

JEFFERSON COUNTY ATTORNEY'S OFFICE
Joshua A. Ney, County Attorney

300 Jefferson Street
P.O. Box 351
Oskaloosa, Kansas 66066

Telephone: (785) 863-2251
Facsimile: (785) 863-3041
countyattorney@jfcountryks.com

CRIMINAL/MAJOR TRAFFIC DIVERSION PROGRAM

The Diversion program is intended to give a "second chance" to offenders who commit a relatively minor criminal offense. The Jefferson County Attorney of the Second Judicial District of Kansas has established the following guidelines for the Diversion Program.

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

Please be advised that applicants for a diversion for traffic matters who, at the time of the offense, were holders of a CDL will be ineligible for a diversion regardless of whether or not they were driving a commercial vehicle or a personal vehicle at the time of the offense under current Kansas law.

GENERAL POLICIES

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 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.

An applicant in an adult Criminal case has the right to counsel through an attorney, and, to have the attorney involved and present throughout the Diversion Application process. Applicants that are approved for Diversion will be required to pay any Court-Appointed Attorney's Fees, if applicable.

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 an adult Defendant wants to participate in the Diversion program without an attorney and there is a risk that the Defendant may have to serve any jail time, the Defendant must sign a waiver of counsel form.

Any applicant who is under the age of eighteen (18) is required to have an attorney throughout the diversion application process.

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. *A defendant's application for diversion may be rejected or denied if not submitted prior to Arraignment.*

Diversion contracts not signed by the Defendant and returned to the Jefferson County Attorney's Office prior to the next court date may be withdrawn. It is the applicant's responsibility to inform and maintain current contact information with the Jefferson County Attorney's Office throughout the entire diversion process.

In determining whether or not to grant diversion, the Jefferson County Attorney will consider, in addition to all facts and information known to the Jefferson County Attorney's Office surrounding this case and the Defendant, whether the applicant 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.

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 Diversion, the Program lasts from a minimum of six (6) months or longer depending on the nature of charges and any aggravating/mitigation circumstances. The diversion period begins **after** the filing of the Diversion Agreement and Agreed Order of Stay with the Court.

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

The Diversion program will be administered in accordance with 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.

- For all alcohol and/or drug related offenses, including MIP, a completed drug/alcohol evaluation will be required to be completed prior to entering into a Diversion Program.**
- For all crimes of domestic violence, a domestic violence assessment with corresponding recommendations must accompany the application.**

COSTS AND FEES

- Diversion Fees if Approved (based upon a single count of the highest offense level charged/diverted):
 - \$100.00 – Traffic
 - \$100.00 – Misdemeanor, Class C
 - \$150.00 – Misdemeanor, Class B
 - \$250.00 – Misdemeanor, Class A
 - \$250.00 – Domestic Battery
 - \$250.00 – Misdemeanor D.U.I. First Offense
 - \$250.00 to \$1,000 – Felony
- Court Costs:
 - \$108.00 – Traffic
 - \$158.00 – Misdemeanor
 - \$193.00 – Felony
- Additional Diversion Costs may include, but are not limited to:
 - Fines as mandated by State of Kansas
 - Fingerprinting

Bond Supervision
Urinalysis Testing
Lab Fees (including KBI 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 presumed by the following guidelines that diversion is NOT appropriate in the following circumstances:

- The applicant has previously been convicted of any misdemeanor offense, other than minor traffic violations, within five (5) years preceding date of the current charge(s);
- The applicant has previously been convicted of any felony offense within 10 years preceding the date of the current charge(s);
- The applicant has previously entered into a Diversion agreement or agreement for deferred prosecution in lieu of further criminal proceedings in this or any other jurisdiction within one (1) year preceding the current offense;
- The applicant is charged with any felony classified as Levels 1 through 8 on the nondrug grid and/or with any felony classified as Levels 1 through 4 on the drug grid by the Kansas Sentencing Guidelines Act;
- The applicant is charged with crime of a sexual nature that would or could otherwise require registration under the Kansas Offender Registration Act if convicted;
- The applicant is charged in a D.U.I. case
 - Involving any injuries to any other person; and/or
 - The applicant is charged in a D.U.I. case with children present in the vehicle;
- Crimes of Domestic Violence will not be considered for diversion unless the applicant submits a Domestic Violence Assessment at the time of the application and, additionally, approval of a diversion will be the exception and not the norm;
- In addition, Defendants with charges pending in other municipal, state, or federal jurisdictions will not be considered for Diversion

The County Attorney may approve for diversion a matter that might otherwise fall within one of the categories above.

