

NEOSHO COUNTY DIVERSION PROGRAM

Effective November 6, 2006

Pursuant to K.S.A. §22-2906 et seq., the County Attorney of Neosho County, Kansas, has established a Diversion Program. A copy of this Diversion Program will be available to each defendant upon his or her first appearance before the Court.

Diversion is a privilege, 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.

In all cases, the decision to offer a diversion, together with any terms thereof, rests solely in the discretion of the Neosho County Attorney and/or Assistant County Attorney. The County Attorney reserves the right to offer diversion for felony offenses in special, unique circumstances when deemed necessary for the effective administration of justice and in the best interest of the defendant, the community and the victim(s). In determining whether a diversion is warranted in a specific case, the County Attorney shall address and consider the factors set out in K.S.A. §22-2908.

ELIGIBILITY

Defendants charged with misdemeanors, traffic and fish and game offenses shall be eligible to apply for diversion. No defendant charged with assault or battery on a law enforcement officer will be eligible for diversion.

Traffic infractions are eligible for the "Pay and Dismiss diversion." Please ask about that policy if all you have are traffic infractions.

CONSIDERATIONS

Pursuant to K.S.A. 22-2908 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, the community, and the victim(s):

1. The nature of the crime charged and circumstances surrounding it;
2. Any special circumstances or characteristics of the defendant;
3. Whether defendant is a first-time offender and if defendant has previously participated in diversion;
4. Whether there is a probability that defendant will cooperate with and benefit from a diversion;
5. Whether the available diversion program is appropriate to the needs of the defendant and community;
6. Recommendations, if any, of involved law enforcement agency;
7. Recommendations, if any, of the victim;
8. Recommendations, if any, of the alcohol/drug counselor;
9. Provisions for restitution; and
10. Any mitigating circumstances.

Additionally, the County Attorney or Assistant County Attorney may examine the following criteria in determining whether diversion is in the interests of justice and of benefit to the defendant and the community:

1. The arrest record of defendant;
2. The employment record of defendant;
3. The physical and mental condition of defendant as perceived by the County Attorney or Assistant County Attorney;
4. Public reaction to the offense charged;
5. Education level of defendant;
6. Family and social history of the defendant;
7. Degree to which defendant cooperated or failed to cooperate with law enforcement;
8. General attitude of defendant;
9. Whether the Neosho County Attorney's Office possesses the necessary resources to establish and execute an effective diversion program which would benefit the defendant and the community; and
10. Any other factors the County Attorney or Assistant County Attorney deems appropriate to the particular defendant and the specific offense charged.

PROCEDURE

The application for Diversion shall be attached to this Diversion Program. The defendant shall complete the application for Diversion and submit the application to the County Attorney's Office **before leaving court. Failure to return the application before leaving court will make you ineligible for a diversion.** The County Attorney's office will review the application, police reports, criminal history and driving record of the defendant before making a decision. Such decision will be made prior to the Diversion Review court date and you will be notified of the decision at the court hearing. If you have been accepted for diversion then we will give you, or your attorney if you are represented by one, the diversion agreement in court and you will have thirty (30) days to return the agreement with the diversion fee and any applicable evaluation fees. Evaluation fees will be required in all DUI and MIP cases. The diversion agreement is considered an offer and **if you fail to return the documents and money owed within thirty (30) days of receiving the agreement then the offer will be withdrawn and a diversion will no longer be an option for you.** Any money that you owe, aside from the diversion fee and evaluation fee, will be made in monthly payments throughout the duration of the diversion.

AGREEMENT

The written agreement shall contain:

1. A waiver of rights to a speedy arraignment, preliminary examination, and/or speedy trial under the Constitution of the State of Kansas and the Constitution of the United States.
2. A waiver of a right to jury trial and agreement to stipulate to the facts of the case.
3. An agreement that the defendant shall not violate any laws of the United States, or any State, County or local laws.

The written agreement may contain:

1. An agreement for the defendant to report to the diversion program coordinator or to any person that the County Attorney designates.
2. A specified term of diversion.
3. In traffic matters, an agreement by defendant to maintain owner's or non-owner's liability insurance and provide verification of said insurance in effect during the term of the diversion to the County Attorney's Office.
4. Payment of a specified fine as determined by the County Attorney in accordance with the statutory guidelines.
5. Payment of all Court costs
6. Payment of attorney fees for the defendant's court appointed attorney, if one.
7. Payment of a diversion fee by cash, money order, certified check or law firm check made payable to the Neosho County Treasurer. This diversion fee is due prior to filing of any diversion agreement. All monies from diversion fees shall be deposited in the County General Fund. The amount of diversion fees are as follows:
 - a) Misdemeanor Offenses \$100.00
 - b) Felony Offenses \$200.00

The County Attorney reserves the right to reduce or eliminate the fees set forth above in special, unique circumstances when deemed necessary for the effective administration of justice.

8. Special conditions may also be required, including:
 - a) Residence in a specified facility or location;
 - b) Maintenance of gainful employment;
 - c) Restitution to the victim;
 - d) Drug, Alcohol, Psychological and/or psychiatric evaluations;
 - e) Satisfactory participation in and completion of designated medical, psychological, educational, vocational, or social counseling programs;
 - f) Avoidance of specific locations or associates;
 - g) Moderation or abstinence in the consumption of alcoholic beverages and/or drugs;
 - h) Consent to random alcohol or drug testing at defendant's expense;
 - i) Letter(s) of apology to any victim(s);
 - j) Suspension of driving privileges;
 - k) House arrest;
 - l) Strict school attendance;
 - m) Community service;
 - n) Any other conditions as determined by the County Attorney;
 - o) Payment of the KBI lab fee, if applicable, of \$400.

EFFECT

Upon the Defendant entering into an Agreement of Pre-trial 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 Pre-trial Diversion, the County Attorney will request that diversion agreement be set aside. After an appropriate hearing, the court upon finding the defendant failed to fulfill the terms of the Agreement for Pre-trial Diversion, may order diversion revoked and resume criminal proceedings set forth in the complaint or information based upon the stipulation of facts contained in the agreement.

The first time you fail to comply with the diversion conditions, a motion to revoke the diversion can and will be initiated. This means missing one payment or even making a late payment will be grounds by itself to revoke your diversion.

It is your responsibility to keep our office informed of address changes and/or other changes relevant to your case(s) and meet all deadlines.

Diversion is a privilege, not a right. Absolute compliance will be required.

Melissa R. Dugan
Neosho County Attorney