



29TH JUDICIAL DISTRICT OF KANSAS

Policy for Diversion of Criminal Drug Charges

General Policy: The District Attorney has established a pretrial diversion program for qualified defendants. 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. 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 drug 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.

Defendants shall have an attorney for the purpose of drug diversion. Defendants shall reimburse the "court-appointed attorney's fund" when represented by court appointed counsel. The District Attorney's office does not provide interpreting services.

Drug diversion applications may be obtained from the Diversion Services Unit, or may be downloaded from the website: www.wycoda.org.

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

- An off-grid crime
- A severity level 1, 2 or 3 felony
- A domestic violence offense, as defined in K.S.A. 21-5111, and the defendant has participated in two or more diversions in the previous five year period upon complaints alleging a domestic violence offense

At the discretion of the District Attorney, defendants charged with the following offenses may also be denied diversion:

- A case involving a weapon or firearm
- Sex offenses, except prostitution/patronizing a prostitute
- A case involving financial lost over \$25,000
- Person crimes
- Theft from an employer, charity, or public agency
- Distributing or possessing with intent to distribute a controlled substance
- Cultivate any controlled substance or controlled substance analog

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

- Any prior felony conviction or misdemeanor (a prior misdemeanor diversion or conviction will require compelling circumstances to be granted diversion)
- Charges pending or outstanding warrants in other municipal, state, or federal jurisdictions
- Any pre-trial motions filed with the court prior to the final decision regarding diversion

- If the defendant is not a United States citizen, or a foreign national registered with I.C.E.
- If the defendant is currently on probation or parole in other municipal, state, or federal jurisdictions
- Failure to complete the application timely, wholly, 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 thirty (30) days of the first scheduled docket appearance. To apply for diversion, the defendant shall submit a completed drug diversion application to the Wyandotte County District Attorney's Diversion Services Unit. Applications may be submitted by mail, e-mail, or hand delivery.

The **non-refundable application fee** of \$130 is required to be paid to the Clerk of the District Court. You must pay \$30 at the time of submission of the application to the Clerk of the District Court and the remaining \$100 will be paid during the diversion period, if approved.

If approved for diversion, the defendant shall be required to pay the standard court costs to the Clerk of the District Court during the period of diversion.

The **court costs** shall be as follows:

- \$158 for misdemeanor charges - \$193 for felony charges

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 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 twelve (12) months. The diversion term may be for a shorter or longer period at the discretion of the District Attorney.

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

- Defendant must remain law abiding, shall not ingest any illegal substance, and will be subject to random UA testing
- Defendant shall not have contact with victim(s), co-defendant(s), and witness(es), unless otherwise waived by the Diversion Program Manager or Court Service Officer.
- 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
- Defendant shall surrender all firearms and ammunition to one who may lawfully possess them

Home Visits: During the period of diversion, court services may perform one or more home visits. The visits may be prearranged or unannounced.

If granted diversion, **special conditions** of the agreement may include, but are not limited to:

- Substance abuse treatment
- Mental health treatment
- Anger management classes
- Community service
- Abstaining from alcohol, illegal substances, prescribed medication without authority
- Other conditions as set out by the District Attorney

Failure to participate in these services may result in revocation.

Effect: Upon the defendant 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.