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Office of the County Attorney
11TH Judicial District/Crawford County, Kansas

DIVERSION PROGRAM -- DRIVING UNDER THE INFLUENCE

(Updated September 2020)

Pursuant to K.S.A. 22-2906 *et seq.* the Crawford County Attorney of the Eleventh Judicial District of Kansas has established a Diversion Program for all traffic offenders charged with DUI (Driving Under the Influence of Alcohol or DWI) pursuant to K.S.A. 8-1567 *et seq.* A copy of this Diversion Program Guideline will be furnished to each defendant upon his or her first appearance before the Court. 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 serve the ends of justice and the interests of the community.

ELIGIBILITY:

All defendants charged with DUI are eligible, except: 1) those previously convicted of or pled nolo contendere to DUI or DWI (even if the conviction has been expunged); 2) those previously diverted on a DUI or DWI charge; 3) offenses where a personal injury or a death is involved; 4) offenses where additional criminal (other than traffic) charges are filed; 5) offenses where the defendant's driver's license has been revoked, suspended or restricted at the time of the offense; 6) defendant drove as a commercial driver with a commercial driver's license at the time of the offense; 7) defendant had a commercial driver's license at the time of the arrest or at any time thereafter; or 8) defendant has a hold from another jurisdiction or law enforcement agency for separate legal actions.

PROCEDURE:

The application shall be available in the Diversion Office. The defendant shall complete the application for diversion and submit the application with a **\$150.00** application fee. This non-refundable fee **must** be in the form of a cashier's check, money order, or attorney's trust account check payable to "County Attorney's Office." The defendant will then be scheduled for a drug/alcohol evaluation. The defendant may be required to have an interview with the Diversion Coordinator. The defendant shall give such information as may be necessary for the Diversion Committee to determine his suitability for diversion, including information which would otherwise be privileged.

The application for Diversion **must** be filed within thirty (30) days of arraignment. **Applications not so filed will not be considered unless agreed to by the County Attorney.**

CONSIDERATIONS:

The following factors shall 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:

- Level of blood or breath alcohol concentration.

- Surrounding circumstances of the offense.

- Whether the defendant, at the time of the offense, had liability insurance in force.
- Any special characteristics or circumstances of the defendant, including prior record.
- The probability that the defendant will cooperate and benefit from diversion.
- The appropriateness of Diversion to meet the needs of the defendant and the community.
- Recommendations of law enforcement agency and/or assessment evaluator.
- Any mitigating or aggravating circumstances.

DETERMINATION:

The County Attorney's Office will review 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 County Attorney.

AGREEMENT:

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 fourteen (14) days after the mailing of the offer to enter into a written agreement to the defendant or counsel for the defendant, the offer will be considered to be withdrawn. 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.
- An agreement that the defendant shall not violate any laws of the United States or any State, or ordinances of any City, or resolutions of any County.
- An agreement that the defendant shall report to the County Attorney's Office 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.
- 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.

- Participation in an alcohol and drug safety action program, drug or alcohol treatment, or both and payment of program costs.
- Payment of all court costs, *minimum* Diversion fee of \$150.00 for misdemeanors and \$250.00 for felonies (depending on facts of case), and fines within a specified period.
- Any special conditions agreed to by the parties which may include any of the following:
 1. Residence in a specified facility.
 2. Maintenance of gainful employment.
 3. Participation in any recommended program.
 4. Counseling.
 5. 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.
 6. 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. If the defendant fails to fulfill the terms and conditions of the Agreement for Pretrial Diversion or has misrepresented facts in the diversion application, the County Attorney will request that the diversion be terminated. 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.

(FOR OFFICE USE ONLY)

Application Fee _____

Date Received _____

Trial Date _____

Case No. _____

Alcohol Evaluation _____

Arraignment _____

APPLICATION FOR DUI PRETRIAL DIVERSION PROGRAM

All answers must be complete. After completing the application below, please return it to the Diversion Office with the **\$150.00 non-refundable application fee**. Application fee must be in the form of a money order, cashier's check, or attorney's trust account check made payable to the County Attorney. **NOTE: This application must be filed thirty (30) days after first appearance. A \$25.00 fee must accompany request for waiver of the time requirement if application not filed timely.**

1. Name _____ Phone No. _____
(Last) (First) (Middle)

Maiden name or other names used _____

Address _____
(Street) (City) (State) (Zip)

Who do you live with _____
(Name) (Relationship)

How long have you lived at this address? _____

2. Age _____ 3. Date of Birth _____ 4. Race _____ 5. Sex _____

6. Are you a United States citizen or legal alien? _____

Proof of citizenship or legal alien residency is required. Non-citizens must have entered the United States law fully and in accordance with the requirements of the U.S. Citizenship and Immigration Services (U SC IS) and provide verification of residency status, e.g. valid work perm it, visa or green card if approved for the Diversion program .

