

Finney County Attorneys Office
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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, except those charged with off-grid, severity level 1-3 non-drug offenses, or severity level 1-3 drug offenses, shall be eligible to apply for Diversion. Diversions are generally approved for non-violent felonies and misdemeanors where the Defendant has no criminal history and has not participated in a previous diversion. Cases involving person crimes, Defendant's with criminal history, or Defendant's with prior diversions are reviewed on a case by case basis.

If you are applying for Diversion for the offense of No Driver's License, you will be required to have a valid driver's 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 driver's 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 possess 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. This application for Diversion must be submitted to the Finney County Attorney's Office within sixty (60) days of first appearance before the Court. Applications not timely filed will not be considered absent approval of the assigned prosecutor.

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.

Before any diversion is finalized on any felony or class A misdemeanor the parties must request a hearing before the Court to allow the court to advise the Defendant of their right to a jury trial and by entering into a diversion agreement the Defendant is waiving that right.

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, will benefit the Defendant, and ensure the safety of the community.

1. Nature of the crime charged and the circumstances surrounding it.
2. Any special characteristics or circumstances of the Defendant.
3. The Defendant's criminal history to include arrests and convictions.
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. Input from any victims and/or any mitigating circumstances.

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 fourteen (14) days after the offer to Defendant or counsel for Defendant, the offer will be considered withdrawn. Although not exclusive, the written agreement will contain:

1. A waiver of all rights to a speedy trial.
2. A waiver of the right to a jury trial.
3. An agreement to proceed to a bench trial on stipulated facts should the Defendant violate the terms of the diversion agreement.
4. A stipulation of facts as to the charged offenses.
5. An agreement that the Defendant report to the Diversion Program Coordinator or any other person that the County Attorney designates.
6. A specified term of diversion.
7. 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.
8. That Defendant must have an evaluation at Community Corrections and then attend appropriate programs requested by the Diversion Supervisor.
9. That Defendant agrees not to violate any laws of the United States or any state, county, or local laws.
10. Payment of any statutorily required fine.
11. Payment of all Court costs.
12. Payment to the Finney County Attorney's Office of a Diversion Fee:
13. In addition to the diversion fee, a matching contribution to a non-profit of your choice. See the Contribution List at the bottom of this application.

CRIMINAL DIVERSION FEES:

Misdemeanor:

	<u>CONTRIBUTION FEE</u>	<u>DIVERSION FEE</u>
Class A Person	\$300.00	\$300.00
Class A Non-person	\$275.00	\$275.00
Class B Person	\$250.00	\$250.00
Class B Non-person	\$225.00	\$225.00
Class C Person	\$200.00	\$200.00
Class C Non-person	\$175.00	\$175.00
Unclassified	\$150.00	\$150.00

Felony: PER STATUTE ABSOLUTELY NO LEVEL 3 DIVERSIONS

	<u>CONTRIBUTION FEE</u>	<u>DIVERSION FEE</u>
Level 4 Person	\$550.00	\$550.00
Level 4 Non-Person	\$525.00	\$525.00
Level 4 Drug	\$525.00	\$525.00
Level 5 Person	\$500.00	\$500.00
Level 5 Non-person	\$475.00	\$475.00
Level 5 Drug	\$475.00	\$475.00
Level 6 Person	\$450.00	\$450.00
Level 6 Non-person	\$425.00	\$425.00
Level 7 Person	\$400.00	\$400.00
Level 7 Non-person	\$375.00	\$375.00
Level 8 Person	\$350.00	\$350.00
Level 8 Non-person	\$325.00	\$325.00
Level 9 or 10	\$275.00	\$275.00

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.

Any special conditions appropriate to the Defendant's circumstances and the crime(s) charged including, but not limited to:

1. Residence in a specified facility.
2. Maintenance of gainful employment
3. Counseling.
4. Restitution for Court-appointed attorney's fees; Domestic Violence Evaluation
5. Substance Abuse Evaluation
6. Alcohol/Drug Evaluation
7. Batterers Intervention Program
8. Anger Management
9. Crossroads (life skills)
10. Larceny Program
11. Level 1 Outpatient
12. Alcohol Drug Information School
13. Courage to Change – Community Corrections
14. Other conditions as determined by the County Attorney.
15. Random urine analysis and/or breath testing
16. Restitution to the victim(s) of any crime.
17. Advent eLearning Courses

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.

If any divertee needs additional time to pay amounts due, including restitution, they may request the diversionary period be extended to allow additional time to pay. Any such extension will be executed in writing as an addendum to the diversion agreement. Any such extension is not guaranteed and will be considered on a case by case basis.

GENERAL INFORMATION

DUI DIVERSIONS

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

Diversion for a minimum of twelve (12) months; Court costs of \$108.00; a \$225.00 contribution to a non-profit organization of their choice (please see contribution list at the bottom of this application), all due the day of the diversion conference. The Diversion Fee of \$225.00 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 Alcohol/Drug evaluation at an alcohol/drug facility. It shall be completed within three (3) months of filing the diversion agreement, with copies provided to the Diversion Supervisor. Defendant will also be required to follow any recommendations of the Alcohol/Drug evaluation and complete any recommendations by the end of the diversion term.

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 (see contribution list at the bottom of this application); and a diversion fee depending on class of misdemeanor.

KBI LAB TESTING FEE

Any charges that require KBI Lab testing (drugs/alcohol/paraphernalia) an additional fee of \$400.00 will be assessed to the diversion agreement along with the Diversion Fee, Non-Profit Contribution, Court Costs, and Fines.

ADDITIONAL CHARGES

Any additional charges in the diversion agreement will be added to the Diversion Fee and Non-Profit Contribution.

Each additional felony count: add \$100 per count
Each additional misdemeanor count: add \$75.00 per count
Each additional infraction: add \$25.00 per count
If this is second or subsequent diversion, costs double

TRAFFIC & CRIMINAL FELONIES

Diversion for a minimum of twelve (12) months; Court costs of \$193.00; and a diversion fee anywhere up to \$550.00, 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 the County Attorney's office will file a motion to revoke the Diversion Agreement. Failure to comply with any other requirement in the diversion agreement may result in a motion to revoke the diversion being filed at the discretion of the assigned prosecutor.