

General Diversion Policy

Pursuant to K.S.A. 22-2906 et seq, the Marion County Attorney's Office has established a Diversion Program. Diversion is a privilege, and not a right. There is not presumption in favor of diversion in any case, and the burden or persuasion falls upon the Defendant to establish that a Diversion Program serves the ends of justice or prosecution is warranted in a specific case where the evidence indicates that an individual has committed a crime, this office will address the needs of 1) Public Safety, 2) the Victim(s), and 3) the Defendant.

The County Attorney's Office supports policies which lead to the rehabilitation of defendants. However, the County Attorney recognizes that the needs of the Defendant must be considered subordinate to the needs of public safety and the rights of victims. Victims will be contacted regarding the offer of diversion prior to signing of an agreement.

The Defendant must submit a written application for diversion. The application will help in providing background information to determine if the Defendant is a suitable candidate for diversion. This form is available at the County Attorney's Office, 202 S. Third, Suite A, Marion, KS, or online at <http://www.marioncoks.net/attorney/pages/diversion>

Eligibility

In order to be considered for diversion, the Defendant must establish that:

1. The offense is the Defendant's first serious criminal act/offense.
2. The Defendant has the ability to pay restitution to the victims. If requested, through a reasonable restitution payment schedule, if applicable to the offense
3. There is a probability that the Defendant will cooperate with and benefit from diversion.
4. The Defendant is NOT eligible if they refuse any testing by a Law Enforcement Officer.
5. **You must apply for diversion within thirty (30) days after your first court date.**
6. **If you have a Commercial Driver's License (CDL) you do not qualify for Diversion pursuant to K.S.A. 8-2150 "Commercial driver's licenses; diversion agreements not allowed.** (a) A driver or a holder of a commercial driver's license may not enter into a diversion agreement in lieu of further criminal proceedings that would prevent such person's conviction for any violation, in any type of motor vehicle, of a state or local traffic control law, except a parking violation, from appearing on the person's record,

whether the person was convicted for an offense committed in the state where the person is licensed or another state.

(b) For purposes of subsection (a), a person shall be considered a holder of a commercial driver's license if the person was a holder of a commercial driver's license at the time the person was arrested or was issued a citation and shall remain a holder of a commercial driver's license even if the person surrenders the commercial driver's license after the arrest or citation.

(c) The provisions of this section shall be a part of and supplemental to the Kansas uniform commercial drivers' license act.

Considerations

The following factors will be considered in determining whether diversion of the Defendant is in the best interests of justice and will be of benefit to the Defendant and the community:

- Nature of the crime charged and the surrounding circumstances
- Whether the offense is non-violent in nature
- Any special characteristics or circumstances of the Defendant
- Previous criminal conduct, whether or not such conduct resulted in a formal charge or conviction of the Defendant.
- The probability that the Defendant will cooperate with and benefit from Diversion
- The appropriateness of Diversion to meet the needs of the Defendant and the community
- Provisions for restitution
- Recommendations of the law enforcement officers and/or Court Services officers involved
- Any mitigating or aggravating circumstances
- Input from the Victim
- Whether the Defendant admits the offense and accepts responsibility.
- A Defendant's application for diversion may be denied if not submitted within forty-five (45) days of the initial court date if the case is a misdemeanor, or prior to the first Preliminary Hearing date if the case is a felony.

Requirements

When entering into a diversion agreement, the Defendant will be required to waive any and all rights arising under the laws and the Constitution of the State of Kansas and the United States. This includes the speedy filing of charges, a speedy trial, and all proceedings incidental thereto.

The agreement may include, but is not limited to, provisions for:

1. Payment of restitution to the victims of crimes, or the community.

2. Payment of all Court Costs, Fines and Diversion Fees.
3. Residence in a specified facility at a specified location.
4. Maintenance of gainful employment.
5. Avoidance of specified locations and/or associates.
6. Moderation or abstinence in the consumption of alcoholic beverages.
7. Strict compliance with all Federal, State and local laws.
8. Satisfactory participation in a designated medical, educational, vocational, social rehabilitation or psychological counseling programs.
9. Complete Community Service:
 - a. Misdemeanor Non-Person: 30 hours
 - b. Misdemeanor Person: 45 hours
 - c. Felony Non-Person: 60 hours
 - d. Felony Person: 80 hours
 - e. Community Service hours can be completed through the Marion County Court Services Office. Please contact them at (620) 382-3765.
10. Diversion is a twelve (12) month program for most law violations. A Traffic Diversion is typically a six (6) month program. A DUI Diversion is typically a twelve (12) month program.
11. Any other conditions deemed appropriate by the County Attorney.

Procedure

The application is available on the County Attorney's website and in the County Attorney's Office. For the Defendant's completed application to be considered, it should be submitted with the Application Fee prior to the first Preliminary Hearing date if the case is a felony, or within forty-five (45) days of the initial court date if the case is a misdemeanor. A non-refundable \$45.00 Application Fee shall be due at the time of the application. Eligibility does not guarantee acceptance for diversion. If any contested hearing is requested, Diversion will NOT be eligible.

Diversion Fees

In addition to the non-refundable Application Fee, upon acceptance the following fees are to be paid:

Misdemeanor Diversion Fee: \$125.00

Court Costs: \$158.00

Felony Diversion Fee: \$200.00

Court Costs: \$193.00

Fees affect all adult criminal diversion cases, worthless check diversion cases, and juvenile offender diversion cases. Additional diversion costs may include, but are not limited to,

urinalysis testing, witness fees, court appointed attorney's fees, and KBI fees. All fees and costs are to be paid to the Marion County Attorney's Office. You may do community service in lieu of a portion of diversion fees. You may also pay off community service hours at a rate of \$7.00 per hour. The money will be forwarded to a Marion County Charity.

Agreement

If the Defendant is found suitable for the Diversion Program, a written Agreement for Diversion shall be offered to the Defendant for acceptance or rejection. If no action is taken within fourteen (14) days after the mailing of the written Agreement, the offer will be considered rejected and withdrawn. If the offer is accepted by the Defendant, all parties shall sign the written Agreement for Diversion with the approval of the Court. The Diversion Fee and Court Costs are due at the time the Agreement is signed by the parties.

Upon the Defendant entering into an Agreement for Diversion, the criminal proceedings shall be suspended by appropriate order of the Court. When the Defendant successfully fulfills the terms and conditions of Diversion, the County Attorney will request that Diversion be terminated. After an appropriate hearing, the Court, upon finding the Defendant has failed to fulfill the terms of the Diversion Agreement shall order Diversion terminated. Criminal proceedings on the original Complaint shall be resumed.

Joel Ensey, #25164
Marion County Attorney

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