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**Office of the County Attorney**  
**11<sup>TH</sup> Judicial District/Crawford County, Kansas**

**Criminal Diversion Policy**  
**(Updated August 2015)**

Pursuant to K.S.A. 22-2906 et seq. the Crawford County Attorney in the Eleventh Judicial District of Kansas has established a Diversion Program. Diversion 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 a Diversion Program will serve the ends of justice and the interests of the community.

**ELIGIBILITY:**

All defendants charged in a single case with nonperson or person crimes, severity level 1, 2, 3 and 4 crimes, weapons violations, sex offenses and/or sexually motivated crimes, any offense involving a death, are not eligible for diversion. All other crimes, if the defendant does not have a prior felony conviction(s) and has never previously been placed on diversion, deferred prosecution, pretrial probation or deferred judgment for a criminal offense in this or any jurisdiction *may be* eligible for diversion.

All defendants charged with a person crime, except as excluded above, may be eligible to apply for diversion on a case by case basis. All defendants charged with an anticipatory crime under Article 33 of Kansas Statutes Annotated, where the underlying crime is an offense that is not a divertable offense as described above, are ineligible for diversion. First time offenders charged with DUI or defendants charged with certain traffic infractions may be eligible for diversion under separate diversion programs administered by the County Attorney.

**PROCEDURE:**

The application shall be available in the Diversion Office. The defendant shall complete the application for diversion and submit the application with a **\$115.00** application fee for misdemeanors and **\$150.00** for felonies. This non-refundable fee **must** be in the form of a cashier's check, money order, or attorney's trust account check payable to "County Attorney's Office".

The application for Diversion **must** be filed prior to first Preliminary Hearing date if the case is a felony, or within thirty (30) days of arraignment if the case is a misdemeanor. **Applications not so filed will not be considered unless agreed to by the County Attorney. A request for a waiver of this requirement may be made if accompanied by a \$25.00 waiver fee.**

**CONSIDERATIONS:**

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

- Nature of the crime charged and the surrounding circumstances.
- 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 agency involved and the victim.
- Recommendations of the assessment evaluator.
- Any mitigating or aggravating circumstances.
- Whether the defendant admits the offense and accepts responsibility.

**DETERMINATION:**

The County Attorney's Office will review the defendant's suitability for diversion. The County Attorney reserves the right to accept or reject any application based on the above considerations. Once a defendant is denied diversion, an application will not be reconsidered unless material circumstances have arisen which were not initially brought to the attention of the the County Attorney.

**AGREEMENT:**

If the defendant is found suitable for the Diversion Program, a written Agreement for Pretrial 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 offer to enter into a written agreement to the defendant or counsel for the defendant, the offer will be considered to be withdrawn. If the offer is accepted by the defendant, all parties shall sign the written Agreement for Pretrial Diversion with the approval of the Court.

This Agreement may contain:

- A waiver of all rights to a speedy trial, all rights to a jury trial and a stipulation as to the facts of the case.
- A specified term of Diversion.
- An agreement that the defendant shall not violate any laws of the United States or any State, or ordinances of any City, or resolutions of any County.
- An agreement that the defendant shall report to the Diversion Program Coordinator or to any other person at the time he or she may be ordered to do so by the Court, or anyone so designated by the Court.
- Payment of all court costs, *minimum* Diversion fee of \$150.00 for misdemeanors and \$250.00 for felonies (depending on facts of case), and fines within a specified period.
- Any special conditions agreed to by the parties which may include any of the following:
  1. Full restitution to the victim.
  2. Residence in a specified facility.
  3. Maintenance of gainful employment.
  4. Participation in any recommended program.
  5. Counseling.
  6. Other conditions as determined by the County Attorney.

**EFFECT:**

Upon the defendant entering into an Agreement for Pretrial Diversion, the criminal proceeding shall be suspended by appropriate order of the Court. When the defendant successfully fulfills the terms and conditions of Diversion, the County Attorney shall move to have the criminal charges dismissed with prejudice. If the defendant fails to fulfill the terms and conditions of the Agreement for Pretrial Diversion, the County Attorney will request that the diversion be terminated. After an appropriate hearing, the Court, upon finding the defendant has failed to fulfill the terms of the Agreement shall order Diversion terminated. Criminal proceedings on the original complaint shall be resumed.