Additionally, by operation of Kansas law, the following situations/offenses are not eligible for diversion under any circumstances:

- Any charge of Domestic Battery in which the Defendant has been previously granted a Diversion, or agreement for deferred prosecution in lieu of further criminal proceedings, in any jurisdiction twice within three (3) years preceding the current charge
- Any traffic offense in which the Defendant-Driver holds a Commercial Driver's License
- Any D.U.I. in which the Defendant has previously been granted a Diversion, or agreement for deferred prosecution in lieu of further criminal proceedings, for D.U.I. or substantially similar offense in any jurisdiction

- Any D.U.I. in which the Defendant has previously been convicted of D.U.I. or substantially similar offense in any jurisdiction

DIVERSIONS FOR ALCOHOL, DRUG, AND/OR DOMESTIC VIOLENCE

All D.U.I. and drug cases require an evaluation from a Diversion approved provider be completed **before** a Diversion will be entered. The completed evaluation must accompany the Defendant's completed Diversion Agreement when submitted to the Jefferson County Attorneys Office.

Defendants in Domestic Violence cases will be required to participate in and complete a Domestic Violence Assessment **prior to the submission of the diversion application**. The diversion application must be submitted with the domestic violence assessment and all releases of information with the evaluator and his or her agency must be signed authorizing the Jefferson County Attorney Office to consult with the evaluator.

All Domestic Violence cases will require an eighteen (18) month term of Diversion. Defendants in all Domestic Violence cases will be required to follow the recommendations of the domestic violence assessment as a condition of diversion. Domestic Violence assessments may be obtained from any court-approved provider; however, all counseling services must be obtained from a Diversion approved provider.

Defendants who have a misdemeanor diversion or conviction within the last 5 years and/or a felony diversion or conviction within the last ten (10) years must demonstrate compelling circumstances to be granted Diversion.

PROCESS FOR APPLICATION

1. The Applicant **MUST** complete the attached Diversion Application with specific attention to paragraphs VII and IX.
2. **If the crime involves Alcohol or Drugs**, the applicant **MUST** obtain an Alcohol and/or Drug Evaluation from one of the approved agencies listed in this application if approved for a diversion. This requirement also applies to Minor in Possession/Consumption of Alcohol.
3. If the crime involves **Domestic Battery**, the applicant **MUST** obtain an assessment with corresponding recommendations and submit the results of the same at the same time s/he submits their diversion application. If approved, the applicant must complete all recommendations. The evaluation can **ONLY** be obtained from one of the agencies listed in this application, or an agency approved by the County Attorney.
4. The application must be completed on the forms provided by the Jefferson County Attorney's Office prior to arraignment.
5. The applicant or the applicant's attorney will be notified whether or not the Diversion Application has been approved. If the application is denied, notice will be given in writing.

EFFECT

Upon the Applicant entering into the Diversion Program, the criminal proceeding shall be suspended by appropriate order of the Court. If the Applicant successfully fulfills the terms and conditions of Diversion, the Jefferson County Attorney shall move for the charges to be dismissed with prejudice.

If the Applicant fails to fulfill the any of the terms and conditions of the Diversion Agreement, the Jefferson County Attorney will terminate the Agreement and provide notice of the termination.

After an appropriate hearing, the Court, upon finding the Defendant has failed to fulfill the terms of the Agreement shall order Diversion terminated. Criminal proceedings on the original Complaint shall be resumed with trial to the court, without a jury, on stipulated facts.

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.

