

4th Judicial District Court of Kansas

Magistrate Court

Traffic and Criminal Misdemeanor Cases



A GUIDE FOR WORKING WITH YOUR LOCAL COURT

Fourth Judicial District of Kansas

Anderson County

100 E 4th
Garnett, KS
785-448-6886

Coffey County

6th and Neosho
Burlington, KS
620-364-8628

Franklin County

301 S Main
Ottawa, KS
785-242-6000

Osage County

717 Topeka Ave.
Lyndon, KS
785-828-4713

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Traffic and Criminal Misdemeanor Cases

This brochure is to assist you in understanding the procedures of Traffic or Criminal Misdemeanor Cases and the Rights you have.

The Right to an Attorney

You have the right to legal representation by an attorney for any traffic or misdemeanor case. If the possible penalty upon conviction includes a jail term and a judge finds you do not have the financial means to hire an attorney, a court-appointed attorney will be assigned to you at reduced or no cost. You do not have a choice in the selection of the court-appointed attorney. You also have the right to proceed without an attorney and represent yourself. For misdemeanor cases, you will be asked to sign a Waiver of an Attorney.

If you retain an attorney or an attorney is appointed to you, your case will be continued so your attorney may be present.

Plea Options

Guilty-

By pleading guilty you agree that you committed the violation listed in the citation or complaint. Appropriate sentencing will be ordered by the judge.

No Contest-

A plea of no contest means you do not want to contest the charge(s) against you. A plea of no contest is not an admission of fault and cannot be used against you in a civil suit. Following a plea of no contest, the judge will enter a finding of guilty if a factual basis for the charge(s) is found. Appropriate sentencing will be ordered by the judge.

Not Guilty-

This plea means that you deny any guilt or fault and the State must prove its charges against you. You are presumed innocent in this matter by the court. A trial is scheduled for a later date. You have every right for a trial, to confront and cross-examine witnesses, and subpoena witnesses for yourself.

Plea Agreement

Many criminal and traffic cases are concluded without a trial. A case may be disposed of without a trial through a plea agreement or diversion program.

Under a plea agreement, you agree to plead guilty or no contest, and in return, the prosecutor may amend some of the charges and/or agree to ask the judge to dismiss some of the charges. This may include amending moving traffic violations to non-moving violations under certain strict guidelines.

You may initiate the conversation by asking for an appointment with the prosecutor to discuss your case. The prosecutor has no obligation to discuss or negotiate your case. Your attorney will initiate plea negotiations; if you have waived your right to an attorney, you may do so.

Diversion

In some cases, the prosecutor may allow you to enter into a diversion program rather than proceed with a trial. Diversion is a contract you enter into with the State. You agree to comply with certain conditions and in return, the State agrees to dismiss the charge(s) after your successful completion of the diversion. If you fail to comply with the diversion agreement, the charges against you will be reinstated, and a hearing on a motion to resume prosecution will be set.

The prosecutor has policies in regard to diversions and who would be accepted into the program. If you have an attorney, they may assist you in this matter.

The Trial

If you plead not guilty, a trial will be scheduled. A bench trial, trial to the court, will be presided over by a magistrate judge.

At the trial, a prosecutor (attorney who represents the State) will call witnesses to testify against you. Many times this is the officer who wrote you the citation. Pictures or videos of the violation may also be used as evidence against you. You have the right to cross-examine (or question) each witness.

Once the prosecution has presented its case, you have the right to present witnesses. If a witness will not testify voluntarily on your behalf, you may have the court issue subpoenas for witnesses to ensure their appearance at trial. However, you must provide to the court the proper paperwork and forms no later than 15 days before the trial date so the subpoenas can be served sufficiently in advance of the trial.

You also have the right to testify yourself and tell your side of the story. If you choose to testify, the prosecutor has a right to cross-examine you. You also have a constitutional right not to testify. Choosing not to testify cannot be used against you in determining guilt or innocence. You are presumed innocent. The prosecutor has the sole burden of proving you guilty beyond a reasonable doubt.

THE VERDICT

The judge's decision is based upon the state statutes (laws) involved, the testimony, and the evidence presented in the trial. If you are found guilty, the penalty will usually be announced at that time. In the case of more serious charges, the judge may set a separate sentencing date. The judge may also order certain evaluations that might be required by statute to assist in sentencing.

THE APPEAL

If you are dissatisfied with the judge's decision, you have the right to appeal the case to a district court judge. You have 10 days after the conviction and sentencing to file a formal "Notice of Appeal" with the district clerk's office.

