

STANDARD DIVERSION PROGRAM

The following guidelines have been adopted by the Office of the Wallace County Attorney for the Office's diversion program in Wallace County District Court. These guidelines supersede prior policies or guidelines, whether oral or in writing.

Diversion is a privilege afforded an accused and not a right. No presumption in favor of diversion exists in any case, and the burden of persuasion rests with the applicant to establish that a diversion agreement will best serve the ends of justice and the interests of the community, public safety and the rights of the victims.

It is not required that a defendant have an attorney for the purpose of diversion; however, a defendant has the right to employ an attorney and have him/her present throughout the diversion application process. If you request and receive a court-appointed attorney, you will be expected to reimburse the County for the attorney fees and expenses incurred in your case as a part of the terms and conditions of your diversion.

Eligibility; Factors Considered

In determining whether or not diversion is appropriate, the County Attorney will consider a number of factors.

Some of these factors include:

1. The nature of the crime and the circumstances surrounding it.
2. Any special characteristics and circumstances of the defendant.
3. Whether the defendant is a first-time offender.
4. Whether the diversion program is appropriate to the needs of the defendant.
5. The impact of diversion on the community.
6. Recommendations of the involved law enforcement community.
7. Recommendations, if any, of the victim.
8. The amount of restitution, if applicable, owed by the defendant.
9. Any mitigating or aggravating circumstances surrounding the crime.
10. Whether you are courteous to law enforcement and staff in the County Attorney's Office

Exclusions

Traffic offenses which may prevent you from being eligible for a diversion are:

1. When the defendant is charged with operating under the influence of alcohol or drugs and,
 - (a) the defendant has a previous conviction or diversion for operating under the influence of alcohol or drugs, or
 - (b) the defendant was involved in a motor vehicle accident and left the scene of the accident, or the accident resulted in injury or death of a person.
2. The defendant has prior serious traffic convictions, such as Driving While Suspended, Reckless Driving, No Insurance, Attempting to Elude, Leaving the Scene of an Accident, etc.

3. The defendant has a poor driving record or history of the same offenses.
4. A person driving a passenger vehicle over 94 mph.
5. A driver of a motor vehicle with an empty weight in excess of 8 tons driving in excess of 10 mph over the posted speed limit.
6. A driver charged with violation in a school, construction or hospital zone; passing a stopped school bus; or failure to yield to a pedestrian.
7. **A driver with a CDL is not eligible for a diversion under any circumstances.**
8. A driver with no valid driver's license.
9. Providing alcohol to a minor or hosting a social hosting (party where minors are in attendance).

Drug Offenses

Diversions are not available for drug-related offenses under any circumstances.

Procedures

ALL COURT APPEARANCES MUST BE ATTENDED DURING THE APPLICATION PROCESS.

You may turn in this application to the County Attorney's Office after your first appearance.

Charles F. Moser
Wallace County Attorney
113 W. Greeley Ave.
P.O. Box 429
Tribune, KS 67879

YOUR APPLICATION MUST BE RECEIVED WITHIN 14 DAYS AFTER YOUR 1st APPEARANCE OR YOUR APPLICATION WILL BE DENIED.

County Attorney will review requests for diversion and may require a diversion conference with the applicant. Please review the following carefully:

- A. The diversion application **must** be completed on the form provided by the County Attorney's Office. Photocopied reproductions will be accepted.
- B. **All court costs are due at time of signing agreement. There are no exceptions!** Your diversion agreement will not be approved and the prosecution of your case will proceed until your court costs are paid. Failure to timely pay the costs and fees will jeopardize your diversion.
- C. A diversion application will not be accepted for a charge of **operating under the influence of alcohol** without an accompanying **alcohol evaluation**.
- D. A diversion application will not be accepted for a charge of **possession/consumption of an alcoholic beverage while underage** without **proof of completion of an approved alcohol education program**.

- E. The defendant or the defendant's attorney will be notified if the diversion application has been approved. If the application is denied, the defendant or the defendant's attorney will be notified in writing.
- F. Approval of a diversion will be withdrawn if the diversion agreement is not signed by the defendant and in the Office of the County Attorney before the assigned court date.

The Diversion Agreement

If the County Attorney approves a diversion agreement, the terms and conditions will be reduced to writing for approval and signature by both parties. The diversion agreement will contain a stipulation of facts surrounding your offense(s). The executed diversion agreement will be filed with the Court and criminal proceedings will be suspended as long as the defendant fulfills the terms and conditions of the diversion agreement. Upon successful completion of the agreement, the County Attorney will move to dismiss the charge(s) with prejudice with costs assessed to the defendant.

If at any time during the diversionary period the County Attorney finds that the defendant is no longer fulfilling the terms of the agreement, the County Attorney will file a Motion to Revoke the agreement and resume criminal proceedings.

STANDARD DIVERSION AGREEMENT LENGTH:

6 to 12 months depending upon the circumstances.

In addition to court costs you will pay:

A Diversion Fee

\$100.00 for most offenses

\$ 50.00 for speeding 66 - 74 mph in 65 mph zone

\$100.00 for speeding 75 - 84 mph in a 65 mph zone

\$150.00 for speeding 85 - 94 mph in 65 mph zone

A Donation In Lieu of Fine

This will vary depending upon the offense, number of offenses and other circumstances. It will be a donation to a local organization. Please do not ask whether you can direct the donation to a particular organization.

Restitution (If Applicable)

Reimbursement of Court-Appointed Attorney Fees and Expenses (If Applicable)

These payments will be due periodically throughout the diversion period.

Additional terms may be included in diversion agreements depending on the circumstances, such as community service, apology letter to victim, curfew, etc.