



**OFFICE OF THE
ALLEN COUNTY ATTORNEY**

Jerry B. Hathaway
Allen County Attorney

Christopher B. Phelan
Assistant Allen County Attorney

ALLEN COUNTY DIVERSION PROGRAM

Effective January 1, 2016

Pursuant to K.S.A. 22-2906 *et seq.*, the County Attorney of Allen 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 or as otherwise requested.

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 Allen 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 payments will be accepted. 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, cash and money orders are accepted as a form of payment.
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 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. The Allen County Attorney and/or Assistant County Attorney are precluded by Kansas law to divert traffic infractions involving those Defendants who possess a commercial driver's license (CDL). The Allen County Attorney and/or Assistant County Attorney will not divert any speeding infractions with a speed of 20 mph or more over the posted speed limit. The Allen County Attorney and/or Assistant County Attorney will not divert any matters in which a contested hearing has occurred, including, but not limited to preliminary hearings, suppression motions, or trials/adjudications of any kind.

In all cases, the decision to offer a Diversion, together with any terms or conditions thereof, rests solely in the discretion of the Allen County Attorney and/or Assistant County Attorney. The Allen County Attorney reserves the right to offer Diversion for felony offenses in special, unique and limited circumstances when deemed necessary and appropriate for the effective administration of justice and in the best interest of the Defendant and the community. In felony offenses, this determination will be made prior to the preliminary hearing. In determining whether a Diversion is warranted in a specific case, the Allen County Attorney and/or Assistant County Attorney will 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 Allen County Attorney's Office as soon as reasonably possible.

The Allen County Attorney's Office will also take into consideration the Defendant's prior record, investigations and related concerns, if any, regarding the Diversion application. Upon careful review and consideration of all factors, the Allen County Attorney and/or Assistant County Attorney will decide if the Defendant meets the requisite conditions for acceptance into the Diversion program. As indicated above, this decision will be made *prior* to any contested hearing has occurred.

CONSIDERATIONS

Pursuant to K.S.A. 22-2908, the following minimum factors will be considered by the Allen County Attorney and/or Assistant County Attorney 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 Allen County Attorney and/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 Allen 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.

Failure to cooperate with providing any additional documentation or information requested by the Allen County Attorney and/or Assistant County Attorney will automatically disqualify the Defendant for further consideration for Diversion. After considering all the factors set forth herein, the Allen County Attorney and/or Assistant County Attorney may offer a Diversion agreement to a Defendant.

AGREEMENT

If the Defendant is accepted as a candidate into the Allen County Diversion Program, a written agreement for Diversion will 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 and the case will proceed on the original complaint or citation filed with the Court.

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.
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 other 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 Allen County Attorney and/or Assistant County Attorney in accordance with the statutory guidelines.
5. Payment of all applicable Court costs: \$193.00 in felony cases, \$158.00 in misdemeanor cases, \$56.00 in juvenile cases, and \$108.00 in minor traffic cases. Payment of a one-time payment of \$25.00 payable to CASA. Payment of a one-time payment of \$10.00, issued in a separate check payable to Allen County Substance Abuse Task Force.

6. Payment of attorney fees for the Defendant's Court appointed attorney, if one is appointed.
7. Payment of a Diversion fee by cash, money order, certified check or law firm check made payable to the Allen County Treasurer. This Diversion fee is due prior to the filing of any Diversion agreement with the Court. All monies from Diversion fees shall be deposited in the County General Fund. The amount of Diversion fees are as follows:
 - a) **Minor Traffic Offenses** **\$100.00**
 - b) **DUI Offenses** **\$200.00**
 - c) **Misdemeanor Offenses** **\$200.00**
 - d) **Felony Offenses** **\$350.00**

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 but not limited to:
 - 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 laboratory fee, if applicable, of \$400.00.

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 Allen County Attorney and/or Assistant County Attorney shall move to have the criminal, traffic or juvenile charges dismissed with prejudice.

If the Defendant fails to fulfill the terms and conditions of the Diversion Agreement, the Allen County Attorney and/or Assistant County Attorney will request that the Diversion Agreement be set aside. After an appropriate hearing, the Court upon finding the Defendant failed to fulfill the terms of the Diversion Agreement, may order the Diversion revoked and resume criminal proceedings as set forth in the complaint or information based upon the stipulation of facts contained in the agreement, or both.

Please remember, Diversion is a privilege, not a right and that compliance with all terms and conditions of the Diversion is required at all times. Failure to comply with all terms and conditions of Diversion will result in an immediate request that the Diversion be set aside.

Jerry B. Hathaway
Allen County Attorney
1 North Washington
Iola, Kansas 66749
(620) 365-1420
(620) 365-1421 fax