JEFFERSON COUNTY ATTORNEY'S OFFICE

Jason W. Belveal, County Attorney

Phone: (785) 863-2251

Fax: (785) 863-3041

Post Office Box 351 Oskaloosa, KS 66066



TRAFFIC DIVERSION PROGRAM

The Traffic Diversion program is intended to give a "second chance" to offenders who commit a relatively minor traffic infraction.

Traffic infractions are violations for which a standard penalty is listed at K.S.A. § 8-2118. <u>See</u> K.S.A. § 21-3105. In addition, misdemeanor violations of K.S.A. § 8-2503 and K.S.A. § 8-142 (expired tag only) may be combined with an infraction for diversion.

The Jefferson County Attorney of the Second Judicial District of Kansas has established the following guidelines for the Diversion Program for Traffic Citations and Fish & Game Violations.

GENERAL POLICIES

Diversion is a <u>privilege</u> and not a <u>right</u>. No presumption in favor of Diversion exists in any case, and the burden of persuasion rests with the applicant to establish that a Diversion Agreement will best serve the ends of justice; the interests of the community; public safety; and, the rights and considerations of any victims involved.

There is no guarantee Diversion will be granted in any given case.

An applicant in a Traffic Case is not required to obtain the services of an attorney. However, an applicant may retain counsel if you feel it would be helpful. **The Jefferson County Attorney's Office cannot and will not dispense any legal advice to any potential diversion applicant/defendant.** If a potential diversion applicant/defendant needs legal advice regarding his or her case, the applicant/defendant should contact an attorney.

Additionally, if a Defendant wants to participate in the Diversion program without an attorney, and must serve any jail time, the Defendant will be asked to sign a waiver of counsel form.

The Jefferson County Attorney makes all decisions regarding Diversion policy. He appoints a Diversion Coordinator to enforce such policies and determine Diversion eligibility including conditions of Diversion contracts.

The Jefferson County Attorney has the final authority to approve or deny any Diversion application.

Any application for traffic diversion may be rejected or denied if not submitted within sixty (60) days of the applicant's first appearance.

The Assistant County Attorney (hereafter "A.C.A.") assigned to the case may request an application be denied for Diversion even though otherwise eligible. Additionally, an assigned A.C.A. may request an application be approved for diversion if outside the guidelines. In either case, the A.C.A. is responsible for notifying the Diversion Coordinator of his/her wishes. Final approval of Diversion lies with the Diversion Coordinator in conjunction and consultation with the Jefferson County Attorney.

Diversion contracts not signed by the Applicant and returned to the Jefferson County Attorney's Office within sixty (60) days of an acceptance letter being mailed will be withdrawn. It is the applicant's sole responsibility to inform the Jefferson County Attorney's Office of current contact information.

In determining whether or not to grant diversion, the Jefferson County Attorney will consider the following whether the applicant demonstrates a genuine sense of remorse and is prepared to acknowledge the act(s) charged and accountability for his or her actions.

Other factors that will be considered include, but are not limited to:

- The nature of the offense and the circumstances surrounding it
- The probability that the applicant will cooperate and benefit from the program
- The impact on the community of placing the applicant on Diversion
- The recommendations of the involved law enforcement officers
- The recommendations of any victims involved
- The amount of restitution owed if any
- Any mitigating and aggravating circumstances surrounding the offense

The victim, assigned A.C.A., and lead investigator will all be consulted regarding any application for diversion.

THE JEFFERSON COUNTY ATTORNEY MAY APPROVE OR DENY ANY DIVERSION APPLICATION IN THEIR SOLE DISCRETION FOR ANY LAWFUL REASON.

If you are *approved* for a Traffic Diversion, the Program lasts for three (3) months, which begins **after** you have been approved *and* the Jefferson County Attorney's Office has **received** all completed and signed Diversion paperwork along with the appropriate Diversion fees.

During the three (3) months period, you must not receive any additional moving violations or be charged with any additional criminal offenses. Receipt of a moving violation or new criminal charges while an applicant is on Diversion will result in termination of the Diversion Agreement.

If you are *approved* for the Diversion Program, you are not required to pay the fines to the District Court as indicated on the back of the citation.

The Diversion program will be administered in accordance with Chapter 8 of the Kansas Statutes; K.S.A. § 22-2907; K.S.A. § 22-2908; K.S.A. § 22-2909; K.S.A. § 22-2910; and, K.S.A. § 22-2911.

COSTS AND FEES

- Non-Refundable Traffic Diversion Application Fee:
 \$50.00
- Traffic Diversion Fees if Approved: \$100.00 \$300.00
- <u>Court Costs</u>: \$98.00
- Additional Diversion Costs may include, but are not limited to:

Fines
Fingerprinting
Bond Supervision
Urinalysis Testing
Lab Fees
Witness Fees
Transportation Costs
Court Appointed Attorney's Fees
Restitution

Such additional costs will be incorporated into the defendant's proposed Diversion contract.

ELIGIBILITY

The Jefferson County Attorney will consider a number of factors in determining if Diversion is appropriate. It is <u>presumed</u> by the following guidelines that diversion is NOT appropriate in the following circumstances:

- The Applicant has a prior criminal record, which includes convictions, prior diversions, or pending criminal matters not covered by the Application.
- The Applicant has been convicted of any moving violations within twelve (12) months immediately preceding the current citation.
- The Applicant has been granted a Diversion or agreement for deferred prosecution in lieu of criminal proceedings within twelve (12) months immediately preceding the current citation
- The Applicant's citation was issued as a result of an accident involving another person, or if alcohol was a factor
- The Applicant's citation is for a violation within a construction or school zone, or involves a school bus or emergency vehicle
- The Applicant is currently charged with Driving While Suspended
- The Applicant holds a Commercial Driver's License (hereafter "C.D.L.").

