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McPHERSON COUNTY, KANSAS**

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Diversion Program – Driving Under the Influence and Other Alcohol-Related Offenses

Pursuant to K.S.A. 22-2906 et seq. the County Attorney of the Ninth Judicial District of Kansas has established a Diversion Program for traffic offenders charged with Driving Under the Influence (DUI) pursuant to K.S.A. 8-1567 et. seq. Persons charged with Refusal to Submit to Preliminary Breath Test (and no prior DUI), Minor in Possession, Minor in Consumption, and Furnishing Alcohol to a Minor may also be eligible for this program with similar requirements.

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 with DUI are eligible, except: 1) those previously convicted of DUI or DWI (Driving While Intoxicated) even if the case has been expunged and even if it was when the defendant was a juvenile, since July 1, 2001; 2) those previously diverted of a DUI or DWI in the Defendant's lifetime; 3) offenses where a personal injury to another party or a death of any party is involved; 4) offenses where one or more children under the age of 14 were in the vehicle; 5) offenses where the defendant's driver's license was revoked or suspended, except in cases where it is the first time the defendant's license has been suspended, the suspension is solely due to failure to comply with a citation and the

defendant has obtained reinstatement of his/her driver's license within forty five (45) days of the date of the offense; 6) offenses where the defendant was driving in violation of a substantial license restriction; 7) defendants with a commercial driver's license at the time of the offense, even if the defendant was driving a non-commercial vehicle at the time of the offense (per K.S.A. 8-2,150); or 8) defendants who have holds from other jurisdictions or law enforcement agencies for separate legal actions; 9) those previously convicted of a felony offense. Those who have been convicted of a nonviolent, nonperson, low severity level felony where defendant successfully completed all conditions of any non-prison sanction; and the case has been closed for 5 years or more prior to the current offense, may apply and be considered for a waiver of this requirement. Consideration will also be given to offenders whose prior case resulted in more than one such conviction in the single case. Defendants charged with certain criminal offenses in addition to DUI in the single case may be eligible for diversion under the Criminal or Drug programs if the additional offenses are also divertible.

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 \$25.00 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 in one payment at the time of application. 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."

The applicant must obtain an alcohol or drug evaluation. The evaluation can only be obtained from one of the agencies approved by the Kansas Department for Aging and Disability Services (or the like in your respected State of Residence). To access the list of approved Kansas providers go to

<https://www.kdads.ks.gov/commissions/behavioral-health/consumers-and-families>

under Program Directories click the link titled "Alcohol and Drug Evaluators K.S.A. 8-

1008". 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.

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:

- The circumstances surrounding the offense
- Whether the defendant, at the time of the offense, had liability insurance
- Any special characteristics or circumstances 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
- Recommendations of the law enforcement agency involved and the victim with provisions for restitution

- Recommendations of the Diversion Coordinator and/or assessment evaluator
- Whether the defendant admits the offense and accepts responsibility

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 rejected. 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, with a standard 12-month term for DUI, and a standard 6-month term for MIP, MIC, and Furnishing Alcohol to a Minor.
- An agreement that the defendant shall not violate any laws of the United States or any State, or resolutions of any County, or ordinances of any City.
- 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 or Diversion Program Coordinator
- An agreement that the defendant maintain owner's or non-owner's liability insurance and provide verification that said insurance is in effect during the term of Diversion

- 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.)
- At the defendant's own expense, follow all recommendations of the Substance Abuse Evaluation accepted at time of Application, including but not limited to: education classes, substance abuse treatment, 12-Step Programs, DUI Victim Impact Panel.
- Any special conditions agreed to by the parties which may include but is not limited to any of the following:
 1. Full restitution to any victims or their property
 2. Maintenance of gainful employment
 3. Participation in any recommended program
 4. Counseling, a 12-Step Program, or Alcoholics Anonymous / Drug Addicts Anonymous
 5. Performance of community service
 6. Restriction, suspension or revocation of the privilege to operate a motor vehicle for not less than Ninety (90) days nor more than one (1) year.
 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.

(For Office Use Only)

Case: _____ Application Fee: _____ Date Received: _____

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APPLICATION FOR THE DUI 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. This Application must be completed and returned, by mail or in person.

Last Name	First Name	Middle Name
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Other names (Maiden, Alias, Street Names)

Street Address	City	State, Zip Code
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Primary Phone Number	Secondary Phone Number	Email Address
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Social Security Number	Age	Date of Birth (MM/DD/YYYY)
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Race	Sex	Hispanic?
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Driver's License Number	State of Issuance	CDL?
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Defense Attorney (if any)	Phone Number	City, State
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Charges Filed Against You

City and state where born: _____

Who do you live with?

Name

Relationship

How long have you lived at this current address? _____

In what other cities and states have you lived?

City

State

Dates Lived There

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

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