

Finney County Attorneys Office  
409 N. Ninth St.  
Garden City, KS 67846  
620-272-3568

## **FINNEY COUNTY DIVERSION PROGRAM**

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

Diversion of Prosecution 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 non-violent felony crimes and all misdemeanors, traffic and fish and game offenses shall be eligible to **apply** for Diversion. All Defendants, if they have no prior felony convictions and have never previously been placed on Diversion in this or any other jurisdiction, and are charged with non-violent crimes shall be eligible to apply for Diversion. Defendants charged with **Off-grid, Level 1-3 Nondrug and Level 1-3 drug felonies shall not** be eligible to apply for Diversion pursuant to K.S.A. 22-2908.

**If you are applying for Diversion for the offense of No Drivers License, you will be required to have a valid drivers license at the time you sign the Diversion Agreement. If you are applying for Diversion for the offense of No Proof of Insurance, you will be required to have current insurance on your vehicle or on yourself at the time you sign the Diversion Agreement. In the above cases, if you are unable to obtain a valid drivers license or insurance, you should not apply for Diversion.**

***Pursuant to Kansas law (House Bill 2220, effective April 17, 2003) one who commits a traffic violation, in any type of motor vehicle and who owns or posses a commercial driver's license (CDL) is prohibited from entering into a diversion agreement for traffic violations, except parking violations.***

### **PROCEDURE**

The application for Diversion shall be upon the prescribed form prepared by the Finney County Attorney's Office. An "Application for Diversion" is attached to this

Diversion packet.

The Defendant, or his/her attorney shall complete the "Application for Diversion" and submit the application, along with a **\$40.00** application-processing fee. This non-refundable application processing fee **must** be in the form of a cashier's check, money order, attorney's trust account check, or cash, payable to the "**FINNEY COUNTY ATTORNEY**". **This application for Diversion must be submitted to the Finney County Attorney's Office within seven (7) days of first appearance before the Court exclusive of Saturdays, Sundays, or legal holidays. Applications not timely filed will likely not be considered.**

Further, in all felony or misdemeanor criminal cases, and alcohol and/or drug cases, the Defendant shall make an appointment with a certified alcohol facility for intake conference, and the Defendant must undergo, at the Defendant's exclusive expense, any and all intake evaluations as may be required at one of the above-mentioned agencies. All fees for the alcohol/drug facility must be paid by the Defendant to the evaluating agency.

All Defendants participating in a Diversion Program for the offense of Driving Under the Influence of Alcohol and/or Drugs, Transportation of Open Container of Alcohol, or Possession/Consumption of Alcohol or Cereal Malt Beverage by a Minor (between ages 18 and 21) or any drug offenses shall participate in, complete and pay for the recommended program at an alcohol/drug facility.

Upon review, the Finney County Attorney's Office will decide if Diversion is an acceptable alternative for the Defendant. This determination is absolutely required to be made prior to Preliminary Hearing in felony cases. In all other cases, this determination shall be made sufficiently in advance of trial so as to not require the State of Kansas to subpoena witnesses for trial.

**THE DEFENDANT OR THE ATTORNEY FOR THE DEFENDANT SHALL FILE AND OBTAIN AN ORDER OF CONTINUANCE OF ALL HEARINGS AT THE TIME THE DIVERSION APPLICATION IS SUBMITTED TO THE COUNTY ATTORNEY'S OFFICE. SAID MOTION AND ORDERS FOR CONTINUANCE SHALL BE CHARGED TO THE DEFENDANT.**

### **CONSIDERATIONS**

Although not intended to be exclusive, the following factors shall be considered by the Finney County Attorney's Office in determining whether Diversion of the Defendant is in the best interest of justice and will be a benefit to the Defendant and to the community.

1. Nature of the crime charged and the circumstances surrounding it.
2. Any special characteristics or circumstances of the Defendant.
3. Previous record of the Defendant.

4. The probability that the Defendant will cooperate with and benefit from Diversion.
5. The appropriateness of this Diversion Program for the needs of the particular Defendant.
6. Provisions for restitution.
7. Recommendations of the law enforcement agency involved; and the recommendations of the agencies providing Diversion services to the Finney County Attorney's Office.
8. Any mitigating circumstances.

### **AGREEMENT**

If the Defendant is found suitable for Diversion Program, a written agreement for Diversion shall be offered to the Defendant for acceptance or rejection. If no action is taken within fourteen (14) days after the offer to Defendant or counsel for Defendant, the offer will be considered withdrawn. Although not exclusive, the written agreement may contain:

1. A waiver of all rights to a speedy trial.
2. In cases involving a violation of K.S.A. 8-1567 (DUI), the Defendant waives all rights to a jury trial and agrees to stipulate to the facts of the case.
3. An agreement that the Defendant report to the Diversion Program Coordinator or any other person that the County Attorney designates.
4. A specified term of diversion.
5. In traffic matters, the Defendant agrees to maintain owners or non-owners liability insurance and provide verification that said insurance is in effect during the term of the Diversion period.
6. That Defendant must have an evaluation at Community Corrections and then attend appropriate programs requested by the Diversion Supervisor.
7. That Defendant agrees not to violate any laws of the United States or any state, county, or local laws.
8. Payment of a specified fine as determined by the County Attorney in accordance with the statutory guidelines.
9. Payment of all Court costs.

