

Office of the Scott County Attorney

LAURA L. LEWIS
Attorney At Law, LLC

303 Court Street
Scott City, Kansas 67871
Telephone (620) 872-3600
Facsimile (620) 872-5666
caassistant@scottcountyks.com

Criminal Diversion Policy

Pursuant to K.S.A. 22-2906 et seq. the Scott County Attorney 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:

The County Attorney is not allowed by statute to enter into diversion agreements in lieu of further criminal proceedings on a complaint where the complaint alleges a violation of K.S.A. 8-1567, driving under the influence, and the defendant has either been previously on diversion for or has been convicted of a similar charge no matter where or when situation occurred; the complaint alleges an off-grid crime, a severity level 1, 2, or 3 felony for non-drug crimes or a severity level 1 or 2 felony for drug crimes; or the complaint alleges a domestic violence offense and the defendant has participated in two or more diversions in the previous five year period upon complaints alleging a domestic violence offense. The County Attorney will not consider diversions in cases of burglary involving a dwelling, felony sexual offenses, animal cruelty, crimes involving a deadly weapon, or crimes involving death. All other crimes, if the defendant does not have a prior felony conviction within the last five years, *may be* eligible for diversion.

PROCEDURE:

The application shall be available in the Scott County Attorney's Office. **The defendant shall complete the application for diversion and submit the application to the Scott County Attorney.**

The application for Diversion **must** be filed prior to first Preliminary Hearing date if the case is a felony, or within thirty (30) days of arraignment if the case is a misdemeanor. **Applications not so filed will not be considered unless agreed to 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 and benefit from diversion.
- The appropriateness of Diversion to meet the needs of the defendant and impact on the community.
- Provisions for restitution.
- Recommendations of the law enforcement agency involved and the victim.
- Any mitigating or aggravating circumstances.
- Whether the defendant accepts responsibility.

DETERMINATION:

The County Attorney's Office will review the defendant's suitability for diversion. The County Attorney reserves the right to accept or reject any application based on the above considerations. 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 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.
- 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 City Attorney 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.
- 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.
- Fee for reimbursement of court appointed attorney.
- Any special conditions agreed to by the parties which may include any of the following:
 1. Full restitution to the victim, as well as community service.
 2. Residence in a specified facility.
 3. Maintenance of gainful employment.
 4. Participation in any recommended program.
 5. Counseling, a drug and alcohol evaluation, or a violence/anger evaluation.
 6. Other conditions as determined by the City 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.

LEGAL COUNSEL:

The office of the Scott County Attorney cannot provide you legal advice. If you do not fully understand this process or have legal questions, please seek legal counsel to review your case and assist you with the diversion process. If you wish to apply for court appointed counsel, please contact the district court.

(FOR OFFICE USE ONLY)

Application Fee _____ Date Received _____

Next Court Date _____ Case No. _____

Accepted _____ Denied _____ Date Agreement Sent Out _____

APPLICATION FOR PRETRIAL DIVERSION PROGRAM

All answers must be complete. After completing the application below, please return it to the County Attorney's Office **NOTE:** This application **must** be filed before the preliminary hearing or within thirty (30) days of arraignment. **YOU MUST ATTEND YOUR NEXT COURT HEARING UNLESS YOU VERIFY WITH THE COURT THAT THE AGREEMENT HAS BEEN FILED AND YOU ARE EXCUSED.**

1. Name _____ Phone No. _____
(Last) (First) (Middle)

Maiden name or other names used _____

Address _____
(Street) (City) (State) (Zip)

2. List others living in your home. _____
(Name) (Relationship)

How long have you lived at this address? _____ Email: _____

3. Age _____ 4. Date of Birth _____ 5. Race _____ 6. Sex _____

7. City and State where born _____

8. Social Security Number _____

9. Driver's License Number _____ State of Issuance _____

10. Marital Status _____ Spouse's Name _____

11. Number and Ages of Minor Dependents _____

12. Educational and Vocational Training (include high school or highest grade completed if not high school graduate, as well as education beyond high school). _____

13. Military Service _____ Yes _____ No _____ Branch _____

Type of discharge _____ Date of Discharge _____

14. Nearest Contact:

Name _____ Telephone No. _____

Address _____

Relationship to Defendant _____

15. Defense Attorney:

Name _____ Telephone No. _____

Address _____

16. Present Employment:

Employer _____ Telephone No. _____
Address _____
Dates Employed _____ to _____ Occupation _____
Salary _____

17. Employment History (list employment for the past three years. Begin with current employer. If you need more space, use blank sheet of paper.)

-Employer _____ Telephone No. _____
Address _____
Dates Employed _____ to _____ Occupation _____
Reason Left _____

-Employer _____ Telephone No. _____
Address _____
Dates Employed _____ to _____ Occupation _____
Reason Left _____

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 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.)

20. 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:

21. 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)