

CHEYENNE COUNTY ATTORNEY'S DIVERSION POLICIES AND PROCEDURES

It is the policy of the Cheyenne County Attorney to offer a diversion in appropriate cases. The Cheyenne County Attorney has the sole discretion to offer and accept a diversion based upon "the interests of justice" and the "benefit to the defendant and the community."

A diversion means the referral of a defendant in a criminal case to a supervised performance program prior to trial. Every defendant desiring a diversion will be required to sign a diversion agreement. A diversion agreement is an agreement between the defendant and the State in which contains the specification of formal terms and conditions which a defendant must fulfill in order to have the charges against him or her dismissed. Failure of the defendant to complete the diversion agreement will result in the diversion being revoked and the defendant being tried on the facts stipulated in the diversion agreement. Successful completion of the diversion agreement will result in the dismissal with prejudice of the diverted charges.

QUALIFYING OFFENSES

The Cheyenne County Attorney's policy does offer diversions for traffic infractions. If you have received a citation for a traffic infraction, please refer to the Cheyenne County Attorney's Amendment Program for Traffic Infractions. The County Attorney will consider entering a diversion agreement for a variety of misdemeanors, including field and game violations, and felonies.

In making a determination to offer a diversion, the County Attorney shall consider the following statutory factors:

- 1) The nature of the crime 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) the impact of the diversion of the defendant upon the community;
- 6) recommendations, if any, of the involved law enforcement agency;
- 7) recommendations, if any, of the victim;
- 8) provisions for restitution; and
- 9) any mitigating circumstances.

A diversion will not be offered in the following cases:

- 1) Driving under the influence of drugs or alcohol, in violation of K.S.A. 8-1567, if any of the following conditions exist:
 - a. The defendant has received a previous diversion for the same or similar offense, in any city, any county or any state court;

- b. The defendant has been convicted of the same or similar offense, in any city, any county or any state court; or
 - c. During the time of the alleged violation the defendant was involved in a collision or motor accident involving property damage to a third person, a personal injury to any person, including the defendant, or death.
- 2) The complaint alleges that the defendant committed an off-grid crime, a severity level 1, 2 or 3 felony for nondrug crimes or drug severity level 1 or 2 felony for drug crimes.
 - 3) The complaint alleges a domestic violence offense, as defined in K.S.A. 21-3110, and amendments thereto, and the defendant has participated in a diversion in the previous five-year period upon complaints alleging a domestic violence offense.
 - 4) The complaint alleges burglary to a dwelling.
 - 5) The complaint alleges a felony sex offense.
 - 6) The complaint alleges a felony drug offense involving distribution, possession with intent to distribute or possession of a drug having previously be convicted of possession of a drug.
 - 7) Any crime involving a death.
 - 8) Any crime involving a firearm or other deadly weapon.
 - 9) Any crime for which diversion is prohibited by Kansas statute.

As part of entering a diversion agreement the defendant will be required to waive all rights under the law or the constitution of Kansas or of the United States to a speedy arraignment, preliminary examinations and hearings, and a speedy trial, and a waiver of the rights to counsel and trial by jury. The diversion agreement may include, but is not limited to, provisions concerning payment of restitution, including court costs and diversion costs, residence in a specified facility, maintenance of gainful employment, and participation in programs offering medical, educational, vocational, social and psychological services, corrective and preventive guidance and other rehabilitative services.

PROCEDURE AND COSTS

The defendant must request a diversion by submitting an application to the County Attorney. Oral request, either in person or on the phone, for a diversion will not be considered. Any request for a diversion must be accomplished by submitting a completed diversion application to the County Attorney by mail, fax, or email. Whether a defendant receives a diversion is at the discretion of the County Attorney. The defendant will be informed by the County Attorney within 30 days whether his or her request for a diversion has been denied or has been approved. a written diversion agreement for his or her review and signature.

If the defendant has an attorney, then the attorney must participate in the diversion application and agreement process. If the defendant does not have an attorney, then the defendant has the right to retain an attorney or request that the Court appoint the defendant attorney according to the laws and regulations of the State of Kansas. If the defendant does not desire to have an attorney, then the defendant may be asked to sign a waiver of counsel form.

If approved for a diversion, the defendant will be required to sign a written diversion agreement with the County Attorney. A diversion fee will be required to be paid upon signing of the Diversion Agreement, which shall be made payable to the Cheyenne County Attorney Diversion Fund. Court costs are also required to be paid upon signing of the Diversion Agreement, which shall be made payable to the Clerk of Court. The Diversion Fee and Court Costs are due in the form of money order, cashier's check, or attorney's trust account check at the time of signing the diversion agreement. NO CASH OR PERSONAL CHECKS WILL BE ACCEPTED.

The amount of the diversion fee will be determined by the highest level of crime charged. The fees will be as follows:

- \$200 for misdemeanors
- \$400 for Level 8, 9, 10, and unclassified felonies
- \$600 for Level 6 or 7 Felonies and level 4 drug felonies.

The standard diversion term will be as follows:

- 6 months on misdemeanors, except diversion for DUI and first time misdemeanor possession of an unlawful substance.
- 12 months on all other diversions, including DUI and first time misdemeanor possession of an unlawful substance.

Failure to pay the proper fees will result in the incorrect payment amount being returned and the defendant will be required to pay the correct amount prior to the diversion being accepted by the County Attorney. The diversion period does not begin until the diversion fee and court costs have been paid and a signed Diversion Agreement is filed with the Court.

The Defendant will be required to pay restitution to any victims, and to BIDS or the County for all court appointed attorney fees as a condition of the diversion.

The defendant will be required to pay a fine per diverted count and the standard court costs based upon the highest crime charged as determined by the Clerk of the District Court's Office. All fees and costs associated with the diversion are nonnegotiable and shall not be waived.

STANDARD TERMS OF A DIVERSION AGREEMENT

If granted Diversion, standard conditions of the Diversion Agreement may include, but are not limited to:

- 1) Defendant must remain law abiding.
- 2) Defendant shall not have contact with victim(s), co-defendant(s), and witness(es), unless otherwise waived by the County Attorney.
- 3) Defendant must report monthly in writing
- 4) Defendant shall not leave the State of Kansas without providing advanced written notification to the County Attorney.

- 5) Defendant shall pay fines, court costs, and other associated fees within a specified period set forth in the Agreement.
- 6) Defendant shall pay KBI Laboratory fees (if applicable) within a specified period set forth in the Agreement.
- 7) Defendant shall pay restitution in full (if applicable) in the monthly payment amount designated in the Agreement.
- 8) Defendant shall attend school and/or work at a lawful occupation.
- 9) Defendant shall maintain current address on file with County Attorney Office and the Clerk of the District Court.

Depending on the circumstances and at the discretion of the County Attorney, special conditions of the Agreement may include, but shall not be limited to:

- 1) Defendant attending and providing proof of completing treatment (i.e. alcohol, drug, anger management, domestic violence, mental health) by the provider to be approved by the County Attorney.
- 2) Defendant shall surrender all firearms and ammunition to one who may lawfully possess them.
- 3) Defendant may not possess or consume alcohol or drugs.
- 4) Defendant making a donation to charitable organizations.
- 5) Defendant performing community service.
- 6) Other conditions as set forth by the County Attorney.