

# **TREGO COUNTY DIVERSION PROGRAM GUIDELINES**

**Trego County Attorney's Office, 216 N Main St., WaKeeney, KS 67672**

The Trego County Attorney has established the following guidelines for a pretrial diversion program for adult offenders. The diversion program is intended to give a "second chance" to offenders who commit a relatively minor criminal offense. A criminal defendant charged in the District Court of Trego County may apply to the office of the County Attorney for participation in a diversion program. Once a request for an application is made, the County Attorney will provide an application to the defendant, requesting that the same be completed and returned within ten days of its receipt.

When the defendant applies for entry into the program, he or she is requesting that the County Attorney interrupt the formal processing of the case for the purpose of diverting him or her to alternative, community-based rehabilitation or assistance. The objective of the program is to offer the defendant the opportunity to leave the criminal justice system at the early stages, and yet, assume responsibility for the cases' ultimate dismissal.

Diversion is a privilege and not a right. There is no guarantee diversion will be granted in any given case, and the decision as to whether diversion will be offered or not offered rests solely with the County Attorney. In addition, it must be remembered that in reviewing applications for diversion, the needs of the offender are less important than those of public safety and the rights of the victim(s).

In determining whether or not to grant diversion, the County Attorney will consider a number of factors, including (but not limited to) whether the defendant demonstrates a genuine sense of remorse and is prepared to acknowledge the act(s) charged and accountability for the consequences of his/her actions. 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. Defendants shall be required to reimburse the State of Kansas or Trego County, as the case may be, for the services of court-appointed counsel.

## **DIRECT DIVERSION**

Direct Diversion is an application process that does not require the defendant to schedule a conference with the Trego County Attorney. Applicants must not have any prior criminal history to be eligible for this type of diversion. The Defendant's eligibility criteria can be discussed when submitting the application.

## **ELIGIBILITY CRITERIA**

1. Applications must be made no later than ten (10) days prior to the defendant's first appearance in Court. These criteria may be extended or waived by the County Attorney for good cause shown by the defendant.
2. Persons with prior criminal diversion and/or convictions, and/or pending criminal matters in other jurisdictions may not be eligible for diversion.
3. Persons may request a diversion if any pre-trial motions are filed with the court prior to the final decision by the Trego County Attorney regarding the defendant's application for diversion.

4. Diversion will not be granted for felonies having a severity level of 1-7, or for off-grid felonies. Diversion will not be granted for drug felonies having a severity level of 1-3. The Trego County Attorney reserves the right to review these criteria on a case by case basis.
5. Diversion will not be granted for the misdemeanor crimes of providing alcohol to minors, pursuant to K.S.A. 21-3610, 21-3610a and/or 21-3610b.
6. Defendants who are charged with certain crimes or priors may need to meet with the Trego County Attorney in a conference to review the diversion application, the determination and notification for the same shall be made on a case by case basis.
7. All court appearances must be attended during the application process unless a continuance of the same has been granted.
8. The successful or unsuccessful completion of a previous diversion program, whether or not the diversion was for the same or different offense, shall be considered in making a determination or qualification.

### **DIVERSION REQUIREMENTS**

If the Trego County Attorney agrees to diversion, the defendant will be required to waive any and all rights arising under the laws and/or Constitution of the State of Kansas or the United States to a speedy trial and all proceedings incidental thereto. The diversion agreement *may include*, but is not limited to, the provisions listed below:

1. Restitution for the victim(s) or the community.
2. The following diversion fees for traffic cases are as follows:
  - \$150.00** for traffic infractions; speeding equal to or less than 10 mph over the posted speed limit;
  - \$200.00** for speeding infractions 11 mph or more over the posted speed limit;
  - \$350.00** for speeding infractions equal to or greater than 100 mph;The following diversion fees for criminal cases are as follows:
  - \$250.00** for a misdemeanor crime;
  - \$300.00** for possession of marijuana;
  - \$350.00** for driving under the influence; and
  - \$500.00** for a felony

The diversion fees must be submitted by money order or cashier's check, made payable to the ***Trego County Diversion Fund***, and returned to the Trego County Attorney's Office, 216 N Main Street, WaKeeney, KS 67672.