10. Payment to the Finney County Attorney's Office of a Diversion Fee:
  - a. \$525.00 for Nondrug level 4 & 5
  - b. \$325.00 for Nondrug level 6 & 7, Drug level 4
  - c. \$225.00 for Nondrug level 8,9, & 10, and Nongrid felonies
  - d. \$175.00 for a Class A Misdemeanor and Alcohol related Traffic Offenses.
  - e. \$150.00 for a Class B Misdemeanor
  - f. \$125.00 for a Class C Misdemeanor

**Diversion fees in the entire amounts as herein above set forth, must be paid in their entirety to the Finney County Attorney's Office within thirty (30) days of being accepted for Diversion.** Upon being accepted for Diversion, the \$40.00 Application-processing fee will be applied to the Diversion fee.

11. Any special conditions including:
  - a. Residence in a specified facility;
  - b. Maintenance of gainful employment
  - c. Counseling;
  - d. Restitution for Court-appointed attorney's fees;
  - e. Other conditions as determined by the County Attorney.
  - f. Random urine analysis and/or breath testing
  - g. Restitution to the victim(s) of any crime.

### **EFFECT**

Upon the Defendant entering into an agreement of Pre-Trial Diversion, the criminal proceedings shall be suspended by appropriate order of the Court. The filing of the original Diversion Agreement with the Clerk of the District Court of Finney County, Kansas, shall act as a general continuance of the proceedings until the conclusion of the Diversion Agreement. When the Defendant has successfully fulfilled the terms and conditions of the Diversion Agreement, the County Attorney shall move to have all of the charges against the Defendant 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 the Diversion be terminated. After an appropriate hearing, the Court, upon finding that the Defendant failed to fulfill the terms of the agreement for Pre-Trial Diversion, may order Diversion terminated and resumption of the criminal proceedings on the original complaint.

The Finney County Attorney's Office does hereby advise all prospective applicants for Diversion of Prosecution to consult with their own attorney prior to executing any Diversion Agreement, to determine any and all effects which said Diversion Agreement may have upon the individual Defendant.

It is extremely important that the Defendant understand that Diversion is a privilege and not a right, and **absolute compliance** will be required. Absolute compliance with the conditions of Diversion, including the timely making of any and all payments under the Diversion contract, on the dates specified therein will be required. The County Attorney's Office will not excuse any non-compliance no matter how slight.

## **GENERAL INFORMATION**

### **DUI DIVERSIONS**

Persons accepted for a DUI Diversion are subject to the following:

Diversion for a minimum of nine (9) months; Court costs of \$108.00; a \$50.00 contribution to a non-profit organization of their choice; and a \$10.00 sign-up fee for a minimum of 40 hours of community service, all due the day of the diversion conference. The Diversion Fee of \$200.00 less the \$40.00 application fee is due in its entirety within thirty (30) days of signing of the diversion agreement. The DUI fine of \$750.00 is payable to the Clerk of the District Court. If there are additional charges such as Driving While Suspended, No Proof of Insurance, Speeding, etc., those fines will be added to the DUI fine. In the event that urine or blood samples are sent to the K.B.I. Lab in Topeka, the Defendant, pursuant to K.S.A. 28-176 shall be assessed a fee of \$400.00 for lab testing performed by the Kansas Bureau of Investigation. This fine may be paid in installments. The Defendant, at the discretion of the reviewing attorney, may also be subject to random urine analysis and/or breath testing and shall be responsible for the associated costs of the test.

Defendant shall complete an ADSAP evaluation at an alcohol/drug facility. It shall be completed at least two weeks prior to the diversion conference with copies provided to the Diversion Supervisor.

### **DWS AND OTHER CRIMINAL MISDEMEANOR DIVERSIONS**

Persons accepted for Diversion for Driving While Suspended or criminal misdemeanor charges are subject to the following:

Diversion for a minimum of six (6) months; Court costs of \$108.00 if a traffic misdemeanor or \$158.00 if a criminal misdemeanor; a contribution to a non-profit organization of his/her choice in Garden City, Kansas; A minimum of 40 hours of community service; and a diversion fee depending on class of misdemeanor.

## **TRAFFIC & CRIMINAL FELONIES**

Diversion for a minimum of twelve (12) months; Court costs of \$193.00; 40 to 100 hours of community service; and a diversion fee anywhere up to \$525.00, depending on class of felony.

If a Defendant is charged with a felony involving restitution, the Defendant will be placed on diversion long enough for the restitution to be paid in full. If the Defendant is charged with a forgery, he/she may be subject to a forensics fee for the handwriting analysis.

