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## **Traffic 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 for qualified traffic offenders.

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**

- 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.
- Defendants who were cited at a speed greater than 20mph over the speed limit in question, will not be considered eligible for diversion.
- If the Defendant does not have more than two moving violation convictions on their driving record in the past 12 months or more than three moving violation convictions in the past 24 months, they may be eligible for a traffic diversion.

### **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, the Defendant shall complete this Application for the Traffic Diversion Program and

submit the Application with a \$20.00 non-refundable application fee, any time before or within two weeks after the Must Appear / Must Pay date. Payment for the 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."

- 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 letter of denial, or a letter of acceptance with an attached Diversion Agreement, which must be signed and returned to the County Attorney's Office by the due date.
- Eligibility does not guarantee acceptance for diversion. If the defendant is determined to be ineligible for consideration for diversion, the defendant will be notified.

### **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.

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.

### **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 as 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 30 day term for infractions, and a standard 60 day term for misdemeanors.
- 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.
- If the Defendant has been charged with Driving While Suspended (DWS), they will

only be eligible for Diversion if it is the first time the defendant's license has been suspended, and the suspension is solely due to failure to comply with a citation. As part of the agreement, the defendant will need to pay any and all fines or other requirements to the jurisdiction that ordered the suspension.

- 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.)
  1. 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:
    - \$10 for every mph over the speed limit(Diversion Fee) +\$108.00(Court Costs) + Fine
    - Other Misdemeanors: Diversion Fee(various)+\$108.00(Court Costs)+Fine(varies)
      - DWS: Diversion Fee is \$125.00, Fine is \$250.00
      - Operate a Motor Vehicle without a Valid License: Diversion Fee is \$100.00, Fine is \$75.00
      - Inquire with the Diversion Coordinator for charges not listed above.
- Any special conditions agreed to by the parties which may include but is not limited to any of the following:
  1. At the Defendant's own expense, completion of an online Traffic Safety course
  2. Other conditions as determined by the County Attorney and Diversion Coordinator

### **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.

