.S.A. 8-2,150 are not eligible for diversion of moving violations. A driver or a holder of a commercial driver's license may not enter into a diversion agreement in lieu of further criminal proceedings that would prevent such person's conviction for any violation, in any type of motor vehicle, of a state or local traffic control law. 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.

- Traffic Violations committed in a road construction/road work zone or in a school zone are not eligible for diversion.
- A defendant currently on a Diversion Program is generally not eligible for Diversion.

## **PROCEDURE**

The Defendant shall complete this Application for the Traffic Misdemeanor Diversion Program and submit the Application with a \$25.00 non-refundable fee before or within two weeks after the First Appearance date in Court.

- If the Defendant has been charged with No Proof of Insurance, please provide this office with current proof of insurance. The Diversion Application cannot be processed without this information.
- If the Defendant has been charged with No Driver's License, please provide this office with a copy of a valid driver's license. The Diversion Application cannot be processed without this information.
- If the Defendant's Driver's License is registered in a state other than Kansas, the Defendant must include a Certified Copy of their Driving Record when submitting this Application. The Diversion Application cannot be processed without this information.

If the Defendant is interested in participating in the Diversion Program, the Defendant must not pay the fine and court costs until they have received a Diversion Agreement, which must be signed and returned to the County Attorney's Office by the due date. The Diversion Agreement must be accompanied by the total amounts due. The amounts due will be a Diversion Fee plus the original Fine and Court Costs. The Diversion Fees are as follows:

1-10 MPH over the posted speed limit:	\$50.00 (diversion fee) + \$108.00 (Court Costs) + fine
11-15 MPH over the posted speed limit:	\$100.00 (diversion fee) + \$108.00 (Court Costs) + fine
16-20 MPH over the posted speed limit:	\$150.00 (diversion fee) + \$108.00 (Court Costs) + fine
21+ MPH Over:	\$200 + \$10 for every MPH over + \$108.00 (Court Costs) + fine
Other Misdemeanors:	Diversion Fee Will Vary + Variable (Court Costs) + fine

If a defendant does not qualify for Diversion, they will be notified by mail. The Defendant will still have the same options as originally available at the time the citation was written.

Any questions regarding Fees and Court Costs for your offense can be directed to the Diversion Coordinator, (620) 241-1027 x 3.

Any questions regarding the scheduled court hearings in a case should be directed to the McPherson County District Court at (620) 241-3422.

(For Office Use Only)

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

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**APPLICATION FOR THE TRAFFIC MISDEMEANOR DIVERSION PROGRAM**

All answers must be complete. After completing the Application, please return it to the County Attorney's Office with the \$25.00 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 following 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