

POLICY FOR PRETRIAL DIVERSION

Pursuant to K.S.A. 22-2907

Updated 11/01/2017

1. GENERAL

- 1.1 The County Attorney’s Office will enter into a pretrial diversion agreement with a defendant only when doing so will serve the interests of justice, and be of benefit to the defendant and the community.
- 1.2 The County Attorney’s Office maintains complete discretion, within the bounds of the law, in approving or denying any application for diversion.
- 1.3 The County Attorney’s Office will not opine as to a particular defendant’s eligibility, or potential approval for diversion prior to submission of a diversion application and fee. It is the responsibility of the defendant and/or defense counsel to be informed of a defendant’s eligibility based on this policy and the laws of the State of Kansas.
- 1.4 The County Attorney’s Office maintains the authority to deviate from the provisions of this policy as may be necessary to serve the interest of justice.

2. COSTS

- 2.1 ***Diversion Application Fee.*** Applications for diversion must be submitted with a cashier’s check, money order, or firm check, made payable to Diversion Application Fee Fund in the following amount:

Traffic	\$25
Fish & Game	\$25
DUI	\$100
Misdemeanor.....	\$100
Felony	\$150

- 2.2 ***Diversion Fee.*** If the application for diversion is approved, the defendant shall pay the following applicable diversion fee:

Traffic	\$50
Fish & Game	\$50
DUI	\$100
Misdemeanor.....	\$100
Felony	\$150

- 2.3 ***Fine.*** As a condition of diversion, the defendant must pay fines in the amount set out in the diversion agreement. Such fines will not be less than the statutory minimum, if applicable. Fines may be more than the statutory minimum, if applicable.
- 2.4 ***Restitution.*** For offenses resulting in a monetary loss to others, the defendant will be required to pay restitution as provided in the diversion agreement.

2.5 **Court Costs.** The defendant will be required to pay the following applicable court costs:

Traffic	\$108
Fish & Game	\$108
DUI	\$108
Misdemeanor.....	\$158
Felony	\$193

These costs are subject to change by the court.

2.6 **Payment.** The applicable diversion fee must be paid at the time of filing the diversion agreement. All other costs must be paid within 90 days of filing the diversion agreement. If additional time is needed, a written request for extension of time to pay must be submitted to the Cherokee County Attorney’s Office in advance, explaining the reason for the request and stating the amount of additional time needed.

3. TIMING

3.1 **Application.** To be considered for diversion, a defendant must submit a completed application and the applicable fee within: (1) 30 days of arraignment in misdemeanor and traffic cases; (2) 30 days of first appearance in felony cases; and (3) prior to preliminary hearing in felony cases.

3.2 **Application out of Time.** A defendant may submit an application out of time, if accompanied by applicable fee, plus a \$25 late fee.

3.3 **Agreement.** The signed diversion agreement and applicable fee must be returned to the Cherokee County Attorney’s Office 14 days prior to bench trial in traffic and misdemeanor cases, or 14 days prior to preliminary hearing in felony cases. It is the responsibility of the defendant to continue the applicable court date as necessary to comply with this timeline.

4. DIVERSION PERIOD

4.1 The standard diversion periods shall apply:

	Months
Traffic	6
Fish & Game	12
DUI	12
Misdemeanor.....	12
Felony	24

4.2 The diversion period in any case may be modified as necessary to serve the interest of justice.

5. ELIGIBILITY

5.1 A defendant charged with any of the following is not eligible for diversion:

- i. A person felony
- ii. A drug offense involving intent to distribute
- iii. Any offense, if diversion is prohibited by state law
- iv. An offense involving a firearm or deadly weapon

5.2 A defendant is not eligible for diversion if such defendant:

- i. Has been previously convicted of a similar offense
- ii. Has been convicted of a misdemeanor or felony in the preceding 5 years
- iii. Has been convicted of a felony
- iv. Is currently facing other felony or misdemeanor charges in any jurisdiction
- v. Has previously failed to appear in court on the matter for which diversion is sought
- vi. Fails to take responsibility for the actions which led to the current case

5.3 Additional factors to be considered in determining whether entering a diversion agreement serves the interest of justice, the defendant, and the community include, but are not limited to the following:

- i. The nature of the offense and factual circumstances
- ii. The defendant's previous criminal history, including uncharged criminal conduct
- iii. Recommendation of victims and law enforcement
- iv. To what degree the defendant accepts responsibility for his or her actions
- v. The defendant's cooperation with law enforcement officers

6. TERMS AND CONDITIONS

6.1 ***Standard Conditions.*** The following terms and conditions shall apply to all diversion agreements:

- i. Defendant shall not violate any federal, state, or local law. Should Defendant be stopped, questioned, ticketed, arrested by, or have any contact with law enforcement, Defendant shall notify the Cherokee County Attorney's Office, in writing, within 48 hours.
- ii. Defendant shall notify the County Attorney's Office, in writing, of any change of residential address within ten days of the change.
- iii. Defendant will accept service by mail to Defendant's attorney of record, or if not represented by an attorney, by mail sent to Defendant's last known address.

6.2 ***Special Conditions.*** If appropriate, special conditions of diversion may include, but are not limited to:

- i. Defendant shall not possess or consume any type of alcohol and/or illicit drug during the diversion period. Should a representative of the County Attorney's Office, law enforcement officer, or a judge request a test of your blood, breath, or urine at any time during the diversion period, Defendant shall immediately submit thereto. Defendant is responsible for any cost incurred to complete such test. Should any such test be positive for alcohol and/or illicit drugs, Defendant refuses to submit to such test, Defendant shall be considered in violation of the Agreement. Defendant stipulates the results of the any such test shall be admitted into evidence in Court without foundation testimony.
- ii. Defendant shall have no contact with the victim(s), witness(es), and/or co-defendant(s) in this case.
- iii. Defendant shall remain in the State of Kansas. If Defendant intends to leave the State for any reason, he or she must obtain permission from the County Attorney's Office. Any request to leave the State must be submitted in writing.
- iv. Defendant shall report to the County Attorney's Office by mail once a month, on or before the 5th day of each month, on the monthly reporting form provided with this Agreement. Defendant shall complete the form in its entirety each month. Any false or incomplete information will be a basis to revoke the Agreement.
- v. Defendant agrees to immediately (within 24 hours) surrender Defendant's firearms and ammunition to one who may lawfully possess the same.
- vi. Defendant shall participate in a drug and alcohol evaluation, conducted by a licensed provider, and follow the recommendation thereof. Proof of completion must be provided to the County Attorney's Office 30 days prior to the completion of the period of deferred prosecution.

7. DIVERSION CONFERENCE

- 7.1 The Defendant, or counsel for the Defendant, may at any time after the submission of the applicable diversion application and fee request a Diversion Conference be scheduled with the prosecutor assigned to the case.