

Reina Probert
Office of the County Attorney
11th Judicial District/ Crawford County, Kansas
Criminal Diversion Policy
(Updated July 2020)

DRUG DIVERSION PROGRAM

Pursuant to K.S.A. 22-2906 *et seq.* the Crawford County Attorney in the Eleventh Judicial District of Kansas has established a Diversion Program. 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 in a single case with the offense of simple possession of controlled substances may be eligible for the drug diversion program. All defendants charged with drug manufacturing and related offenses, drug sales or possession of drugs with the intent to sell, or cultivation (if more than five plants) are ineligible for diversion. All defendants charged with an anticipatory crime under Article 33 of Kansas Statutes Annotated, where the underlying crime is an offense that is not a divertible offense as described above, are ineligible for diversion. If crimes other than simple possession are charged in the single case, the defendant may be eligible for diversion if the additional offenses would also be divertible offenses under other diversion programs administered by the County Attorney. Defendants with prior convictions for violent crimes, sex offenses, or prior drug convictions or diversions are ineligible for the program. First time offenders charged with certain non-person crimes or DUI or defendants charged with certain traffic infractions may be eligible for diversion under separate diversion programs administered by the County Attorney.

PROCEDURE:

The application shall be available in the County Attorney's Office. The defendant shall complete the application for diversion and submit the application with a **\$115.00** application fee for misdemeanors and **\$150.00** for felonies. 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 application for Diversion **must** be filed prior to the first Preliminary Hearing date if the case is a felony, or within (30) days of arraignment if the case is a misdemeanor. **Applications not so filed will not be considered unless agreed to and the time line waived 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:

- Nature of the crime charged and the surrounding circumstances.
- Any special characteristics or circumstances of the defendant.
- Previous criminal conduct, whether or not such conduct resulted in a formal charge or conviction of the defendant.
- The probability that the defendant will cooperate with the benefit from diversion.
- The appropriateness of Diversion to meet the needs of the defendant and the community.
- The availability of a suitable treatment program for the defendant.
- Recommendations if the law enforcement agency involved.
- Recommendations of the assessment evaluator.
- Any mitigating or aggravating circumstances.
- Whether the defendant admits the offense and accepts responsibility.

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 Drug 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 and an agreement that the defendant shall remain on a pre-trial release bond during the diversion term.
- 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, *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 treatment or other program.
 4. Counseling.
 5. Payment of all treatment or other program costs.
 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.

(FOR OFFICE USE ONLY)

Application Fee _____

Date Received _____

Trial Date _____

Case No. _____

Alcohol/Drug Evaluation _____

Arraignment _____

APPLICATION FOR PRETRIAL DRUG DIVERSION PROGRAM

All answers must be complete. After completing the application below, please return it to the Diversion Office with the **non refundable \$115.00** application fee for misdemeanors and **\$150.00** for felonies. 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's Office. **NOTE: This application must be filed within thirty (30) days of arraignment. 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 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 _____

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 DW I 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 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 a valid driver's license? Yes No
6. Do you have any pending court cases besides this case? Yes No
7. Do you have support (monetary or emotional) from family members? Yes No
8. Have you suffered prior legal consequences due to alcohol or drug use? Yes No
9. Have you ever been diagnosed with a mental illness? Yes No
10. Do you feel that you have been charged fairly in this case? Yes No
11. Have you ever been convicted of a criminal offense (including juvenile)? Yes No