



*Adult Diversion*  
Sedgwick County Courthouse  
525 N. Main, Ste 235  
Wichita, Kansas 67203

**Office of the District Attorney**  
*18<sup>th</sup> Judicial District of Kansas*

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**DRUG DIVERSION PROGRAM**

Pursuant to K.S.A. 22-2906 et seq. the District Attorney of the Eighteenth Judicial District of Kansas has established a diversion program for the Eighteenth Judicial District. 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, drug cultivation, drug distribution, or possession of drugs with the intent to distribute are ineligible for diversion. All defendants charged with attempt, conspiracy, or solicitation to commit an offense, where the underlying crime 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 District Attorney. Defendants with prior felony convictions for violent or sex offenses are ineligible for the program. Defendants who have warrants or pending felony cases in this or any jurisdiction for separate legal actions are ineligible for diversion. Defendant must live in Sedgwick County or a county adjoining Sedgwick County. Defendants charged with certain non-drug offenses, DUI, or certain traffic infractions may be eligible for diversion under separate diversion programs administered by the District Attorney.

## **PROCEDURE**

The application is available on the District Attorney's website and in the Diversion Office. **For the defendant's completed application to be considered, it must be submitted to the Diversion Office with the appropriate fee within thirty (30) days of the first CAD setting or within thirty (30) days of the first scheduled IAD preliminary hearing. A non-refundable \$45.00 criminal history fee shall be due at the time of application in order to determine the defendant's eligibility for diversion regarding their criminal, traffic, and juvenile record. Eligibility does not guarantee acceptance for diversion.**

If the defendant is determined to be ineligible for consideration for diversion, the defendant will be notified. If the defendant is eligible for consideration for diversion, he or she will be scheduled for an interview with a diversion coordinator, which the defendant's attorney may attend. **A non-refundable \$45.00 application fee** must be paid on or before the interview date. The defendant will be required to complete a drug/alcohol evaluation to address his/her specific needs. The defendant shall give such information as may be necessary for the Diversion Committee to determine his or her eligibility and suitability for diversion, including information which may otherwise be privileged.

Payment for both the criminal history fee and application fee may be submitted at the time of application, in one payment, if the defendant chooses. **Fees must be in the form of a cashier's check, money order, or attorney's trust account check made payable to "District Attorney."**

## **CONSIDERATIONS**

The following factors will 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 crimes 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 and benefit from diversion
- The availability of a suitable treatment program for the defendant
- The appropriateness of diversion to meet the needs of the defendant and the community
- Recommendations of the law enforcement agency involved
- Recommendations of a Diversion Coordinator and/or assessment evaluator
- Any mitigating or aggravating circumstances
- Whether the defendant admits the offense and accepts responsibility
- Whether there is a probability the defendant committed the crime as a result of an injury, including major depressive disorder, polytrauma, post-traumatic stress disorder, or traumatic brain injury connected to service in a combat zone while in the U.S. Armed Forces, and, if so, whether there is a probability the defendant will cooperate with and benefit from inpatient or outpatient treatment in a facility operated by the U.S. Department of Defense, the U.S. Department of Veterans Affairs, or the Kansas National Guard, with the defendant's consent, as a condition of diversion.

## **DETERMINATION**

The Diversion Committee will review the defendant's suitability for diversion and make a recommendation to the District Attorney. The District Attorney reserves the right to accept or reject the recommendations of the Diversion Committee in making the final determination of 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 Diversion Coordinator and/or the District 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 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 a diversion coordinator or to any other person at the time he or she may be ordered to do so by a diversion coordinator, or anyone so designated by a diversion coordinator
- Payment of all court costs, diversion costs, fees 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, counseling, or other program
  4. Payment of all treatment or other program costs
  5. Performance of community service
  6. Other conditions as determined by the District 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 District 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 District 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.