

NEOSHO COUNTY DIVERSION PROGRAM

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

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 interest of the community.

ELIGIBILITY

All Defendants charged with non-violent felony crimes and all misdemeanor and traffic and fish and game offenses shall be eligible to apply for Diversion if they have no prior felony convictions and have never previously been placed on Diversion in this or any other jurisdiction.

PROCEDURE

The application for Diversion shall be attached to this Diversion Program. The Defendant shall complete the application for Diversion and submit the application with a \$30.00 application fee that is a donation to the Neosho County Prosecutor Training Fund. This non-refundable fee **must** be in the form of a cashier's check, money order, attorney's check or cash, payable to "**Neosho County Attorney**". **This application for Diversion must be submitted to the County Attorney's office within five (5) days of First Appearance. Applications not so filed will not be considered.** Further, in felony cases, alcohol, and drug related cases, the Defendant shall have a drug/alcohol evaluation, and must provide the agency with a copy within the duration of the diversion period. All fees for said evaluation shall be paid directly to the agency providing the evaluation.

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The law enforcement agency shall submit an evaluation concerning the Defendant's prior record, investigations and concerns regarding the Diversion. **This shall be submitted within ten (10) days of Defendant's First Appearance.**

The attorney for the Defendant shall file a Motion to Continue all hearings at the time the Diversion Application is submitted to the County Attorney.

Upon review, the County Attorney will decide if Diversion is accepted. The determination will be made by the Preliminary Hearing date.

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.

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. Provision for Restitution.
7. Recommendations of the law enforcement agency involved; the victims; and the alcohol/drug counselor.
8. 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 to be withdrawn. The written agreement may contain:

1. A waiver of all rights to a speedy trial.
2. In all cases, 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 to any person that the County Attorney designates.
4. A specified term of Diversion.
5. In traffic matters, the Defendant agrees to maintain owner's or non-owner's liability insurance and provide verification that said insurance is in effect during the term of Diversion.
6. That Defendant agrees not to violate any laws of the United States or any State, County or local laws.
7. Payment of a specified fine as determined by the County Attorney in accordance with the statutory guidelines.
8. Payment of all Court costs.
9. Payment of a Diversion Fee; \$1000.00 for a level 4 drug felony or DWS third or subsequent; \$750.00 for a level 9-10 felony; \$500.00 for a DUI; \$300.00 for misdemeanor and alcohol related traffic offenses; \$75.00 for minor traffic infractions.

Diversion fees must be paid within thirty (30) days of being accepted for diversion.

10. Any special conditions including;
 - a. Residence in a special facility;

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- b. Maintenance of gainful employment;
- c. Counseling;
- d. Payment of Diversion Program Costs;
- e. Other conditions as determined by the County Attorney.

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 enters into a Diversion Agreement, the offense will be considered a conviction for sentencing purposes if the Defendant should later be convicted of another crime. If the Defendant fails to fulfill the terms and conditions of the Agreement for Pre-Trial Diversion, the County Attorney will request that Diversion be terminated. 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 terminated and resumption of the criminal proceedings on the original complaint.

It is extremely important that the Defendant understand that Diversion is a privilege and not a right and that absolute compliance will be required. This is of the essence, and absolute compliance with the conditions of Diversion, **INCLUDING MAKING PAYMENTS**, on the date specified will be required. The County Attorney's office will not excuse any non-compliance, no matter how slight.

Linus Thuston
Neosho County Attorney