

FRANKLIN COUNTY ATTORNEY'S OFFICE

Diversion Program Guidelines

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FRANKLIN COUNTY JUVENILE DIVERSION POLICY

Pursuant to K.S.A. 38-1635, the Franklin County Attorney has established a Juvenile Diversion Program. A copy of this Diversion Program will be furnished to each Respondent upon his/her first appearance before the Court.

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 Respondent to establish that a Diversion Program will serve the ends of justice and the interests of the community.

ELIGIBILITY

All Respondents charged with non-violent felony crimes and all misdemeanors, if they have no prior felony convictions and have never previously been placed on Diversion in this or any other jurisdiction, and are charged with non-violent crimes shall be eligible to apply for Diversion. Respondents 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, Respondents will not be eligible for diversion if a firearm was, in any way, involved in the offense.

PROCEDURE

The Respondent, 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 first appearance before the Court exclusive of Saturdays, Sundays or legal holidays. Applications not timely filed 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 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 the recommended counseling program provided through Franklin County Mental Health or other approved provider. Any Respondents who are 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 the recommended program at an alcohol/drug facility. All fees for the evaluations must be paid by the Respondent to the evaluation agency.

Upon review, the Franklin County Attorney's Office will decide if Diversion is an acceptable alternative for the Respondent. This determination shall be made prior to the Respondent's second appearance in Court.

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

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

AGREEMENT

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

1. The Respondent waives all rights to a trial and agrees to stipulate to the facts of the case.
2. An agreement that the Respondent report to the Franklin County Attorney's Office.
3. Payment to the Franklin County Attorney's Office of a **\$75.00 Diversion Fee in the form of a money order or firm check.**

4. Payment of all Court costs.
5. Any specified terms of diversion.
6. The Respondent agrees not to violate any laws of the United States or any state, county, or local laws.
7. 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 Respondent has successfully fulfilled the terms and conditions of the Diversion Agreement, the County Attorney shall move to have all of the charges against the Respondent dismissed with prejudice. If the Respondent 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 Respondent 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 effects which said Diversion Agreement may have upon the individual Respondent.

It is extremely important that the Respondent 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.