

Michael Gayoso, Jr.
Office of the County Attorney
11TH Judicial District/Crawford County, Kansas

DIVERSION PROGRAM -- DRIVING UNDER THE INFLUENCE

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additional criminal (other than traffic) charges are filed, 5) offenses where the defendant's driver's license has been revoked, suspended or restricted at the time of the offense 6) defendant drove as a commercial driver with a commercial driver's license at the time of the offense or 7) 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 **\$55.00** 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, 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.

Date Received _____

Case No.

Arraignment

All answers must be complete. After completing the application below, please return it to the Diversion Office with the **\$55.00 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 \$15.00 fee must accompany request for waiver of the time requirement if application not filed timely.**

Maiden name or other names used

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 lawfully and in accordance with the requirements of the U.S. Citizenship and Immigration Services (USCIS) and provide verification of residency status, e.g. valid work permit, 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 _____

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 :

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 |