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OFFICE OF THE



FRANKLIN COUNTY
ATTORNEY

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FRANKLIN COUNTY JUVENILE DIVERSION POLICY **(UPDATED JANUARY 1, 2019)**

Pursuant to K.S.A. 38-2346, the Franklin County Attorney has established a Juvenile Diversion Program. A juvenile will be notified that a diversion program exists by way of printing notice of such on his/her juvenile complaint.

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 juvenile to establish that a diversion will serve the ends of justice and the interests of the community.

ELIGIBILITY

All juveniles charged with non-violent felony crimes and all misdemeanors, if they have no prior adjudications and have never previously been placed on diversion in this or any other jurisdiction, shall be eligible to apply for diversion. Juveniles charged with Off-grid, Level 1-5 non-drug, and Level 1-3 drug felonies shall not be eligible to apply for diversion. In addition, juveniles will not be eligible for diversion if a firearm was, in any way, involved in the offense.

PROCEDURE

The juvenile, or his/her attorney, shall complete the Application for Diversion and submit the application. This Application for Diversion must be submitted to the Franklin County Attorney's Office within thirty (30) days of first appearance before the Court exclusive of Saturdays, Sundays, or legal holidays. Applications not timely filed may not be considered.

All juveniles who are participating in a Diversion Program for a felony offense, misdemeanor offense, or any other offense shall, at the discretion of the Franklin County Attorney's Office, participate in, complete, and pay for recommended counseling programs. Any juvenile who is charged with criminal offenses (felony or misdemeanor) in which the possession or consumption of drugs and/or alcohol are clearly indicated, but not charged, shall participate in, complete, and pay for any recommended program at any approved alcohol/drug facility. All fees for the evaluations must be paid by the juvenile to the evaluating agency.

Upon review, the Franklin County Attorney's Office will decide if diversion is an acceptable alternative for the juvenile and under what terms and conditions.

CONSIDERATIONS

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

1. Nature of the crime charged and the circumstances surrounding it.
2. Any special characteristics or circumstances for the juvenile.
3. Previous record of the juvenile.
4. The probability that the juvenile will cooperate with and benefit from diversion.
5. The appropriateness of this diversion program for the needs of the particular juvenile.
6. Provisions for restitution.
7. Recommendations of the law enforcement agency involved.

AGREEMENT

If the juvenile is found suitable for the Diversion Program, a written agreement for diversion shall be offered by Franklin County Attorney's Office to the Juvenile for acceptance or rejection. Although not exclusive, the written agreement may contain:

1. The juvenile waives all rights to a speedy arraignment, a preliminary hearing, speedy trial, to file motions and have them heard by the court, and to a trial, including a jury trial. The juvenile agrees to stipulate to the facts of the case.
2. An agreement that the juvenile report to the Franklin County Attorney's Office.
3. Payment to the Franklin County Attorney's Office of a Diversion Supervision Fee of \$100 to be paid in form of money order, cashier's check, cash, or check from the juvenile's attorney's firm.
4. Payment of all court costs.
5. Any specified terms of diversion.
6. The juvenile agrees not to violate any laws of the United States or any state, county, municipality, or other local laws.

7. Any juvenile who is charged with criminal offenses (felony or misdemeanor) in which the possession or consumption of drugs and/or alcohol are clearly indicated, but not charged shall participate in, complete, and pay for any recommended program at an approved alcohol/drug facility.
8. Any special conditions including:
 - a. Restitution to the victim(s) of any crime.
 - b. Random urine, blood, breath, or saliva analysis.
 - c. Counseling.
 - d. Maintaining employment (if applicable).
 - e. Restitution for court appointed attorney's fees.

EFFECT

The filing of the Diversion Agreement with the Clerk of the District Court of Franklin County, Kansas, shall act as a general continuance of the proceedings until the conclusion of the Diversion Agreement. When the juvenile has successfully fulfilled the terms and conditions of the Diversion Agreement, the County Attorney shall move to have all of the charges against the juvenile dismissed with prejudice. If the juvenile fails to fulfill the terms and conditions of the agreement for diversion, the County Attorney will request that prosecution be resumed. After an appropriate hearing, the Court, upon finding that the Juvenile failed to fulfill the terms of the Diversion Agreement, may order the diversion terminated and resumption of the criminal proceedings on the original complaint.

The Franklin 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 juvenile.

It is extremely important that the juvenile 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.

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FRANKLIN COUNTY JUVENILE DIVERSION APPLICATION

(Please fill out completely or your application will not be considered.)

1. Legal Name: _____ Case No.: _____
Any other names by which the juvenile has been known (alias/step-parent): _____

2. Current Address: _____
Mailing Address: _____
City, State, and Zip Code: _____
3. Telephone Number(s): Cell _____ Home _____
4. Social Security Number: _____
5. Sex: _____ Height: _____ Weight: _____
6. Date of Birth: _____ Place of Birth: _____
7. Age: _____ School: _____ Grade: _____
8. Parents:
Father's Name: _____
Address: _____
Mother's Name: _____
Address: _____
9. Are parents divorced: _____ Which parent is custodial: _____
10. With whom do you live: _____
What is their relationship to you: _____
11. Juvenile's statement of facts as to the charges. **THIS SECTION MUST BE COMPLETED IN JUVENILE'S OWN HANDWRITING:** _____

12. Next Court Date: _____

13. Have you been on Diversion before: _____ When: _____

What was the offense(s): _____

14. Have you ever been on probation or intensive supervision before: _____

When: _____ Where: _____

15. List all contacts with law enforcement: _____

16. Are you enrolled in school? _____ Yes _____ No

If yes, where are you currently enrolled? _____
(Please attach a copy of your current grades to your application for diversion.)

If no, have you received a diploma or a GED? _____ If so, when? _____
(Please attach a copy of your diploma or GED).

17. Do you have any unexcused absences, tardies, or disciplinary suspensions from school?

_____ Yes _____ No

If yes, please list all dates and the nature of the absence, tardy, or suspension and a brief explanation:

18. If you are not attending school are you employed? _____ Yes _____ No
If yes, where are you employed? _____
How many hours a week do you work? _____ Your rate of pay? _____
If no, why aren't you employed? _____

19. Your Attorney: _____
Address: _____
City, State, and Zip Code: _____
Phone: _____ Fax: _____
Appointed: _____ Retained: _____

Attorney's Signature: _____

I, solemnly swear that I have read the foregoing Diversion Application and all of the information is true and correct to the best of my knowledge. I understand that any false or incorrect information provided on this form will result in a denial of diversion or revocation of the diversion agreement, if granted.

Applicant's Signature: _____

Date: _____

Subscribed and sworn to me this _____ day of _____, 20____.

My Appointment Expires: _____

NOTARY PUBLIC

**IF YOUR SIGNATURE IS NOT NOTARIZED THE APPLICATION
WILL BE RETURNED**

Return this application, either in person or by US mail to:

Franklin County Attorney's Office

ATTN: Juvenile Division

220 Beech Street – Suite B

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