3. Court costs as assessed.
4. The diversion term shall be three (3) months for a traffic offense and some fish and game offenses; three (3) months for Class C misdemeanor offenses; six (6) months for Class B misdemeanor offenses; one (1) year for Class A misdemeanor offenses; and one (1) year for felony offenses. The Trego County Attorney reserves the right to extend or shorten the above periods in a proposed diversionary agreement.

5. Defendant shall obtain/maintain full-time employment, full-time enrollment in school or a combination of both.
6. Satisfactory participation in designated medical, educational, vocational, social, psychological or parenting counseling programs and/or public service.
7. Avoidance of specified locations or associations.
8. Strict compliance with all federal, state and local laws.
9. Abstinence from the consumption of beer/alcoholic beverages, illicit drugs, non-prescription drugs, and/or controlled substances.
10. Successful completion of an approved alcohol/drug/anger/mental health evaluation, treatment, and/or aftercare program, whether the same be for inpatient treatment, outpatient treatment, or aftercare.
11. Strict compliance with "No Contact Order" when applicable.
12. If diversion is granted, then all costs of the diversion, including but not limited to diversion fees, court costs, fines, and fees, shall be due and payable at the time the diversion agreement is signed. The Trego County Attorney reserves the right to review and modify this provision for exceptional circumstances.
13. In addition to the above, and in the case of a diversion for driving under the influence of alcohol and/or drugs, pursuant to K.S.A. 8-1567, the defendant shall conform to additional requirements specifically pertaining to said crime.
14. A stipulation to the alleged facts of the crime as charged.

The terms of the diversion agreement will be reduced to writing and, upon approval of the parties involved, filed with the District Court. Upon satisfactory completion of the diversion program, the Trego County Attorney will move to have the charges against the defendant dismissed with prejudice. Participation in the diversion program will appear on the defendant's record.

Failure to strictly comply with any provision of the program may result in the reinstatement of prosecution on the facts as stipulated in the agreement.

## **SUPERVISED DIVERSIONS**

In the event any diversion as proposed by the County Attorney shall be supervised, the applying defendant shall meet with the Court Services Office for the Twenty-third Judicial District for the State of Kansas, to complete a risk/needs assessment. The defendant shall meet with said officer as directed, and shall provide truthful and accurate information to all questions as asked. The risk/needs assessment shall be completed and provided to the Trego County Attorney and the defendant to determine if the defendant is suitable for diversion as set forth above. The result of said risks/needs assessment shall not automatically qualify the defendant for diversion, and the granting of a diversion shall remain the sole and exclusive right of the County Attorney per Kansas statute.

Effective January 15, 2018.

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## **Trego County DUI Diversion Policy**

DUI diversions will be subject to the same provisions as set forth by statute (K.S.A. 8-1567 or K.S.A. 8-1567a, as applicable). In addition, the following criteria may be included in any diversion agreement granted for DUI:

