



29<sup>TH</sup> JUDICIAL DISTRICT OF KANSAS

**Policy for Diversion of 1<sup>st</sup> Time DUI Charges**

**General Policy:** The District Attorney has established a pretrial diversion program for qualified defendants. The diversion program is intended to give a “second chance” to offenders who are charged, for the first time, with Driving Under the Influence (DUI), as set out in K.S.A. 8-1567. However, diversion is a privilege, not a right, and may be denied any applicant for any reason permitted by law. The District Attorney’s Office will not prescreen or opine about the defendant’s eligibility, potential approval, or other consideration until application has been made and the application fee has been paid. There is no presumption of 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.

The District Attorney makes all decisions regarding diversion policy and has the final authority to approve or deny any DUI diversion application. The District Attorney has appointed personnel to enforce these policies, as well as screen for eligibility and finalize conditions of the Diversion Agreement.

You have a right to the assistance of an attorney in this matter. The District Attorney recommends that you consult your attorney if you desire to do so. If you are represented by an attorney in this matter, the District Attorney is prohibited from speaking with you directly. All communication with you must be done through your attorney. **All diversion application and payment timetables still apply to your case, even if you are represented by counsel.**

However, it is not **required** that you have an attorney for the purpose of DUI diversion. If you apply for diversion without an attorney, and if the charge could require that you serve time in jail, then you must formally waive the assistance of counsel. In such a case if you are not inclined to waive counsel, you may apply to the court for the appointment of an attorney. However, you may be required to repay the court-appointed attorney’s fund.

DUI diversion applications may be obtained from the Diversion Services Unit, or may be downloaded from the website: [www.wycoda.org](http://www.wycoda.org). The District Attorney’s office does not provide interpreting services.

A separate diversion program exists for certain criminal offenders, traffic violations, and worthless check charges. The diversion program for drug charges is managed by Community Corrections. Diversions for juveniles are also managed by Community Corrections.

**Guidelines and eligibility:** Defendants charged with DUI are statutorily prohibited from receiving diversion, as set out in K.S.A. 22-2908(b) if:

- The defendant has previously participated in DUI diversion
  - The defendant has previously been convicted of or pleaded *nolo contendere* to DUI
- During the time of the offense, the defendant was involved in a motor vehicle accident or collision resulting in personal injury or death

The following factors may also prohibit a defendant from receiving diversion:

- The alcohol concentration of the defendant's blood or breath is greater than .20
- If a child (14 or under) was present in the car at the time of the offense
- If the defendant possesses a Commercial driver's license (CDL)
- If the defendant's driver's license has been revoked, suspended, or restricted, or if the defendant did not have a valid driver's license at the time of the offense
- Any pre-trial motions filed with the court prior to the final decision regarding diversion
- Any prior felony conviction or misdemeanor (excluding traffic infractions)
- Charges pending in other municipal, state, or federal jurisdictions
- If the defendant is not a United States citizen, or a foreign national registered with I.C.E.
- If the defendant is not a Wyandotte County, Kansas resident
- Failure to complete the application timely, completely or falsifying or omitting any required information

Other factors may be taken into account in determining eligibility, as set out in K.S.A. 22-2908:

- The nature of the crime charged and the circumstances surrounding it
- Any special characteristics or circumstances of the defendant
- Whether the defendant is a first-time offender or has previously participated in diversion
- The probability that the defendant will cooperate with and benefit from diversion
- Whether the available diversion program is appropriate to the needs of the defendant
- The impact of the diversion of the defendant upon the community
- Recommendations, if any, of the involved law enforcement agency
- Recommendations, if any, of the victim
- Provisions for restitution
- Any mitigating circumstances

**Diversion Conferences:** In determining whether to grant diversion, the defendant may be required to have a conference with the Diversion Program Manager in addition to submitting an application. The Diversion Attorney, and Chief Deputy District Attorney, or the District Attorney may review any case reviewed by the Program Manager.

If a diversion conference is required, notice shall be sent to the attorney of record to schedule the conference with the Diversion Program Manager. Both the defendant and defendant's attorney must appear for the conference. Any statement made by the defendant during an informal or formal conference shall not be used in the prosecution of the defendant's case.

**Procedure and costs:** A defendant's application for diversion may be rejected or denied if not submitted within three (3) weeks of the first scheduled docket appearance. To apply for diversion, the defendant shall submit a completed DUI diversion application to the Wyandotte County District Attorney's Diversion Services Unit. Applications may be submitted by mail, e-mail, or hand delivery. **The application fee is \$125.** The application fee is non-refundable, shall be paid to the Clerk of the District Court before submitting the diversion application, and proof of payment shall be submitted to Diversion Services Unit.

If approved for diversion, the defendant must sign the diversion agreement within six (6) weeks of acceptance. Before signing the agreement, the defendant is required to pay to the Clerk of the District Court:

- **Supervision fee: \$250**
- **Court costs: \$108**

As part of the agreement, the defendant is also required to pay:

- **Alcohol & drug evaluation: \$150** (paid to service provider; due at time of service)
- **Alcohol & drug program: varies** (paid to service provider; due at time of service)
- **Fine: \$750** (paid to the Clerk of the District Court)

Additional diversion costs may include, but are not limited to: fingerprinting, bond supervision, urinalysis testing, lab fees, witness fees, transportation costs, court appointed attorney's fees, and restitution. Any additional costs will be listed in the diversion agreement. All fees and costs associated with diversion are non-negotiable and shall not be waived. Standard court costs and fees are subject to change by District and/or Supreme Court rule.

You will be required to disclose to the District Attorney, upon application, whether you are party to any claim of bankruptcy. No costs, fees, fines, or restitution payments agreed to in the diversion contract may be discharged by bankruptcy.

All court appearances shall be attended during the process, unless otherwise directed.

**Terms and Conditions:** If granted diversion, the standard terms of the agreement are typically between twelve (12) and twenty-four (24) months.

If granted diversion, standard conditions of the agreement shall include:

- Defendant must receive a drug & alcohol evaluation from an approved service provider within thirty (30) days of signing agreement
- Defendant must attend a drug & alcohol program from an approved service provider, as recommended in the evaluation within ninety (90) days of signing the agreement, and must follow all recommendations of the service provider through the course of diversion
- Defendant must pay a fine of \$750 within nine (9) months of signing the agreement; failure to pay the fine within nine (9) months will result in revocation of the diversion agreement
- Defendant must remain law abiding and not consume and alcohol or ingest any controlled substance, and will be subject to random UA testing
- Defendant shall pay fines, court costs, and other associated fees within a specified period set forth in the agreement
- Defendant shall pay restitution (if applicable) in full in the payment structure designated in the agreement; failure to adhere to the payment structure will result in revocation of the diversion agreement
- Defendant shall work in a lawful occupation and/or attend school
- Defendant shall maintain current address on file with the District Attorney's Office and the Clerk of the District Court

**Effect:** Upon entering into the diversion agreement, the criminal proceedings shall be suspended. When the defendant successfully fulfills the terms and conditions of the agreement, the District Attorney shall have the criminal charges against the defendant dismissed. If the District Attorney finds at the termination of the diversion period or any time prior to the termination of the diversion period that the defendant has failed to fulfill the terms of the specific diversion agreement, the District Attorney shall inform the district court of such finding, and the district court, after finding that the defendant has failed to fulfill the terms of the specific diversion agreement at a hearing thereon, shall resume the criminal proceedings on the complaint. The District Attorney will have thirty (30) days after the end of diversion to learn of a violation of the terms and conditions of the diversion agreement and move for revocation.