PROCESS FOR APPLICATION

- 1. THE APPLICANT MUST ATTEND ALL COURT APPEARANCES UNTIL DIVERSION IS FINALIZED
- 2. The Diversion Application must be completed and returned to the County Attorney's Office within ten (10) days after receipt by the Applicant.
- 3. If your Driver's License is not a Kansas Driver's License, please provide a copy of your Driving Record along with your Diversion Application.
- 4. An Application Fee of \$50.00 must accompany the Diversion Application or it will NOT be accepted. The Application Fee is NON-REFUNDABLE. Payment shall be made by check or money order made payable to Jefferson County.
- 5. <u>YOU MUST COMPLETE THE ENTIRE APPLICATION</u>. If there are parts of the Application that you do not understand or if you have questions about any part of the Application, you should contact an attorney. The County Attorney's Office cannot provide you with legal advice or assistance in completing the Application.
- 6. You MUST sign the Diversion Application in front of a Notary Public, which also serves as an oath concerning the facts and circumstances surrounding your ticket, as well as your guarantee that you have not received any prior convictions in the twelve (12) months preceding the current ticket.
- 7. If the citation is for No Proof of Insurance, you MUST submit proof of current liability or non-owners insurance for six (6) months with the Diversion Application, or the Application will be denied.
- 8. If your citation is for driving on a Restricted License, upon approval into the Diversion Program, you will surrender your Driver's License to the Jefferson County Attorney's office for the first two (2) weeks of the diversion period.
- 9. If your Application is approved, you, or your attorney, will be mailed the Diversion Agreement, Stay of Proceedings and Motion/Order to Dismiss, which will include the court costs, diversion fee, and any applicable attorney fees. You and/or your attorney must sign and return the paperwork along with the **full payment** to the County Attorney's Office by the deadline indicated on the Diversion Agreement.
- 10. If your Application is denied, you will be notified in writing.

Revised: 01/18/2012

IN THE KANSAS DISTRICT COURT OF JEFFERSON COUNTY KANSAS

Plaintiff,)	
vs.)))	
Defendant.		
Case Number:	Ticket Issue	ed on
Violation(s):	Court Date:	
APPLICA	TION FOR TRAFFIC DIVE	RSION PROGRAM
	on-Refundable Application Fee MUST a	
·	elete EVERY blank and provide complete	
Name:		File and the second sec
Address:	City	State Zip Code
Telephone No(s): (H)	(W)	(C)
D.L.#	State D.L. issued:	S.S.N
D.O.B	Age: Se	x:Race:
Attorney Name, Address & F	Phone No., if applicable	
> Have you had other mo If yes, you MUST compl	ving violations? (speeding, no insurance, etc the following:	illegal registration, etc.) YES NO
City/County:	Violation:	Date:
City/County:	Violation:	Date:
City/County: ✓ Continue on back, if i	Violation:	Date:

THE FOLLOWING MUST BE COMPLETED IN THE APPLICANT'S OWN HANDWRITING OR - the application will be denied

>	Explain why you feel you can successfully complete the Diversion Program?		
> —	State in detail the facts that caused the ticket to be issued. (Use the back of this page if necessary)		
>	State any mitigating facts concerning the ticket that you believe might excuse your actions.		
·			

I hereby apply for status as a participant in the Traffic Diversion Program and request that the Jefferson County Attorney temporarily delay criminal proceedings, including trial, against me in order to permit evaluation and consideration of this application.

I understand it is my responsibility to submit a diversion application in a prompt and timely fashion and within the guidelines set by the Jefferson 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 Jefferson County Attorney's Office.

I understand if the Jefferson County Attorney's Office is required to make a decision concerning my application without being allowed an opportunity to make a full and complete review, my application and request will be denied. I understand that the final decision to commence criminal proceedings or to defer prosecution in my case rests entirely with the Jefferson County Attorney.

A false answer or omission of any question in this application shall be grounds for recommendation against placement into this program or removal after placement in the program; in which case, the Jefferson County Attorney will resume prosecution against me on the original charges.

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 Agreement for Diversion and the Agreement will be revoked. I agree that a criminal justice report, including, but not limited to, a Department of Justice report; Kansas Bureau of Investigation report; Police Department or Sheriff's Department report; and/or, 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 the application incomplete and the Jefferson 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 foregoing application for the Diversion Program is true and correct.

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 foregoing application for the Traffic Diversion Program is true and correct.

Date	Applicant's Signature
employment record and I authorize Attorney's Office with any informati	unty Attorney's Office to conduct a background check of my past my present and previous employers to furnish the Jefferson County ion they request. I further authorize the Jefferson County Attorney's ce carrier and authorize them to release information.
Date	

or any other evaluating agency which	may participate in evaluati	ng me during the application			
, or any other evaluating agency which may participate in evaluating me during the application process.					
Date					
Applic	cant's Signature	Man.			
The \$50.00 Non-Refundable Applica	ation Fee MUST accompany	this Application			
	and the second s				
	Signature of Applicant				
	organitate of reportant				
Subscribed and sworn to before me on this_	day of	, 20			

IF YOUR SIGNATURE IS NOT NOTARIZED THE APPLICATION WILL BE DENIED

Revised: 01/18/2012