7. City and State where born _____

8. Social Security Number _____

9. Driver's License Number _____ State of Issuance _____

If at the time of this arrest or at any time subsequent, you were the holder/owner/possessor of a commercial driver's license, please indicate. YES NO (a holder of a commercial driver's license is prohibited from entering diversions)

10. Marital Status _____ Spouse's Name _____

11. Number of Minor Dependents _____
Number and Ages

12. Educational and Vocational Training (include high school or highest grade completed if not high school graduate, as well as education beyond high school).

13. Military Service _____ Yes _____ No Branch _____

Type of discharge _____ Date of Discharge _____

14. Nearest Contact:

Name _____ Telephone No. _____

Address _____

Relationship to Defendant _____

15. Defense Attorney:

Name _____ Telephone No. _____

Address _____

16. Present Employment:

Employer _____ Telephone No. _____

Address _____

Dates Employed _____ to _____ Occupation _____

Salary _____

17. Employment History (list employment for the past three years. Begin with current employer. If you need more space, use blank sheet of paper.)

Employer _____ Telephone No. _____

Address _____

Dates Employed _____ to _____ Occupation _____

Employer _____ Telephone No. _____

Address _____

Dates Employed _____ to _____ Occupation _____

Reason Left _____

18. Present Sources of Income:

Defendant's Employment \$ _____ Per Month

Spouse's Employment \$ _____ Per Month

Unemployment Compensation \$ _____ Per Month

Public Assistance \$ _____ Per Month

Other \$ _____ Per Month

(If other please indicate source: Parents _____ Relatives _____ Friends _____ Other _____)

19. **Prior Traffic Offense Record:** (List all Juvenile and Adult traffic incidents, DUI or DWI Arrests, Diversions, Deferred Prosecutions, Convictions, and Expungements in Kansas or other states, including those not resulting in formal charges or convictions. Include date of arrest, citation, or incident, arresting or ticketing agency, charge and disposition.)

20. **Prior Criminal Offense Record:** (List all Juvenile and Adult incidents, Arrests, Citations, Prosecutions, Convictions, Expungements, Diversions, or Deferred Prosecution Agreements in Kansas or other states, including those not resulting in formal charges or convictions. Include date of incident involved, agency, charge, and disposition.)

21. Insurance Information: (Attach copy of proof of insurance.)

Name of Insurance Company _____

Agent _____ Phone No. _____

Policy No. _____ Expiration Date _____

22. Have you ever attended Alcohol or Drug treatment or counseling, or received an assessment for possible drug or alcohol problems? _____ Yes _____ No

If yes, state when, where, and the reason for attendance or assessment: _____

23. State the circumstances which led to the offense with which you are charged :

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 it is my responsibility to submit a diversion application in a prompt and timely fashion and within the guidelines set by the County Attorney 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 the final decision to continue 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.

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 County Attorney will resume prosecution on the original charges and may be grounds for additional criminal charges. I declare that I did not have a commercial driver's license at the time of the arrest or any time thereafter.

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 Pre-Trial Diversion and I may be taken off Diversion. I agree that a criminal justice report, including, but not limited to, a Department of Justice report, KBI 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 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 Pretrial Diversion Program is true and correct.

Executed on: _____
(Date) (Applicant's Signature)

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.

Executed on: _____
(Date) (Applicant's Signature)

Name:

Please circle yes or no for each of the following questions.

1. Have you lived in your **current** residence for a year or more? Yes No
2. Have you worked at your **current** job for a year or more? Yes No
3. Do you have a high school diploma or GED? Yes No
4. Do you have outstanding court fines, restitution, or child support? Yes No
5. Do you have outstanding bills or debt? Yes No
6. Do you have a valid driver's license? Yes No
7. Do you have any pending court cases besides this case? Yes No
8. Do you have support (monetary or emotional) from family members? Yes No
9. Have you suffered prior legal consequences due to alcohol or drug use? Yes No
10. Have you ever been diagnosed with a mental illness? Yes No
11. Do you feel that you have been charged fairly in this case? Yes No
12. Have you ever been convicted of a criminal offense (including juvenile)? Yes No