



*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*

Telephone: (316) 660-3663  
Toll Free: (800) 432-6878  
Fax: (316) 660-3674

## **DIVERSION PROGRAM – DRIVING UNDER THE INFLUENCE**

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 traffic offenders charged with DUI (Driving Under the Influence) pursuant to K.S.A. 8-1567 et. seq. Persons charged with Refusal to Submit to Test to Determine Presence of Alcohol or Drugs (no prior DUI), Minor in Possession, Minor in Consumption, and Transporting Open Container may also be eligible for this program with similar requirements.

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 diverted on DUI or DWI (Driving While Intoxicated) even if the case has been expunged; 2) offenses where a personal injury or a death is involved; 3) defendants whose BAC is .24 or higher; 4) offenses where one or more children under the age of 14 were in the vehicle; 5) offenses where additional non-divertible criminal (other than traffic) charges are filed; 6) offenses where the defendant's driver's license was revoked or suspended, except in cases where it is the first time the defendant's license has been suspended, and the suspension is solely due to failure to comply with a citation; 7) offenses where the defendant was driving in violation of a substantial license restriction; 8) defendants with a commercial driver's license at the time of the offense; 9) defendants who have warrants or pending felony cases in this or any jurisdiction for separate legal actions; 10) defendants with a prior felony conviction for violent or sex offenses or any offense which resulted in an imposed prison sanction in this or any jurisdiction; 11) defendants with a prior conviction for any felony offense in this or any jurisdiction within 8 years prior to the current case. Consideration will also be given to offenders whose prior case resulted in more than one such conviction in the single case. Defendants charged with certain criminal offenses in addition to DUI in the single case may be eligible for diversion under the Criminal or Drug programs if the additional offenses are also divertible.

## **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 initial court date. 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 notified and instructed to schedule a drug/alcohol evaluation. A **non-refundable \$45.00 application fee** shall be due within two weeks of the date of the letter of notification.

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."**

The defendant may be required to have an interview with a diversion coordinator. The defendant shall give such information as may be necessary for the Diversion Committee to determine his/her eligibility and suitability for diversion, including information which may otherwise be privileged.

## **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:

- Level of blood or breath alcohol concentration (there will be a presumption against a grant of diversion with a BAC in range of .20 to .23 absent substantial mitigating circumstances)
- Circumstances surrounding the offense
- Whether the defendant, at the time of the offense, had liability insurance in force
- 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 and benefit from diversion
- The appropriateness of diversion to meet the needs of the defendant and the community
- Recommendations of the law enforcement agency, 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 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 the facts of the case
- A specified term of diversion, with a standard 12-month term for DUI and Refusal, and a standard 10-month term for MIP, MIC and TOC
- 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
- Any 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 a drug and alcohol education class, substance abuse treatment, or both, and payment of program costs
- 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. Compliance with any restriction, suspension, or revocation of the privilege to operate a motor vehicle as imposed by the State of Kansas
  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.