

FRANKLIN COUNTY ATTORNEY'S OFFICE

Diversion Program Guidelines

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Updated January 3, 2006

FRANKLIN COUNTY ADULT DIVERSION POLICY

Pursuant to K.S.A. 22-2907, the Franklin County Attorney has established the following written policies and guidelines for the implementation of an adult diversion program. These guidelines are effective for any cases pending or offenses committed on or after January 3, 2006. It is not required that an applicant have an attorney for the purpose of an adult diversion. A Defendant will be notified that a diversion program exists by way of attaching notice of such to his/her criminal 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 defendant to establish that the granting of diversion in his/her case will serve the ends of justice and the interests of the community.

ELIGIBILITY

Diversions in adult cases, as a general a rule, are available to first-time offenders only. For those defendants who have a criminal record, diversion will still be considered if the person has not committed any crimes within the last several years, or been diverted for any crime within the last several years. Typically, diversion will not be considered if the applicant has any criminal convictions or diversions within the last 5 years. Defendants charged with off-grid, Level 1-7 nonperson crimes, Level 1-3 drug felonies, and any person felony **shall not** be eligible to apply for diversion. Only in extenuating circumstances will a defendant be granted diversion in a felony case.

Defendants charged with DUI are **not** eligible to apply for diversion if: they have a prior diversion for DUI, they have a prior conviction for DUI, or if the DUI charged involved an accident resulting in any personal injury or death, including any personal injury of the defendant himself/herself.

Defendants charged with Domestic Battery are **not** eligible to apply for diversion if: they have a prior diversion or conviction for Domestic Battery.

Defendants charged with any crime against a Law Enforcement Officer or Correctional Officer are **not** eligible to apply for diversion.

Defendants charged with Child Endangerment are **not** eligible to apply for diversion.

The County Attorney's Office has a policy against reducing charges and then diverting the reduced charges or diverting part of the charges and dismissing other charges not diverted.

PROCEDURE

The defendant, 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 ten (10) days of the first appearance before the Court exclusive of Saturdays, Sundays or legal holidays. Applications submitted untimely will likely not be considered.

A \$25.00 NON-REFUNDABLE APPLICATION FEE MUST ACCOMPANY THE DIVERSION APPLICATION OR THE APPLICATION WILL NOT BE ACCEPTED. PAYMENT OF THE APPLICATION FEE SHALL BE IN THE FORM OF A MONEY ORDER; CASHIER'S CHECK; AND/OR A FIRM CHECK.

All defendants 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 any recommended counseling program(s) provided through Franklin County Mental Health or other approved evaluating agency. Any defendant who is charged with a criminal offense (felony or misdemeanor) in which the possession or consumption of drugs and/or alcohol are indicated from the facts, shall participate in, complete and pay for any recommended program(s) at an alcohol/drug facility. All defendants who are charged with a drug offense or DUI must obtain an ADSAP evaluation prior to being considered for diversion in the case. All defendants charged with a crime of violence will be required to participate, complete and pay for anger management, regardless of whether or not it is recommended as part of any other evaluation. All fees for the evaluations must be paid by the defendant to the evaluating agency.

Upon review, the Franklin County Attorney's Office will set a diversion conference either with or without the defendant and/or his/her attorney to decide if diversion is an acceptable alternative for the defendant. A decision regarding whether the defendant will be accepted on diversion will be made as soon as possible.

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 defendant is in the best interest of justice and will be a benefit to the defendant and to the community.

1. Nature of the crime charged and the circumstances surrounding it.
2. Any special characteristics or circumstances for the defendant.
3. Previous record of the defendant.
4. The probability that the defendant will cooperate with and benefit from diversion.

5. Provisions for restitution and/or fines.
6. Whether the available diversion program is appropriate to the needs of the defendant.
7. Recommendations of the law enforcement agency involved.
8. Recommendation of any victim(s) of the crime(s) charged.

AGREEMENT

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

1. The defendant waives all rights to a trial and agrees to stipulate to the facts of the case.
2. An agreement that the defendant report to the Franklin County Attorney's Office.
3. Payment to the Franklin County Attorney's Office of a Diversion Fee of \$100.00. The \$25.00 non-refundable Application Fee will be applied toward the \$100.00 Diversion Fee.
4. Payment of all Court costs.
5. Any specified terms of diversion.
6. The defendant agrees not to violate any laws of the United States or any state, county, or local laws.
7. Any special conditions including, but not limited to:
 - a. Restitution to the victim(s) of any crime.
 - b. Random urine analysis.
 - c. Counseling.
 - d. Maintaining employment (if applicable).
 - e. Reimbursement of Court appointed attorney's fees.
 - f. No contact with victim(s) and/or witness(es).
 - g. Community service.
 - h. Fines.
 - i. Letters of apology
 - j. Obtaining a General Education Certificate.

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 defendant has successfully fulfilled the terms and conditions of the diversion agreement, the County Attorney shall move to have all of the charges against the defendant dismissed with prejudice. If the defendant 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 defendant failed to fulfill the terms of the diversion agreement, may order 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 affects which said diversion agreement might have upon the individual defendant.

It is extremely important that the defendant 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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