



OFFICE OF
WOODSON COUNTY ATTORNEY
Zelda Schlotterbeck

WOODSON COUNTY DIVERSION PROGRAM
Effective January 27, 2020

Pursuant to K.S.A. §22-2906 et seq., the County Attorney of Woodson County, Kansas, has established a Diversion Program. A copy of this Diversion Program will be available to each defendant upon his or her first appearance before the Court.

Diversion is a privilege, 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.

Following are the minimum conditions for a defendant in regard to your eligibility to participate in the Woodson County Diversion Program. Meeting these conditions does not mean you will be automatically accepted for diversion. Each case is unique and will be reviewed on its own merits. However, if the following conditions are not met, then your application will be denied without further consideration.

1. The signed diversion agreement must be received back in our office within thirty (30) days of the mailing date.
2. No late payment. The first time a payment is received late, our office will automatically start revocation proceedings. If you are going to be unable to make a payment, contact your attorney or our office immediately. Personal checks are accepted.
3. It is your responsibility to keep our office informed of address changes and/or other changes relevant to your case(s) and meet all deadlines. No exceptions will be made.

ELIGIBILITY

Defendants charged with nondrug related misdemeanors, traffic and fish and game offenses shall be eligible to apply for diversion. No defendant charged with assault or battery on a law enforcement officer will be eligible for diversion. For a traffic diversion how fast you were going above the speed limit will be a factor in determining eligibility for diversion.

In all cases, the decision to offer a diversion, together with any terms thereof, rests solely in the discretion of the Woodson County Attorney and/or Assistant County Attorney. The County Attorney reserves the right to offer diversion for drug related misdemeanors and felony offenses in special, unique circumstances when deemed necessary for the effective administration of justice and in the best interest of the defendant and the community. In determining whether a diversion is warranted in a specific case, the County Attorney shall address and consider the factors set out in K.S.A. §22-2908.

PROCEDURE

The application for Diversion shall be attached to this Diversion Program. The defendant shall complete the application for Diversion and submit the application to the County Attorney's

Office. Further, in alcohol and drug related cases, the Defendant shall make an appointment for a drug/alcohol evaluation after submitting the diversion agreement and must provide the agency with a copy of the diversion agreement. **For 1st time DUI Applicants: The \$150.00 fee for the evaluation must be paid to the County Attorney's Office upon submitting your Agreement. If paying by check, please make check payable to: Southeast Kansas Mental Health Center.**

The law enforcement agency shall submit an evaluation concerning the Defendant's prior record, investigations and concerns regarding the diversion.

Upon review, the County Attorney will decide if diversion is accepted.

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 to the community:

1. The nature of the crime charged and circumstances surrounding it;
2. Any special circumstances or characteristics of the defendant;
3. Whether defendant is a first-time offender and if defendant has previously participated in diversion;
4. Whether there is a probability that defendant will cooperate with and benefit from a diversion;
5. Whether the available diversion program is appropriate to the needs of the defendant and community;
6. Recommendations, if any, of involved law enforcement agency;
7. Recommendations, if any, of the victim;
8. Recommendations, if any, of the alcohol/drug counselor;
9. Provisions for restitution; and
10. Any mitigating circumstances.

Additionally, the County Attorney or Assistant County Attorney may examine the following criteria in determining whether diversion is in the interests of justice and of benefit to the defendant and the community:

1. The arrest record of defendant;
2. The employment record of defendant;
3. The physical and mental condition of defendant as perceived by the County Attorney or Assistant County Attorney;
4. Public reaction to the offense charged;
5. Education level of defendant;
6. Family and social history of the defendant;
7. Degree to which defendant cooperated or failed to cooperate with law enforcement;
8. General attitude of defendant;
9. Whether the Woodson County Attorney's Office possesses the necessary resources to establish and execute an effective diversion program which would benefit the defendant and the community; and
10. Any other factors the County Attorney or Assistant County Attorney deems appropriate to the particular defendant and the specific offense charged.

After considering all the factors set forth, the County Attorney or Assistant County Attorney may offer a diversion agreement to a defendant.

AGREEMENT

If the defendant is found suitable for the Diversion Program, a written agreement for diversion shall be offered to the defendant for acceptance or rejection. If no action is taken within thirty (30) days after the offer to defendant or counsel for defendant, the offer will be considered to be withdrawn.

The written agreement shall contain:

1. A waiver of rights to a speedy arraignment, preliminary examination, and/or speedy trial under the Constitution of the State of Kansas and the Constitution of the United States.
2. A waiver of a right to jury trial and agreement to stipulate to the facts of the case as contained in the police reports, narratives, written statements, and affidavits.
3. An agreement that the defendant shall not violate any laws of the United States, or any State, County or local laws.

The written agreement may contain:

1. An agreement for the defendant to report to the diversion program coordinator or to any person that the County Attorney designates.
2. A specified term of diversion.
3. In traffic matters, an agreement by defendant to maintain owner's or non-owner's liability insurance and provide verification of said insurance in effect during the term of the diversion to the County Attorney's Office.
4. Payment of a specified fine as determined by the County Attorney in accordance with the statutory guidelines.
5. Payment of all Court costs: \$193.00 in felony cases, \$158.00 in misdemeanor cases, \$56.00 in juvenile cases, and \$108.00 in minor traffic cases.
6. Payment of attorney fees for the defendant's court appointed attorney, if one.
7. Payment of a diversion fee by cash, money order, certified check or law firm check made payable to the Woodson County Treasurer. This diversion fee is due at the time of filing any diversion agreement not application. All monies from diversion fees shall be deposited in the County General Fund. The amounts of diversion fees are as follows:

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| a) | Minor Traffic | \$100.00 |
| b) | DUI | \$150.00 |
| c) | Misdemeanor Offenses | \$150.00 |
| d) | Felony Offenses | \$200.00 |

The County Attorney reserves the right to reduce or eliminate the fees set forth above in special, unique circumstances when deemed necessary for the effective administration of justice.

8. Special conditions may also be required, including:
 - a) Residence in a specified facility or location;
 - b) Maintenance of gainful employment;
 - c) Restitution to the victim;
 - d) Drug, Alcohol, Psychological and/or psychiatric evaluations;
 - e) Satisfactory participation in and completion of designated medical, psychological, educational, vocational, or social counseling programs;
 - f) Avoidance of specific locations or associates;
 - g) Moderation or abstinence in the consumption of alcoholic beverages and/or drugs;
 - h) Consent to random alcohol or drug testing at defendant's expense;
 - i) Letter(s) of apology to any victim(s);
 - j) Suspension of driving privileges;
 - k) House arrest;

- l) Strict school attendance;
- m) Community service;
- n) Any other conditions as determined by the County Attorney;
- o) Payment of the KBI lab fee, if applicable, of \$400.

EFFECT

Upon the Defendant entering into an Agreement of Pre-trial 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 Pre-trial Diversion, the County Attorney will request that diversion agreement be set aside. After an appropriate hearing, the court upon finding the defendant failed to fulfill the terms of the Agreement for Pre-trial Diversion, may order diversion revoked and resume criminal proceedings set forth in the complaint or information based upon the stipulation of facts contained in the agreement.

Diversion is a privilege, not a right. Absolute compliance will be required.

IT IS YOUR RESPONSIBILITY TO KEEP IN CONTACT WITH THIS OFFICE REGARDING YOUR DIVERSION NOT DOING SO COULD RESULT IN YOUR LICENSE BEING SUSPENDED!

Zelda Schlotterbeck
Woodson County Attorney