A. Approved Agencies for ALCOHOL/DRUG Evaluations:

D.C.C.A.
3312 Clinton Parkway
Lawrence, Kansas 66044
(785) 841-4138 or 841-2880

Larry Sump
Wamego, Kansas
1-800-386-3119

The Guidance Center
1102 Walnut Street
Oskaloosa, Kansas 66066
785-863-2929

Bert Nash Center
200 Main, Suite A
Lawrence, KS 66044
(785) 843-9192

B. Approved Agencies for DOMESTIC VIOLENCE Assessments:

The Guidance Center
1102 Walnut Street
Oskaloosa, Kansas 66066
785-863-2929

Bert Nash Center
200 Main, Suite A
Lawrence, KS 66044
(785) 843-9192

Contact the County Attorney's Office for approval of any assessment provider not listed above.

IN THE DISTRICT COURT OF JEFFERSON COUNTY KANSAS

STATE OF KANSAS,)
Plaintiff,)
vs.) Case No. _____
_____)
Defendant.)

APPLICATION FOR CRIMINAL DIVERSION PROGRAM

You must complete every blank. If a question does not apply to you, please write "N/A"

Date of Next Court Appearance _____

I. PERSONAL INFORMATION

Last Name _____, First Name _____, M.I. _____

Date of Birth ____/____/____ Sex _____ SSN _____

Driver's License # _____ Driver's License State _____

Phone # _____

Current Address: _____

Email address _____

II. PARENTAL INFORMATION

If you are under the age of 18, please list your parent or guardian information.

Mother (Name, Address, Daytime Phone)

Father (Name, Address, Daytime Phone)

III. ATTORNEY INFORMATION

If you have an attorney representing you, please list their information:

Attorney (Name, Firm, Address, Phone, Email)

IV. RESIDENTIAL HISTORY:

List your residences by address *prior* to your current residence for the last five (5) years:

V. CURRENT EMPLOYMENT

Title and Occupation _____
Employer _____ Telephone _____
Address _____

VI. MILITARY SERVICE – Yes – No (move on to next section)

If Yes, Branch _____
Dates of Service _____
Date of Discharge _____
Type of Discharge _____

VII. MENTAL HEALTH/DRUG TREATMENT HISTORY

Have you ever received or attended counseling or treatment for an alcohol, drug, emotional or psychological problem or disorder?

- No
- Yes If yes, state when, where, the reason for attendance, name(s) of treatment provider(s) and ultimate disposition of treatment:

VIII. PRIOR CONTACTS WITH LAW ENFORCEMENT

The following questions pertain to **all** prior Juvenile and Adult incidents, Arrests, Citations (including “minor” traffic offenses), Orders to Appear, Prosecutions, Convictions, Expungements, Diversions, or Deferred Prosecution Agreements in Kansas or any other jurisdiction, including those not resulting in formal charges or convictions. You may use the back of this application if necessary. If you cannot recall specific dates/locations then you should indicate as much information as you can recall.

- I certify that I **have** had prior incidents, Arrests, Citations, Orders to Appear, Prosecutions, Convictions, Expungements, Diversions, or Deferred Prosecution Agreements in Kansas or any other jurisdiction, including those not resulting in formal charges or convictions, and the facts and circumstances surrounding the same, including ultimate disposition, is as follows:

- I certify that I have had **no** prior incidents, Arrests, Citations, Orders to Appear, Prosecutions, Convictions, Expungements, Diversions, or Deferred Prosecution Agreements in Kansas or any other jurisdiction, including those not resulting in formal charges or convictions.

APPLICATION SUBMISSION
(please review and initial each paragraph)

_____ I hereby apply for status as a participant in the Diversion Program and request that the Jefferson County Attorney temporarily delay prosecution, 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 authorize the Jefferson 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 Jefferson County Attorney's Office with any information they request. I authorize the Jefferson County Attorney's Office to contact my liability insurance carrier and authorize them to release information. I authorize the Jefferson County Attorney's Office to release all records in their possession, including but not limited to, criminal history information and investigation reports any evaluating agency which may participate in evaluating me during the application process.

_____ 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 Criminal Diversion Program is true and correct.

Date _____

_____ Applicant's Signature