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OFFICE OF THE



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FRANKLIN COUNTY ADULT DIVERSION POLICY
(UPDATED JANUARY 1, 2019)

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 1, 2019. 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 printing notice of such on 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 five (5) years, or been diverted for any crime within the last five (5) years. Typically, diversion will not be considered if the applicant has any criminal convictions or diversions within the last five (5) years. Defendants charged with off-grid, Level 1-7 nonperson crimes, Level 1-4 drug felonies, and any person felony **shall not** be eligible to apply for diversion.

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.

Defendants will be diverted as charged in the Complaint. No reduction, dismissal, or amendment of charges will be made as part of a diversion agreement or to make a defendant diversion eligible.

PROCEDURE

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

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).

All defendants who are charged with a DUI **must obtain an ADSAP evaluation prior to being considered for diversion in the case and must attach the evaluation to the Application for Diversion.** All fees for the evaluation must be paid by the defendant to the evaluating agency.

All defendants charged with a domestic battery **must obtain a Domestic Violence evaluation prior to being considered for diversion in the case and must attach the evaluation to the Application for Diversion.** All fees for the evaluation must be paid by the defendant to the evaluating agency.

All defendants charged with a felony drug offense **must obtain a Substance Abuse evaluation prior to being considered for diversion in the case and must attach the evaluation to the Application for Diversion.** All fees for the evaluation must be paid by the defendant to the evaluating agency.

Upon review, the Franklin County Attorney’s Office will set a diversion conference with the defendant and his/her attorney, if applicable, 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.

FACTORS TO BE CONSIDERED (Pursuant to K.S.A. 22-2908)

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(s) charged and the circumstances surrounding it.
2. Any special characteristics or circumstances of the defendant.
3. Whether the defendant is a first-time offender and if the defendant has previously participated in diversion, according to the certification of the Kansas Bureau of Investigation or the division of vehicles of the department of revenue.
4. Whether there is a probability that the defendant will cooperate with and benefit from diversion.
5. Whether the available diversion program is appropriate to the needs of the defendant.

6. Whether there is a probability that the defendant committed such crime as a result of an injury, including major depressive disorder, polytrauma, post-traumatic stress disorder or traumatic brain injury, connected to service in a combat zone, as defined in section 112 of the federal internal revenue code of 1986, in the armed forces of the United States of America.
7. If Factor 6 above applies to the defendant, whether there is a probability that the defendant will cooperate with and benefit from inpatient or outpatient treatment from any treatment facility or program operated by the United States department of defense, the United States department of veterans affairs or the Kansas national guard with the consent of the defendant, as a condition of diversion.
8. The impact of the diversion of the defendant upon the community.
9. Recommendations, if any, of the involved law enforcement agency.
10. Recommendations, if any, of the victim.
11. Provisions for restitution.
12. Any mitigating circumstances.

AGREEMENT

If 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 under the law, the constitution of Kansas and of the United States, the right to a speedy arraignment, preliminary examinations and hearings, and a speedy trial, waiver of the rights to counsel and trial, including trial by jury, to file motions and have those heard by the court, and agrees to stipulate to the facts of the case.
2. Residence in a specified facility.
3. Participation in programs offering medical, educational, vocational, social and psychological services, corrective and preventive guidance and other rehabilitative services.
4. An agreement that the defendant report to the Franklin County Attorney's Office.
5. Payment to the Franklin County Attorney's Office of a Diversion Supervision Fee.
6. Payment of all Court costs and assessed fines.
7. Any specified terms of diversion.
8. The defendant agrees not to violate any laws of the United States or any state, county, municipality, or other local laws.

9. Any special conditions including, but not limited to:
 - a. Restitution to the victim(s) of any crime.
 - b. Random drug testing by way of urine analysis, oral swabs, or other methods of testing.
 - c. Counseling.
 - d. Maintaining employment.
 - 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 or high school diploma.

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 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 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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Brandon L. Jones, County Attorney
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(785) 229-8970
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FRANKLIN COUNTY ADULT DIVERSION APPLICATION

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

PERSONAL INFORMATION:

Case No. _____

Name: _____

Date of Birth: _____

Address: _____

Phone#: _____

City/State: _____

Zip Code: _____

Social Security Number: _____

Current Driver's License Number: _____

State: _____

Marital Status: Single _____ Married _____

Sex: Male _____ Female _____

If married, Spouse's name: _____

Dependents: _____

Age: _____

Age: _____

Age: _____

Age: _____

If you live with someone other than person(s) listed above, state the names: _____

How long have you lived at your current residence listed above: _____

If you have lived in a state other than Kansas, please list all the states and previous addresses:

This crime involves a ___ family member ___ boy/girlfriend ___ other ___ not applicable

Next Court Date: _____

EMPLOYMENT:

Present employer: _____ Phone: _____

Address: _____

City/State: _____ Zip code: _____

Job Title: _____ Length of Employment: _____

Salary: _____ Per _____

Previous employer _____ Phone: _____

Address: _____

City/State: _____ Zip code: _____

Job Title: _____ Length of Employment: _____

Salary: _____ Per _____

Why terminated: _____

EDUCATION:

Elementary: _____

Junior High: _____

High School _____

Date of Graduation: _____

College: _____

Highest Year/Degree Achieved: _____

MEDICAL HISTORY:

Are you presently under supervised medical care for any reason? _____

List any physical injuries which are of significance to this criminal/traffic case:

Psychological Services received, please list dates and providers:

CRIMINAL HISTORY:

Please list all offenses for which you have been arrested or charged. Your reported criminal history should include all arrests or charges over your lifetime and in any jurisdiction, including any pending criminal or traffic actions filed against you. You should also include: all expunged offense(s), adjudicated juvenile offenses, and alcohol related traffic offenses. This section applies even if you were arrested and not charged, charges were dismissed, or someone told you the charges would not be on your record.

MITIGATING FACTORS:

Please state any facts concerning the crime which might excuse your actions. _____

OTHER FACTORS TO CONSIDER:

Explain why you feel you could successfully complete the Diversion Program. (To be completed in the defendant's own handwriting):

State in detail the facts which caused the charges to be filed. (To be completed in the defendant's own handwriting). _____

ATTORNEY INFORMATION:

Please mark one of the following:

() I am represented by counsel. My attorney's name and information is as follows:

Name of Attorney: _____ Phone: _____
Street Address: _____
City/State: _____ Zip Code: _____

Signature of Attorney (if represented by counsel)

() I am not represented by counsel at this time. I understand I have the right to counsel who would be able to assist me in the diversion application process, but I am knowingly and freely waiving my right to counsel as evidenced by my signature below and wish to proceed without the assistance of an attorney.

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.

Date: _____

SIGNATURE OF DEFENDANT

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: Adult Diversions
220 S. Beech Street – Suite B
Ottawa, KS 66067

**COMPLETED APPLICATIONS SUBMITTED VIA FACSIMILE OR EMAIL WILL
NOT BE CONSIDERED.**