**If the Divertee is charged with another offense while on diversion it is grounds for automatic revocation of the Diversion Agreement. Failure to comply with all diversion requirements will also be grounds for revocation.**

**TEAR OFF INFORMATION PORTION AND RETURN APPLICATION ONLY**

CA Office USE:

Date Received: \_\_\_\_\_

Receipt #: \_\_\_\_\_

Attorney: \_\_\_\_\_

Date: \_\_\_\_\_

Court Case No. \_\_\_\_\_

**DIVERSION APPLICATION**

1. Name: \_\_\_\_\_

Maiden Name or any other names used within the last five (5) years.

\_\_\_\_\_

2. Address: \_\_\_\_\_

Mailing Address \_\_\_\_\_

City, State & Zip: \_\_\_\_\_

3. Telephone Number: Home \_\_\_\_\_ Work \_\_\_\_\_

4. Length of residence at that address: \_\_\_\_\_

5. Previous Address: (List all addresses at which you lived in the past 5 years):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

6. List all States that you have lived in other than Kansas: \_\_\_\_\_

\_\_\_\_\_

7. Social Security Number: \_\_\_\_\_

8. Race: \_\_\_\_\_ Sex: \_\_\_\_\_ Wt: \_\_\_\_\_ Ht: \_\_\_\_\_

9. Color of Eyes: \_\_\_\_\_ Color of Hair: \_\_\_\_\_

10. Date of Birth: \_\_\_\_\_ Place of Birth: \_\_\_\_\_

11. Employer: \_\_\_\_\_ How Long \_\_\_\_\_

Address: \_\_\_\_\_ Phone: \_\_\_\_\_

12. Previous Employer: \_\_\_\_\_ How Long \_\_\_\_\_

Address: \_\_\_\_\_ Phone: \_\_\_\_\_

13. Date of Arrest (ticket): \_\_\_\_\_
14. Charges you are applying for Diversion for: \_\_\_\_\_
15. Drivers license Number (include State): \_\_\_\_\_
16. Do you have a valid drivers license? ( ) YES ( ) NO
17. Can you obtain a valid drivers license? ( ) YES ( ) NO
18. Do you carry a Commercial Drivers License: ( ) YES ( ) NO  
(You are not eligible for a diversion on a traffic offense if you carry a CDL)
19. Do you have valid auto insurance? (List insurance company & policy #):  
\_\_\_\_\_
20. Parents Name: \_\_\_\_\_  
Address: \_\_\_\_\_ Phone: \_\_\_\_\_
21. Are you married: \_\_\_\_\_ Divorced: \_\_\_\_\_ Separated: \_\_\_\_\_
22. Spouses Name: \_\_\_\_\_  
Address: \_\_\_\_\_ Phone: \_\_\_\_\_
23. Do you have minor children: \_\_\_\_\_ How Many: \_\_\_\_\_
24. Are you supporting these children: \_\_\_\_\_
25. Is there a support order for any or all of these children? If so, name and location of Court and Case Number/County: \_\_\_\_\_
26. Name, Address and phone number of someone who will always know your whereabouts.  
\_\_\_\_\_  
\_\_\_\_\_
27. Are you currently experiencing any mental or physical problems? ( ) Yes ( ) No  
If yes, state the nature of problem and name of treating physician, therapist:  
\_\_\_\_\_  
\_\_\_\_\_
28. Have you participated in any alcohol/drug treatment program? ( ) Yes ( ) No  
If so, state when and dates of attendance:  
\_\_\_\_\_  
\_\_\_\_\_
29. List any prior incidents where you were arrested, charged or convicted of crimes whether felony, misdemeanor or traffic. List the City/County/State and date where the incident occurred and the results of the incident:  
\_\_\_\_\_

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30. Have you ever been on probation or parole? ( ) Yes ( ) No  
If so, where, dates and on what type of charge:

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31. Do you use liquor or narcotics: ( ) Yes ( ) No

32. Have you ever participated in a Diversion in this State or any other State? ( ) Yes ( ) No  
If yes, list the city, county, state, charges and dates and if you completed it successfully:

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DO YOU SPEAK AND READ ENGLISH FLUENTLY: YES \_\_\_\_\_ NO \_\_\_\_\_  
DO YOU NEED AN INTERPRETER: YES \_\_\_\_\_ NO \_\_\_\_\_  
IF YES, WHAT LANGUAGE? \_\_\_\_\_

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Defendant's Signature

**THE DEFENDANT OR THE ATTORNEY FOR THE DEFENDANT SHALL FILE AND OBTAIN AN ORDER OF CONTINUANCE OF ALL HEARINGS AT THE TIME THE DIVERSION APPLICATION IS SUBMITTED TO THE COUNTY ATTORNEY'S OFFICE. SAID MOTION AND ORDERS FOR CONTINUANCE SHALL BE CHARGED TO THE DEFENDANT.**

\_\_\_\_\_ I ACKNOWLEDGE THAT IT IS MY RESPONSIBILITY TO ENSURE THAT I APPEAR IN COURT FOR THE SCHEDULED COURT DATE OR MAKE ARRANGEMENTS TO CONTINUE THE CASE TO A DATE AFTER THE DIVERSION CONFERENCE DATE.