**(FOR OFFICE USE ONLY)**

Application Fee \_\_\_\_\_ / \_\_\_\_\_ Waiver Fee Date Received \_\_\_\_\_

Trial Date \_\_\_\_\_ Case No. \_\_\_\_\_

Alcohol Evaluation \_\_\_\_\_ Arraignment \_\_\_\_\_

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**APPLICATION FOR PRETRIAL DIVERSION PROGRAM**

All answers must be complete. After completing the application below, please return it to the Diversion Office with the **non-refundable \$115.00** application fee for misdemeanors and **\$150.00** for felonies. Application fee must be in the form of a money order, cashier's check, or attorney's trust account check made payable to the County Attorney's Office. **NOTE:** This application **must** be filed within thirty (30) days of arraignment for a misdemeanor or prior to the preliminary hearing if a felony. **A \$25.00 fee must accompany request for waiver of the time requirement if application not filed timely.**

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1. Name \_\_\_\_\_ Phone No. \_\_\_\_\_  
(Last) (First) (Middle)

Maiden name or other names used \_\_\_\_\_

Address \_\_\_\_\_  
(Street) (City) (State) (Zip)

Who do you live with \_\_\_\_\_  
(Name) (Relationship)

How long have you lived at this address? \_\_\_\_\_

2. Age \_\_\_\_\_ 3. Date of Birth \_\_\_\_\_ 4. Race \_\_\_\_\_ 5. Sex \_\_\_\_\_

6. Are you a United States citizen or legal alien? \_\_\_\_\_

**Proof of citizenship or legal alien residency is required. Non-citizens must have entered the United States lawfully and in accordance with the requirements of the U.S. Citizenship and Immigration Services (USCIS) and provide verification of residency status, e.g. valid work permit, visa or green card if approved for the Diversion program .**

7. City and State where born \_\_\_\_\_

8. Social Security Number \_\_\_\_\_

9. Driver's License Number \_\_\_\_\_ State of Issuance \_\_\_\_\_

10. Marital Status \_\_\_\_\_ Spouse's Name \_\_\_\_\_

11. Number of Minor Dependents \_\_\_\_\_  
 Number and Ages \_\_\_\_\_

12. Educational and Vocational Training (include high school or highest grade completed if not high school graduate, as well as education beyond high school).

13. Military Service \_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_ Branch \_\_\_\_\_

Type of discharge \_\_\_\_\_ Date of Discharge \_\_\_\_\_

14. Nearest Contact:

Name \_\_\_\_\_ Telephone No. \_\_\_\_\_

Address \_\_\_\_\_

Relationship to Defendant \_\_\_\_\_

15. Defense Attorney:

Name \_\_\_\_\_ Telephone No. \_\_\_\_\_

Address \_\_\_\_\_

16. Present Employment:

Employer \_\_\_\_\_ Telephone No. \_\_\_\_\_

Address \_\_\_\_\_

Dates Employed \_\_\_\_\_ to \_\_\_\_\_ Occupation \_\_\_\_\_

Salary \_\_\_\_\_

17. Employment History (list employment for the past three years. Begin with current employer. If you need more space, use blank sheet of paper.)

Employer \_\_\_\_\_ Telephone No. \_\_\_\_\_

Address \_\_\_\_\_

Dates Employed \_\_\_\_\_ to \_\_\_\_\_ Occupation \_\_\_\_\_

Employer \_\_\_\_\_ Telephone No. \_\_\_\_\_

Address \_\_\_\_\_

Dates Employed \_\_\_\_\_ to \_\_\_\_\_ Occupation \_\_\_\_\_

Reason Left \_\_\_\_\_

18. Present Sources of Income:

Defendant's Employment \$ \_\_\_\_\_ Per Month

Spouse's Employment \$ \_\_\_\_\_ Per Month

Unemployment Compensation \$ \_\_\_\_\_ Per Month

Public Assistance \$ \_\_\_\_\_ Per Month

Other \$ \_\_\_\_\_ Per Month

(If other please indicate source: Parents \_\_\_\_\_ Relatives \_\_\_\_\_ Friends \_\_\_\_\_ Other \_\_\_\_\_ )

**19. Prior Criminal Offense Record:** (List all Juvenile and Adult incidents, Arrests, Citations, Prosecutions, Convictions, Expungements, Diversions, or Deferred Prosecution Agreements in Kansas or other states, including those not resulting in formal charges or convictions. Include date of incident involved, agency, charge, and disposition.)

20. Have you ever attended Alcohol or Drug treatment or counseling, or received an assessment for possible drug or alcohol problems? \_\_\_\_\_ Yes \_\_\_\_\_ No

If yes, state when, where, and the reason for attendance or assessment: \_\_\_\_\_

21. State the circumstances which led to the offense with which you are charged:



Name:

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Please circle yes or no for each of the following questions.

1. Have you lived in your **current** residence for a year or more?      Yes    No
2. Have you worked at your **current** job for a year or more?      Yes    No
3. Do you have a high school diploma or GED?      Yes    No
4. Do you have outstanding court fines, restitution, or child support?      Yes    No
5. Do you have a valid driver's license?      Yes    No
6. Do you have any pending court cases besides this case?      Yes    No
7. Do you have support (monetary or emotional) from family members?      Yes    No
8. Have you suffered prior legal consequences due to alcohol or drug use?      Yes    No
9. Have you ever been diagnosed with a mental illness?      Yes    No
10. Do you feel that you have been charged fairly in this case?      Yes    No
11. Have you ever been convicted of a criminal offense (including juvenile)?      Yes    No