

FRANKLIN COUNTY ATTORNEY'S OFFICE

Diversion Program Guidelines

Heather R. Jones, County Attorney

Updated September 2011

FRANKLIN COUNTY JUVENILE DIVERSION POLICY

Pursuant to K.S.A. 38-2346, the Franklin County Attorney has established a juvenile diversion program. 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 Respondent to establish that a diversion program will serve the ends of justice and the interests of the community.

ELIGIBILITY

Eligibility Requirements:

- The alleged offense(s) must be a misdemeanor(s) or a non-violent felony. **Respondents charged with off-grid, level 1-5 non-drug and level 1-3 drug felonies are not be eligible for the Diversion Program.** Additionally, Respondents will not be eligible for diversion if a firearm was, in any way, involved in the offense.
- Respondent must not have previously been granted Diversion in this or any other jurisdiction.
- Respondent must not have any prior felony convictions.
- Respondent must live within the State of Kansas.

PROCEDURE

Respondent, or his/her attorney shall complete the diversion application and **submit to the Franklin County Attorney's Office within ten (10) days of first appearance before the Court exclusive of Saturdays, Sundays or legal holidays. Incomplete or untimely applications will likely not be considered.** Incomplete applications include those which, for example, grades or a written statement of the facts are not included.

A \$25.00 NON-REFUNDABLE APPLICATION FEE MUST ACCOMPANY THE DIVERSION APPLICATION OR THE APPLICATION WILL NOT BE ACCEPTED. Payment shall be in the form of a money order, cashier's check, or check written from an attorney's firm. Cash or personal checks will not be accepted.

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

CONSIDERATIONS

Although not exclusive, the following factors will be used by the Franklin County Attorney's Office in evaluating whether diverting Respondent is in the best interests of justice and will be a benefit to Respondent and to the community:

1. The crime charged and the circumstances surrounding it;
2. Any special characteristics or circumstances relating to Respondent;
3. Respondent's criminal history;
4. The probability that Respondent will cooperate with and benefit from diversion;
5. The appropriateness of this diversion program for the needs of Respondent;
6. Amount of and ability to repay restitution; and
7. Recommendations of the law enforcement agency involved.

AGREEMENT

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

1. A waiver of all rights by Respondent to a trial and an agreement to stipulate to the facts of the case as noted in the police report;
2. An agreement that 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, cashier's check, or check from the Respondent's attorney's firm;**
4. Payment of all court costs;
5. An agreement by Respondent not to violate any laws of the United States or any state, county, or local laws;
6. For any Respondent charged with an offense where the possession or consumption of drugs and/or alcohol are clearly indicated in the facts (regardless of whether the charged offense is specifically alcohol or drug related), completion of an ADSAP evaluation and following any recommended program(s) or counseling at an alcohol/drug facility; and
7. Any special conditions including:
 - a. Restitution to the victim(s) of any crime;
 - b. Random urine, blood, breath or saliva analysis;
 - c. Completing a mental health evaluation and following through with any recommended counseling (Costs of evaluations and ;
 - d. Maintaining employment (if applicable); or

- e. Restitution for Court appointed attorney's fees.

NOTE: The costs and fees for any evaluations, counseling, or other services required as a condition of diversion shall be paid by Respondent to the evaluating agency.

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 Respondent has successfully fulfilled the terms and conditions of the diversion agreement, the County Attorney shall move to dismiss charges against Respondent with prejudice. If Respondent fails to fulfill the terms and conditions of the diversion agreement, the County Attorney will request that prosecution be resumed. After a hearing, the Court, upon finding that Respondent failed to fulfill the terms of the diversion agreement, may terminate the diversion agreement and allow the State to resume prosecuting the criminal charge in the original complaint.

The Franklin County Attorney's Office does hereby advise all prospective applicants for diversion to consult with an 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 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.

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**In order for this application
To be considered it must be
Returned by _____**

Date Received: _____
Def. Attorney: _____
Receipt No. _____

IN THE INTEREST OF:

DOCKET NO:

A MINOR UNDER THE AGE OF 18 YEARS

DIVERSION CASE NO:

DOB:

FORMAL DIVERSION APPLICATION

1. Legal Name: _____

Any other names by which the juvenile has been known (alias/ step-parent): _____

2. Current Address: _____

Mailing Address: _____

City and State: _____

3. Telephone Number: Work _____ Home: _____

4. Social Security Number: _____

5. Race: _____ Sex: _____ Weight: _____ Height: _____

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 make your home: _____

What was the offense(s): _____

16. Have you ever been on Probation or Intensive Supervision before: _____

When: _____ What was the offense(s): _____

17. List all prior contacts with law enforcement:

18. Education Information

If enrolled in school:

a. Where are you attending school? _____

Attach a grade report dated within two weeks of this application.

b. Do you have any unexcused absences, tardies or disciplinary suspensions from school? ___ Yes ___ No (If yes, answer question 18(c) If no, proceed to question 20).

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

(upon completion, skip to question 19)

If not attending school:

d. Have you received a diploma or a GED and if so, when? _____

Attach a copy of your diploma or a GED.

e. If not currently enrolled in school and have not received your diploma or a GED, explain why you are not attending school or enrolled in an equivalency program:

19. Are you employed? Yes No If yes, where? _____

How many hours a week do you work? _____ What is your rate of pay? _____

If no, why aren't you employed? _____

20. Attorney _____ Address: _____

City/State/Zip: _____ Phone: () _____

Fax: () _____ Appointed _____ Retained _____

Applicant Signature: _____

Subscribed and sworn to before me on this _____ day of _____, 200____.

NOTARY PUBLIC