1. The Defendant must not have any previous DUI's or DUI diversions.
2. The Defendant's blood alcohol level must not be more than .16.
3. No property damage or personal injury may be suffered by any person other than the individual charged with DUI.
4. There was no attempt to elude or evade law enforcement officers.
5. The Defendant must have cooperated with and shown respect for law enforcement officers.
6. Defendant shall pay a fine equal to that established by Kansas law for the requisite offense.
7. Defendant shall pay a \$350.00 diversion fee.
8. Defendant shall pay court costs.
9. Diversion shall be for a term of six (6) months from the date the diversionary agreement is filed.
10. All costs and fees must be paid in full before the diversionary agreement is signed, or during other terms as set forth in the agreement.
11. The Defendant must complete and pay for an alcohol evaluation and treatment as suggested or recommended in the evaluation.
12. The Defendant must stipulate to the allegations of the complaint and/or reports of law enforcement relative to the case as filed.
13. Defendant must pay any and all testing fees incurred with the KBI, etc.
14. Defendant must agree not to possess or consume alcohol during the term of the diversion agreement.
15. Defendant must agree to random tests of the defendant's blood, breath or urine at the request of law enforcement, a supervision officer, the Court or the County Attorney. Any such tests shall be done at the expense of the defendant.
16. Possession or consumption of alcohol during the diversion agreement shall be grounds for revocation of the agreement.
17. All of the above terms are subject to review and amendment by the Trego County Attorney and the terms and conditions additionally set forth in the Trego County Diversion Program Guidelines.

**TREGO COUNTY ATTORNEY'S OFFICE  
APPLICATION FOR DIVERSION**

**1. PERSONAL INFORMATION**

Name \_\_\_\_\_ Age \_\_\_\_\_

Address: \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Email Address: \_\_\_\_\_

Telephone (cell) \_\_\_\_\_ (home) \_\_\_\_\_

Date of Birth \_\_\_\_\_ Place of Birth \_\_\_\_\_

Social Security # \_\_\_\_\_ Male \_\_\_ Female \_\_\_ Single \_\_\_ Married \_\_\_

Driver's License # \_\_\_\_\_ Commercial Driver's License Yes \_\_\_ No \_\_\_

**2. EDUCATION:**

School and Highest grade completed \_\_\_\_\_

**3. EMPLOYMENT:**

**Present Job:**

Occupation \_\_\_\_\_

Employer's name \_\_\_\_\_

Business name \_\_\_\_\_

Business address \_\_\_\_\_

Telephone \_\_\_\_\_

**If self-employed, answer the following:**

Business Name \_\_\_\_\_

Nature of business \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_

4. Is anyone appointed as your guardian or conservator? Yes \_\_\_ No \_\_\_

If yes, answer the following:

Name of guardian or conservator \_\_\_\_\_

Address \_\_\_\_\_

Name & location of court \_\_\_\_\_

5. PREVIOUS CRIMINAL RECORD: (If none, state none.)

Please state all offenses for which you have been arrested or charged at any time and in any jurisdiction. Include offenses expunged, juvenile offenses adjudicated, alcohol related traffic offenses, and any other traffic offenses. This section applies even if the charges were dismissed or someone told you the charges would not be on your record.

OFFENSE	WHERE	WHEN	OUTCOME
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

6. Please state any facts concerning the recent crime which you believe might excuse your actions.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. Explain why you feel you could successfully complete the diversion program.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. State in detail the facts which caused charges to be filed.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I have read the foregoing application. All the information is true and correct. I understand that if any of this information is not true and correct, this may be a basis for denial of diversion or withdrawal of diversion.

Prior to making this application, I have been fully informed of the policies and guidelines of the diversion program adopted by the office of County Attorney.

Date: \_\_\_\_\_, 20\_\_\_\_.

Signature \_\_\_\_\_

**RELEASE OF INFORMATION**

I hereby authorize the Trego County Attorney's Office to release any information in the Trego County Attorney's file pertaining to this offense for which I am charged to any medical provider, including but not limited to High Plains Mental Health Center, Smoky Hill Foundation, the Department of Child and Family Services and the investigating law enforcement agencies, or any other such person or agencies, for use in determining whether I am a suitable candidate for diversion. I further authorize any person, agency or organization to release and provide, upon request, any information to the office of the Trego County Attorney in consideration of any application for diversion.

I further authorize any person, agency or organization that is conducting an evaluation or treatment as part of the diversion application or the diversion agreement to release information to any other person, agency or organization as needed for the evaluation or treatment process.

Date: \_\_\_\_\_, 20\_\_\_\_

Signature \_\_\_\_\_