EXPUNGEMENT

If you are found not guilty, if your case is dismissed, or if you are convicted, you may petition for expungement. Expungement means that the case information will be considered "erased," and the public will not have access to the information except in certain situations. There are statutory limitations on when you may petition for expungement. You are encouraged to review K.S.A. 12-4516 and 12-451a for a list of situations in which your expunged records can be revealed.

Penalties

Infractions – statutory fine

Class "A" misdemeanor – up to 1 year in the county jail and fine up to \$2,500.00

Class "B" misdemeanor – up to 6 months in the county jail and fine up to \$1,000.00

Class "C" misdemeanor – up to 30 days in the county jail and fine up to \$500.00

Unclassified misdemeanor – if not stated in statute, penalties same as "C" misdemeanor

Speedy Trial

A person has a right to a speedy trial. After entering a plea, a person that is not in custody has a right to a trial within 180 days. If the person is in custody, he/she has a right to a trial within 90 days.

TRAFFIC TICKETS

For many minor traffic offenses (infractions), you do not need to appear in court. For example, if there is a fine amount entered on the ticket, you can simply mail in the required payment before the appearance date listed on your ticket.

If you know you want to take a traffic ticket to trial, you can call and ask the clerk to set your case on the judge's docket for a pre-trial appearance.

We hope this document has answered your questions about Magistrate Court Procedures.

On your initial appearance, the judge will review the ticket/complaint with you and inquire what your intentions are in regard to an attorney.

IN THE DISTRICT COURT OF _____ COUNTY, KANSAS

THE STATE OF KANSAS,

VS:

Case No. _____

Defendant

I have received and a reviewed the Magistrate Court information sheets on misdemeanor and traffic cases. I understand I have the right to an attorney, I am presumed innocent by the court, and the burden to prove this case beyond a reasonable doubt lies with the State. I understand my plea options, plea agreements, and diversion agreements. I understand the possible penalties if convicted and the right to a speedy trial. I understand the right to confront and cross examine witnesses against me, and I understand that I have the right to subpoena persons to testify on my behalf. I understand my right to an attorney, trial, the appeal process, and how to seek an expungement.

Defendant's Acknowledgement

Date

WAIVER OF ATTORNEY

I, being advised by the court of the offense against me and the penalty that it could possibly carry, understand fully that I have the right to be represented by counsel, and that if I cannot afford to employ counsel, that the court will appoint Counsel for me.

I hereby waive my right to counsel, and it is my personal desire to proceed without being represented by counsel.

Defendant's Acknowledgement

Date

District Court Judge

Date

APPLICATION FOR COURT APPOINTED ATTORNEY (Misdemeanor Cases)

State of Kansas vs. _____ District Court Case #: _____

County: _____

Notice to Applicant:

- The information obtained is not confidential.
- The Judge may verify any information obtained
- False information may lead to criminal prosecution
- If you don't understand specific question or need help, ask for assistance
- The judge may place you under oath and inquire further about any information provided on the form
- You will receive an appointed attorney if you meet the standards for indigent status.
- You must inform the court if there is a change in any of the financial information given
- At the end of the case you may be assessed attorney fees

Name: _____ Age: _____ Phone: _____

Address: _____ City: _____ St: _____ Zip Code: _____

1. Are you self employed, employed, unemployed?
2. How long have you been employed _____, or unemployed _____?
3. Employer name and address: _____
4. Approximate monthly rate of pay: _____ Length of employment _____
5. Do you have money or cash in savings, checking, or other funds? If yes, what amount is available to you? _____
6. Can you afford to pay anything toward the cost of your attorney? If yes, how much? _____
7. Do you currently have any other court cases pending in the District Court? If yes, do you have court appointed counsel? If yes, name _____
8. Are you single, married, widowed, divorced/separated?
9. If married, spouses monthly income, if any: _____
10. Total number of dependants living with you _____. Names and relationship to you: _____

- | | | |
|--------------------|-----------------------|-------|
| 11. Monthly Bills: | Rent/house payment | _____ |
| | Food/Clothing: | _____ |
| | Utilities | _____ |
| | Alimony: | _____ |
| | Child Support: | _____ |
| | Installment payments: | _____ |
| | Other payments: | _____ |
| | Total: | _____ |

I certify under the penalty of perjury that the foregoing is true and correct.

Signature of Applicant Date

Approved yes no

District Crt Judge Date